

Federalism in Switzerland

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As a theory of government, federalism was always the first and best destiny for Canada. Indeed, I cannot imagine Canada as anything but a federation. Geographically large, with two founding languages and distinct regional cultures and economies, home to people from virtually every nation and culture on the planet, Canada needs both a national and provincial governments with balanced and important responsibilities. Only federalism allows us to enjoy the advantages both of unity and diversity.

JEAN CHRÉTIEN

Prime Minister of Canada 1993 - 2003,
at the International Conference of
Federalism 2002
St. Gallen, Switzerland

1. Introduction

Today, almost 95 per cent of the world's population lives in multicultural states, fragmented into different cultural communities. Forty percent of these people live in federal states. The others are in unitary states with greater or lesser degrees of decentralisation.

Federalism is an approach to government that divides public powers not only horizontally, but also vertically. Federalism is traditionally considered to be a useful way of limiting governmental power. Thus it has been viewed as one particular solution to the organisation of power in order to secure good governance. However, at the same time, it has also been criticised as detracting from efficiency and equality.

I understand federalism as a constitutionally established balance between self-rule and shared rule. Viewed in this light, federalism offers an additional answer to the burning question of what can be done to bring or to hold multicultural societies together. Not only does it provide a solution to the traditional questions of governance, but it also assists with the problem of who should govern whom. Thus federalism is one of the main options to be taken into account in determining systems of government for multicultural societies.

2. Federalism and Democracy in Switzerland

Switzerland is a small country with a population of 7.4 million and an area of 41 000 square kilometres. It lies at the heart of Europe, at the interface between German, French and Italian culture. The unity of the Swiss State is therefore not rooted in a single language and culture. Rather, shared historical experience and a powerful political will hold the country together. As a country, Switzerland has a strong sense of independence. It is not a member of the European Union and only opted to join the United Nations as its 190th member after the referendum of 3 March 2002.

2.1 Federalism: a structure, a process and a political culture

Switzerland is made up of 26 cantons (6 of them are half cantons) and more than 2900 communes. The cantons enjoy a great deal of autonomy. Each canton has its own constitution, its government, its parliament, its courts and its laws, though they must, of course, be compatible with those of the Confederation. The cantons also enjoy a great deal of administrative autonomy and freedom of decision-making. They have independent control over their education systems and social services, and each has its own police force. Each canton also has its own level of taxation. As a multilingual country with many minorities, Switzerland grants its cantons a substantial degree of scope for autonomous action. The official languages of the Confederation are German, French and Italian. Romansh is an official language for communicating with persons of Romansh language. The Cantons designate their official languages. In order to preserve harmony between linguistic communities, they are bound to respect the traditional territorial distribution of languages, and to take into account the indigenous linguistic minorities.

Federalism is an institutional structure. But it is also a political process. The federal authorities do not often exercise all the powers they have, and when dealing with the cantons and the communes, use their powers with caution. Instead of deciding unilaterally, federal authorities negotiate, and respect the cantons or communes as equal partners. The process of settlement or mutual agreement between federal, cantonal and communal authorities has become an element of political culture, mostly informal, and only occasionally prescribed as a legal procedure.

2.2 Direct democracy

The Swiss political system provides for direct participation by citizens in the creating and amending of the Constitution and federal legislation.

2.2.1 Referenda

“Referendum” in this context concerns a direct vote of the electorate on a decision of the Parliament, the citizens having the last word: they decide whether a proposal of the Parliament shall become law or be rejected. In Switzerland, there are two types of referendum. First, all proposals for amendments to the Constitution and important international treaties are subject to an obligatory referendum. This requires a double majority, of the Swiss people and of the cantons, thus offering a kind of federal participation. The obligatory referendum is relatively frequent. Second, most acts and regulations voted in Parliament are subject to an optional referendum. In such cases, a decision of the Parliament becomes law unless 50 000 citizens, within 100 days, demand the holding of a popular vote. If enough signatures are collected within the stipulated period, a popular vote must be held, and a simple majority of the voters decides whether the bill is approved or rejected, the wishes of the cantons being irrelevant. Since the obligatory referendum refers to amendments to the Constitution and the optional referendum to ordinary legislation, the two instruments are often distinguished as the “constitutional” referendum and the “legislative” referendum.

2.2.2 The popular initiative

100 000 citizens can, by signing a formal proposition, demand an amendment to the Constitution as well as propose the alteration or removal of an existing provision. The proposition can be expressed in a precise phrase of amendment, or be drawn up in general terms, upon which the Federal Assembly can put forward a formal proposition. Having been handed in, the initiative is discussed by the federal government and Parliament, which then adopt formal positions on the proposed changes. This can involve drawing up an alternative proposition or, if the popular initiative is couched in general terms, formulating precise propositions to be inserted in the Federal Constitution or the legislation. Initiatives demanding an amendment to the Constitution and the counterproposition that may have been put forward are

then presented simultaneously to the popular vote. As with all constitutional changes, acceptance requires the majority of both the voters and the cantons.

2.3 Power-sharing

Switzerland has a long tradition of protecting minorities and involving all political groupings in the exercise of power. This is also linked with Switzerland's system of direct democracy. The Swiss people do not only vote in parliamentary elections every four years; they can also vote on every constitutional amendment and on numerous laws and other policy decisions - not only at national but also at cantonal and communal level.

I would like to stress the three institutional features in the political system of Switzerland: power-sharing, federalism and direct democracy. From this perspective, Switzerland is the exact opposite of the classical Westminster model. In the United Kingdom, power is concentrated in the majority party in the House of Commons. In contrast, Switzerland has developed a system of dispersed power. The cantons and the local communities enjoy much autonomy; at all levels the major political parties participate in the executive; and the citizens themselves are, in many important issues, the ultimate decision-makers. This dispersion of power is the Swiss way of handling the problem of cultural diversity. Swiss democracy, however, is not an export blueprint but an experience which shows that democracy can work in a different way than in most other countries.

The dispersion of power also has a negative side, namely a certain immobility in the system. With accelerated development now in so many fields, this immobility is increasingly felt in the daily life of Swiss politics. The most prominent example relates to relations with the European Community. Switzerland has great difficulty in deciding exactly what this relationship should be. Thus it is lagging behind in the construction of a new Europe, instead of letting Europe profit from its multicultural experience.

3. Self rule and shared rule

Two concepts that are key to understanding federalism are self rule and shared rule. These both can be found in each federal country, but their actual character and the relationship between the two may be very different from one system to another.

3.1 Self rule

This concept encompasses all the domains where the different levels of government – in our case each single canton on one hand and the Confederation on the other hand – have the power to decide independently. From the perspective of the subnational units such as cantons, it means that, within the sphere of self rule, subnational units may enact and implement their own laws without having to observe the regulations of the national authority. Nevertheless, subnational units are usually expected to adhere to some basic rules that must be observed nationwide in every action of any public authority.

Art. 3 of the Federal Constitution contains the basic principle of self rule in Switzerland: all competences are cantonal, unless otherwise stated within the Federal Constitution. Some of the federal tasks are:

- National security, including military defence
- Customs
- Rail
- Monetary and economic policy
- Regulation on postal and telecommunication services
- Civil law and criminal law
- Social insurance
- Environmental protection

3.2 Shared rule

This concept refers to the cases where the decision-making process at one level of government is influenced by another level of government. What makes federal States different from unitary State forms is that shared rule is not only

top down, meaning that the central authority influences the ruling of subnational entities, but also the other way round, meaning that the subnational entities as such have an institutional right of co-determination of the central ruling and policy.

3.2.1 Federalism by cantonal implementation of federal rule

For the majority of federal competences, the federation itself does not provide the administration for putting the law into effect. However, federal laws are binding for all State agencies, whether they be cantonal or federal. Therefore, the cantons must implement federal law, and in case of any contradiction with their own legislation, federal law is superior to cantonal law. Furthermore, many federal laws expressly assign many competences for implementation to the cantons. This is not only a fact, but an intentional result of state organisation based on the principle of subsidiarity.

3.2.2 The cantons are represented with the Senate

Thus, the Swiss Federal Parliament, officially called the Swiss Federal Assembly, is divided into two chambers, the House of Representatives, which represents the people, and the Senate, which represents the cantons. The Senate consists of 46 delegates of the cantons (two seats per full canton, one seat per half canton). As in the American Senate, each canton has the same number of votes in the Senate. In addition, the chambers of parliament have exactly the same powers, and no federal statute can be enacted without the agreement of both of the chambers.

However, the influence of the cantons through the Senate is limited due to the fact that the cantonal governments are not permitted to instruct their representatives.

The Canadian Senate usually has 105 members. The Senators are appointed by the Governor General on the recommendation of the Prime Minister. The big geographic regions of Canada – the East, Quebec, Ontario and the West – are represented by an equal number of Senators. No bill can become law unless it has been passed by the Senate. There is no equal number of

Senators from each province, and there is no election by the people. That's why the Canadian Senate is different from Switzerland's.

3.2.3 The cantons are represented in the House of Representatives

The people directly elect members of parliament in both chambers, the House of Representatives and the Senate. In elections to the Federal Assembly the cantons form the constituencies and the cantonal sections of the parties select the candidates. The House of Representatives is composed of 200 representatives of the People. The representatives are elected by the people according to the system of proportional representation with the larger cantons acting as multi-member constituencies. The House of Representatives is renewed in full every four years. The seats are distributed among the cantons in proportion to their population. Each canton has at least one seat. The members of parliament depend exclusively on the voters in their home cantons. In Switzerland political parties are strongest at the cantonal level, and therefore the deputies of both chambers are obliged to adjust their political actions to the interests of the cantonal section of their respective parties. This is a very important factor of shared rule in Switzerland.

3.2.4 Federal law making

The law making process at the federal level is significantly influenced by the cantons.

Firstly, the cantons must be consulted within the law drafting process, and their opinion must be taken into account.

Secondly, there are two chambers of parliament, and they have exactly equal powers. Both chambers must agree to the proposed law, otherwise it will not be enacted. In case of a difference in opinions between the two chambers, there is a mediation process in order to find consent.

Thirdly, when a revision of the Federal Constitution is proposed, a mandatory popular vote is required that must gain the support of a majority of the population and a majority of votes within a majority of the cantons. This procedure is especially important for the protection of cantonal competences since to shift a competence from the cantons to the federation, the revision of

the Federal Constitution is necessary, and thus the majority of voters within the majority of cantons must agree.

3.2.5 The Federal Government

The federal government is the highest governing and executive authority of the Confederation. It is composed of seven members, each of whom is head of a ministry and individually elected for a fixed term of government of four years by the Federal Assembly. Together they form the Swiss executive. The composition of the federal government is a very important factor of shared rule. This is largely due to the fact that the federal government and its administration draft almost all law-making propositions, and negotiate on behalf of Switzerland whenever an international treaty is discussed.

3.2.6 The Conference of the Cantonal Governments

The increasing internationalisation of politics and the fact that the traditional distinction between foreign and domestic politics are more and more difficult accelerate the already existing tendencies towards centralisation. If the cantons want to preserve or even strengthen their position as constituent States, their co-operation has to be continuously adjusted to new political developments. In this context, the Conference of Cantonal Governments was founded in 1993. This Conference is a new actor on the federal scene and it allows the cantons to answer the present-day challenges.

The agreement on the Conference of Cantonal Governments from October 1993 describes the objectives of the Conference as follows:

“The Conference of the Cantonal Governments shall promote co-operation among the cantons in their fields of responsibility and secure the coordination and information of the cantons in federal politics as far as the cantonal interests are concerned, above all as regards

- the reform and the future development of federalism;
- the distribution of responsibilities and duties between the federation and the cantons;
- the definition of the political objectives and the preparation of the political decisions at the federal level;

- the implementation of the federal laws by the cantons;
- the foreign policy and the integration of Switzerland into Europe”.

The success of the Conference of Cantonal Governments depends on the ability of the cantons to find a consensus among themselves on the most important political issues. The Conference has become a very important instrument for the implementation of article 55 of the Swiss Constitution.

Art. 55 Participation of the Cantons in Decisions of Foreign Policy

¹ The cantons shall participate in the preparation of decisions of foreign policy which concern their powers or their essential interests.

² The Confederation shall inform the cantons timely and fully, and consult them.

³ The position of the cantons shall have particular weight when their powers are concerned. In these cases, the cantons shall participate in international negotiations as appropriate.

4. Reform of the federal system

Federalism is the core principle on which the Swiss Constitution is based. However, it is in need of reform. In recent decades, it has forfeited some of its substance, and there has been a progressive trend towards centralization. More and more powers have been transferred to the Confederation, and the cantons have played a major role in carrying out the decisions taken in the responsibility of the Confederation. Indeed, the Confederation grants resources to the cantons specifically for this purpose. The system is marked by a blurring of competences, declining efficiency and a lack of transparency.

For this reason, a joint federal-cantonal working group has put forward a number of reform proposals. Their main focus is on the reallocation of responsibilities and financial arrangements. With reference to these proposals, the Federal Government submitted a comprehensive package of reforms to Parliament on November 14th, 2001: Reform of Financial Equalization and Task Allocation between the Confederation and the Cantons (RET).

The Parliament voted the reform package on October 3rd, 2003. The obligatory referendum will now take place. As the reforms entail an amendment to the Constitution, they require the majority of both the voters and the cantons.

The key features of the proposed reforms are as follows:

- A reallocation of the responsibilities between the Confederation and the cantons. This will not entail a complete separation of tasks. The aim is to reallocate policy making and financial responsibility to the level of government which would manage them most effectively. Under the proposed reforms, the Confederation would be assigned full responsibility for the following areas: organization, training and equipment of the army; operation and maintenance of national highways; provision of individual retirement pensions and survivors' benefits; provision of individual disability benefits. The following areas will fall solely within the competence of the cantons: special education, education to secondary level, major roads, subsidies for the building and operation of specific social institutions.
- Where it is impossible to reallocate tasks solely to the Confederation or the cantons, the reforms call for improved cooperation and financial restructuring between the Confederation and the cantons. For joint responsibilities, the Confederation should increasingly confine itself to providing strategic, policy-related leadership, while the cantons would be in charge of operational implementation. To this end, the Confederation should no longer fund individual projects but should support multiannual programmes with global budgets. Joint responsibilities would include, for example, education global budgets to the universities, major projects relating to highways which would otherwise be difficult to finance, and regional public transport.
- The proposed reform also is designed to encourage intercantonal cooperation. At the request of interested cantons, the Confederation would have the power to extend intercantonal agreements in specific areas to all the cantons involved, or oblige cantons to join intercantonal agreements. This would apply to the following policy areas: urban transport, specialist medicine, waste disposal and waste water treatment, cantonal universities

and Universities of Applied Sciences, cultural institutions of inter-regional importance, the judicial system, and institutions for the care and advancement of disabled persons.

- Finally, the reform also provides for a reallocation of resources between strong and weak cantons. The Confederation would also participate in these arrangements. The Confederation would pay compensation for natural disadvantages faced by the cantons due to their geographical or topographical position (mountain regions) or specific demographic structure (cities and conurbations).

5. A new Challenge: Federalism and Globalization

Federations, like all states, face the challenge of having to adjust to changes in the international system. For federations, these challenges include accommodating to the change imposed on the autonomous competences of the federal government and those of the constituent units by the direct impact of international legislation. Also, the increasing importance of trans-border and international regional activities affects the relationship between constituent units and the central government. Simultaneously, external interests such as multinational enterprises (MNEs), international regulatory bodies such as the IMF and the WTO, and international non-governmental bodies such as Amnesty International or Greenpeace International may press for various changes to national policy-making, affecting issues such as controls over foreign investment, fiscal policy, or human rights practices. Despite these and other challenges, federal systems of government are alive and well established. But federations must find new ways of dealing with international challenges and of restructuring their constituent parts and their political competences.

6. Conclusion

Each of the 25 different federal countries in the world has to find the specific federal solution for its specific society. Switzerland is an example of multilevel legitimacy held together by multiple loyalties. In fact the national legitimacy is built up by the legitimacy of municipal and cantonal democracies. It is a legitimacy fostering cultural and political diversities through autonomy, democracy and rule of law as major common values. This legitimacy has been upheld for over 150 years by the active democratic institutions on all three levels of government. Democracy cannot be reduced to an efficient mechanism for producing majority votes. Democracy is the procedure to enable self-determination of the federation, the cantons and the municipalities.

Over 150 years ago, Swiss federalism was able to turn enemies into partners. It is up to each generation to adapt the tools to current challenges in order to manage the conflicts peacefully. Federalism should also be the device to teach future generations that, for peaceful conflict management and rule of law, all democratic options can and should be open.

Culturally speaking, many Swiss feel “European” and therefore want to participate in the process of integration. On the other hand, many Swiss are sceptical about “big government”, foreign influence, international bureaucracies and foreign political commitment. Switzerland is in a critical situation between innovation and stagnation. The country’s future is less certain and political compromise less easy than it was for a long time in the past.

References

BLINDENBACHER, R., KOLLER, A., eds. 2003. *Federalism in a Changing World*. Montreal & Kingston: Mc Gill – Queen's University Press.

COTTIER, T. and GERMANN, C., 2001. Die Partizipation bei der Aushandlung neuer völkerrechtlicher Bindungen: verfassungsrechtliche Grundlagen und Perspektiven. In: D. THÜRER, J-F. AUBERT, J-P. MÜLLER, Hrsg. *Verfassungsrecht der Schweiz*. Zürich: Schulthess, 77-96.

FLEINER, T., ed. 2003. *Multicultural Federalism. The Swiss Case*. PIFF, Special Edition. Fribourg (Switzerland): The Institute of Federalism.

FLEINER, T., KÄLIN, W., LINDER, W., SAUNDERS, Ch., 2003. *Federalism, Decentralization and Conflict Management in Multicultural Societies*; Berne: Politorbis N° 32 – 1/2003, 39-57.

LINDER, W., 1994: *Swiss Democracy. Possible Solutions to Conflict in Multicultural Societies*. New York: St. Martin's Press.

NUSPLIGER, K., 2002. International Forum on Public Sector Reform. *Country report: Switzerland*. Seoul: Ministry of Planning and Budget & KDI-School of Public Policy and Management, 253-275.

NUSPLIGER, K., 2004. *Bernisches Staatsrecht und Grundzüge des Verfassungsrechts der Kantone*. Bern: Stämpfli Verlag.

SALADIN, P., 1995. *Wozu noch Staaten? Zu den Funktionen eines modernen demokratischen Rechtsstaats in einer zunehmend überstaatlichen Welt*. Bern: Stämpfli Verlag.

SIDJANSKI, D., 2000: *The Federal Future of Europe*. Michigan: The University of Michigan Press, Ann Arbor.

THÜRER, D., 1998. Der Verfassungsstaat von aussen gesehen – eine Skizze. In: D. THÜRER, *Perspektive Schweiz*. Zürich: Schulthess, 35-57.

THÜRER, D., 1998. The Percetion of Small States: Myth and Reality. In: D. THÜRER, *Perspektive Schweiz. Übergreifendes Verfassungsrecht als Herausforderung*. Zürich: Schulthess, 239-248.

WATTS, R.L., 1999. *Comparing Federal Systems*. Montreal & Kingston: Mc Gill – Queen's University Press.