

## **FEDERALISM AND PROTECTION OF MINORITIES IN SWITZERLAND**

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## FOREWORD

Switzerland is widely known as a composite state where several minorities have long co-existed. Moreover, each Swiss citizen can safely be said to belong in one way or another to a majority and to a minority as well. To give but one example, a French-speaking Protestant resident of Valais belongs to a denominational group forming a majority at federal level but a minority at cantonal level and speaks the canton's majority language, a minority language at federal level.

The principal demands and aspirations of minorities are equal treatment with the majority and some degree of autonomy as a means of preserving their cultural heritage.

The autonomy and self-determination aspired to by minorities are nevertheless only principles which must be given effect in everyday political affairs. Federalism is no doubt an excellent means of applying and fulfilling these principles, by virtue of its ability to foster pluralism and accommodate national differences. Its flexibility makes for a certain balance between the desire of the majority and the aspirations of minority groups to autonomy.

Swiss federalism does not basically differ from that of other states but is conspicuous in having ensured decades of peaceful co-existence for many minorities. This brief study sets out to examine the typical institutions and chief mechanisms of Swiss federalism.

### I. PROTECTION OF MINORITIES THROUGH STATE INSTITUTIONS

#### A. Representation of minorities within the federal institutions

Minorities in Switzerland are protected primarily through their representation in the central bodies of the state.

##### 1. Federal parliament

The federal parliament is bicameral. The people's representatives sit in the first chamber (National Council) and the representatives of the cantons in the second chamber (Council of States).

For the purpose of electing the 200 National Council representatives, the territory of the Confederation is divided into 26 constituencies corresponding to the boundaries of the 26 Swiss cantons (Article 73, Federal Constitution). The 200 seats are allocated to the cantons according to their respective populations under the proportional representation system (Article 72 (2), Federal Constitution). The procedure for allocating seats (rule of the largest remainder) has the effect of favouring the representation of the smaller cantons in the lower house. Elections are then held by direct universal suffrage. Each voter elects the members for his constituency, ie his own canton. There are from one to 35 members per canton depending on its population. Elections are conducted by proportional representation, so that minorities can be represented. The very small cantons with a population under 1/200th of the total Swiss population, which would be deprived of all representation by the proportional system, are nevertheless entitled by statute to one representative, who is elected by majority vote (Article 72 (2), Federal Constitution). As a result, the small cantons are in fact over-represented in the National Council because their single member, unlike those of the other cantons, represents over 1/200th of the population.

The second house of parliament, known as the Council of States, has 46 members, two per canton and one per demi-canton. The method of election is freely determined by the cantons. The membership of the Council of States distinctly favours the small cantons, which have two representatives on the same terms as the large ones. This also means that the minorities are protected and well-represented.

The two upper house representatives are frequently elected in such a way as to represent the various facets of the canton, eg the two language groups, the two denominations and the two main political tendencies. As the Council of State members vote without instruction (Article 91, Federal Constitution), these tendencies can be expressed at the time of voting.

It would be mistaken to believe that the federal element is represented solely in the Council of States. The National Council is also substantially "federalised"; since as already explained, its members are elected in the cantons. In Switzerland, moreover, the political parties are organised very much on a cantonal basis and a political career at federal level is very difficult to achieve without support from the cantonal sections of the parties.

##### 2. Federal government

The government, known as the Federal Council, is also made up in such a way as to represent the various components of the state.

Accordingly, to ensure that as many cantons as possible are represented in the Federal Council, Article 96 (1) of the Constitution stipulates that not more than one member may be chosen from the same canton.

According to an unwritten rule the seven members of the Federal Council must furthermore include two or sometimes three councillors representing the French and Italian-speaking minorities. At present the two minorities, which together make up less than 25% of the total Swiss population, are over-represented in the federal government with three out of seven members of the federal executive.

According to another unwritten rule observed since the early 1960s, the four main political parties share the seven government seats in a ratio, called the "magic formula", of two seats each for three parties and one seat for the fourth. These four parties, which are known as the governing parties and represent some 90% of the political forces in parliament, include three centre parties and one left wing party. Although the three "middle class" parties



would be well able to govern on their own and leave the minority Socialist Party in opposition as is the case in other countries, they have elected to give it a share of responsibility for national affairs as part of the government. Thus a substantial political minority is involved in government. Only the very small political minorities, in particular the extreme right and the extreme left, are not represented within the executive.

### **3. Federal Court**

Concern for equitable representation of minorities is also perceptible in the composition of the country's supreme judicial body, the Federal Court. Article 107 of the Constitution provides that in electing the Federal Court judges and their substitutes, the Federal Assembly shall ensure that the three official languages of the Confederation are represented. In practice, the composition of the Federal Court also reflects the various political tendencies in Switzerland, and judges are elected in such a way that all regions of the country are represented.

It will have been observed that the guiding principle underlying the composition of all federal bodies is proportionality, as they must reflect the political and linguistic components of the nation in proportion to their importance. Compliance with this principle understandably entails a search for compromises between the interests of the various communities constituting the nation (democracy of concordance).

### **B. Cantonal self-government**

Another institutional means of protecting minorities in Switzerland is the autonomy of the cantons in all matters of self-government. Article 3 of the Constitution provides that the cantons are sovereign insofar as their sovereignty is not restricted by the Federal Constitution and that they accordingly exercise all rights not delegated to the federal power.

As space does not permit a detailed description of all fields within the cantons' sphere of competence, only the chief ones will be mentioned.

#### **1. Constitutional law**

##### **a. The cantonal institutions**

As decentralised public authorities, the cantons are free to adopt whatever forms of organisation they consider appropriate and to allocate the cantonal power to such bodies as they may see fit to establish. Thus each canton has its own constitution. Cantonal self-government is furthermore recognised indirectly by Article 5 and 6 of the Constitution and has enabled them to retain to some extent the political institutions handed down to them: assembly-based democracy (Landsgemeinden) in the cantons of early Switzerland; representative democracy in the former aristocratic cantons; direct democracy in the cantons where democratic ideas triumphed in the mid-19th century.

Article 6 of the Constitution simply requires the cantons to have a republican and democratic government. While all have adopted the collegial system of the central government, there is nothing to prevent them from choosing another political system, eg parliamentary or presidential government. All cantons have their own distinctive versions of four main bodies: the electorate, the parliament, the government and the judiciary.

##### **i. The cantonal electorate**

Within the limits imposed upon it by federal law, each canton establishes its own definition of the categories to be granted political rights, ie the right to vote, elect representatives and sign public proposals for legislation or reform (initiative populaire) or petitions for referendum in cantonal affairs (see Article 74 (4) of the Constitution). Consequently, there are fairly significant differences between cantons.

These firstly concern age, ten cantons having fixed the age of civic majority for cantonal affairs at 18 and the rest at 20 years.

The differences also relate to nationality; Jura canton, for example, gives foreigners resident in the canton for ten years the right to vote.

Two cantons allow their expatriate citizens to belong to the cantonal electorate, while residence in the canton is a condition laid down by the other cantons for enjoyment of political rights.

In the vast majority of cantons, the electorate avails itself of its rights through secret ballot. Five cantons, however, have preserved to this day a typical institution of early Switzerland, the Landsgemeinde. This is a general assembly of citizens which meets once a year outdoors and conducts all cantonal elections except the election of the parliament, which is by ballot. It is also empowered to revise the cantonal constitution and pass legislation. Voting is by show of hands.

##### **ii. The cantonal parliament**

All cantons have a parliament but its official title varies (Grand Conseil, Kantonsrat, Landsrat). The number of representatives in each assembly ranges from 60 to 200.

The method of election in nearly all cantons is that of proportional representation, the general rule (except in Geneva and Ticino) being that the cantonal territory is divided into several constituencies made up of the communes, circumscriptions (= cercles) or districts. Some cantons nevertheless have the majority system (Grisons, Uri, Appenzell Inner and Outer Rhodes).

Cantonal parliaments also have varying terms of office, usually four years but in some cases less (Grisons: 2 years) or more (Fribourg: 5 years). Grounds of incompatibility also vary greatly from one canton to the next.

There are further essential differences between the parliaments of Landsgemeinde cantons, which necessarily have limited powers, and those of the city



cantons such as Geneva, Basel or Zurich, which are modern parliaments on the model of national parliaments.

This diversity stems from the specific history of each canton but also reflects the extent of citizen rights and the party system, which includes the single party (one canton) multiparty systems (in 15 or more cantons) the bipartite system with a dominant party.

### **iii. The cantonal government**

Each canton has a governments, whose official title varies. The cantonal governments are all collegial bodies like the federal government, but their membership varies from five to seven according to the canton. They are usually elected by majority vote, but two cantons (Zug and Ticino) use the proportional representation system.

The age of candidacy also varies from one canton to the next.

While professionalism is the rule for the members of cantonal governments, some small cantons have citizen part-time governments whose members continue to hold another occupation.

### **iv. The cantonal courts**

The cantons have considerable autonomy as to their judicial order. Except for the Federal Court and a few special appeals boards, all the Swiss judicial authorities are cantonal (see Article 64 and 64 bis of the Constitution). The salient feature of this judicial order is its great diversity. Civil, criminal, administrative and special or extraordinary courts must be differentiated separately for each canton. For instance, in addition to the ordinary civil courts some cantons have a special civil authority dealing with employer-employee disputes (conciliation boards). Some have the institution of trial by jury for serious criminal offences, others not.

There is also a variety of cantonal administrative courts. Twenty or so cantons have recently set up an administrative court ruling on the lawfulness of most administrative decisions. In cantons not yet having adopted this institution, appeals are made to the cantonal government or to specialised appeals boards.

### **b. Local structures**

These are invariably governed by cantonal law, either stringently or with some scope for autonomy.

Where their internal structures are concerned, the communes can be divided into two main categories. While they all have at least two bodies, ie the local electorate and the local government, some also have an assembly. The bipartite structure (consequently without an assembly) is typical of the smaller communes; the tripartite structure is more commonly found in the large ones.

Owing to the importance of communes as the lowest tier of authority in the Swiss legal order, the right to preserve their autonomy is secured to them but the scope of this right is for the cantons to determine.

Subject to Article 43 (4) and (5) of the Federal Constitution, cantonal law determines the composition of the local electorate. In Neuchâtel canton, for instance, foreigners resident in the canton for five years and in a commune for one year may vote in matters affecting the commune, while they are not granted this right in the other cantons.

### **c. Other territorial authorities**

The characteristic structure of the Swiss state comprises the Confederation, the cantons and the communes. However, within this three-tier state, there occur in a few cantons other authorities which will merely be mentioned in passing, eg the districts which come next above the communes in certain cantons. The circumstances of Grisons canton are true public authorities whose bodies hold considerable judicial, political and administrative powers.

## **2. Political rights**

Political rights also vary considerably between cantons.

- a. Mandatory referenda are normal in all cantons for review of the cantonal constitution (see Article 6 (2) (c) of the Federal Constitution), but some cantons apply this requirement to still other official acts. Fifteen prescribe it for the passing of ordinary legislation and some even for parliament orders, and 19 for expenditure over a certain amount (financial referendum) and for the conclusion of inter-cantonal agreements or treaties (treaty referendum).

Optional referenda may be held in respect of legislation in the 11 cantons which do not have a mandatory referendum for this purpose; 18 cantons also prescribe it for expenditure over a certain amount, and five do so for inter-cantonal agreements.

The time allowed for requesting a referendum is from one to two months depending on the canton.

- b. The "initiative populaire" form of consultation exists in all cantons but the number of signatures required varies. Furthermore, cantonal law lays down the conditions of its success and in particular the time within which the lists of signatures must be lodged with the competent authority. Cantonal law also regulates the formulation of the question to be put to electors, especially where the government counters it with its own proposal.



- c. Only seven cantons apply the right of revocation, enabling a faction of the electorate to move the dissolution of parliament, the dismissal of the executive or the removal of any official.

### 3. Taxation law

The Swiss cantons enjoy extensive autonomy as regards taxation. Except where taxes are levied solely by the Confederation, eg turnover tax (Article 41 bis (1) of the Federal Constitution), the cantons have freedom to define the purpose, basis and rate of cantonal taxes and the persons on whom they are levied. They also have free use of their tax yield.

In particular, the cantons levy a direct tax on personal income, on the turnover and capital of corporate bodies, private assets and capital gains. They collect excise on vehicles, property conveyance dues, entertainment tax, foreigners' residence fees, estate duty, etc.

Cantonal autonomy in taxation matters means that cantonal taxes are highly diversified.

### 4. Federal law restrictions on cantonal self-government

In all fields mentioned above, cantonal self-government is of course not absolute, is to be exercised strictly within the limits prescribed by federal law. The chief restrictions are as follows:

- As regards political institutions, Article 6 of the Federal Constitution requires the cantons to ensure that political rights are exercised in a republican, ie representative or democratic manner. In order to take effect, their constitutions must be accepted by the citizens of the canton and be open to review when the absolute majority of citizens so request (Article 6(2)(c) of the Federal Constitution). In other words, the cantons must arrange consultation by "initiative populaire" in constitutional matters. They are also required to have their constitutions guaranteed by request to the Confederation, which is not granted unless the cantonal constitution complies with federal law in general.

Furthermore, Article 43 determines to some extent who may vote in cantonal and local elections and other forms of consultation. Likewise, Article 44 settles some of the conditions under which foreigners may acquire or forfeit citizenship of a canton or commune.

Nor is the fiscal autonomy of cantons absolute. Apart from the need to respect the Confederation's sole power to levy certain taxes, established federal practice requires that their own taxes are prescribed by a law in the strict sense. Lastly double taxation is prohibited by the Federal Constitution, (Article 46(2)), as are certain ecclesiastical taxes (Article 49(6)). Article 42 quinquies gives the Confederation responsibility for harmonising federal, cantonal and local taxes.

Needless to say, in the exercise of cantonal powers, whatever their nature, the cantons must observe the basic principles of the rule of law, such as separation of powers, legality, independence of the courts and the fundamental rights of the individual.

## II. PROTECTION OF MINORITIES THROUGH THE MAKING AND APPLICATION OF LAW

### A. Law-making

#### 1. Participation by the cantons in the federal process of decision

The Swiss cantons form one of the Confederation's basic entities, or even the chief entity alongside the Swiss people, and as such are actively involved in the process of central government decision.

a. Accordingly, every full or partial revision of the Federal Constitution must be approved by the majority of the people and by the majority of cantons. Thus the constitutional power in Switzerland consists of the people and the cantons (Article 123 of the Federal Constitution). This dual majority is also required to ratify international treaties of very high importance such as those dealing with collective security and instituting supra-national communities (Article 89(5)). It can therefore be said that in Switzerland no domestic or foreign policy decision is possible without the assent of the majority of the cantons.

The dual majority requirement has two implications.

Firstly, those cantons which constitute minorities, eg linguistic minorities, may oppose a project accepted by the majority of the population if they are supported by a few other cantons.

Secondly, as the vote of each canton is determined by the majority of its citizens and as each canton has one vote, irrespective of its population, a minority of the population can block a project accepted by the majority of the population if that minority is distributed throughout most of the cantons.

The constitutional history of the Confederation includes instances where a proposal to revise the Constitution did not come into force because it was rejected by the majority of the cantons.

b. The cantons also form an entity of the Confederation in that a law passed by the federal parliament can be subjected to referendum at the request of 8 cantons (Article 89). Thus cantons representing minorities may possibly defeat at referendum a law to which they object, thanks to this provision.

c. Each separate canton may furthermore submit a proposal to the federal parliament for the adoption of a law or constitutional provisions (Article



Lastly, according to firmly established practice, whenever the federal government has a federal act in preparation, before submitting the bill to parliament it applies the procedure known as consultation which serves to obtain the opinion of various entities or groups affected by the bill. These include political parties, trade unions, the various pressure groups and of course the cantons. If a bill is not favourably received by the cantons, the federal government generally refrains from putting it to parliament or amends it before doing so. As a referendum can be requested by a minority of the population (50,000 citizens) or of the cantons (8), its likelihood compels the federal government to take account of the opinions expressed by the entities consulted.

## 2. APPORTIONMENT OF RESPONSIBILITIES BETWEEN THE CONFEDERATION AND CANTONS; LEGISLATIVE AUTONOMY OF THE CANTONS

### a. Principles

Under Article 3 of the Federal Constitution, matters within the competence of the Confederation must be specified in the Constitution. In other words, if the Confederation is to intervene and legislate in a given area, it must be identified in the Constitution. Otherwise it rests with the cantons, so that they have their own powers in all matters for which the Confederation lacks competence. The extent of cantonal powers nevertheless varies according to the nature of the federal power.

Where the Confederation has sole competence, as in national defence (Article 18 to 22), customs (Articles 28 and 29), rail transport (Article 26), post and telecommunications (Article 36), currency and bank notes (Articles 38 and 39) and foreign affairs, the cantons hold no power in their own right.

In those areas where the Confederation has been assigned parallel competence above and beyond questions of principle, such as private law, intellectual property, prosecution for debt and bankruptcy (Article 64), criminal law (Article 64 bis), public labour law (Article 34 ter), the cantons no longer have undivided powers if the Federal Government has made full provision by enacting exhaustive legislation on the subject, pending which they hold such powers on a provisional basis only.

In fields where the Confederation holds parallel powers in respect of the principles only, ie power to enact outline legislation, eg on regulation of forests (Article 24), hunting and fishing (Article 25), spatial planning (Article 22 quarter), the cantons hold indefinite powers of their own, though only as regards regulation of the details.

In spheres where the Confederation and the canton are assigned corresponding powers, the two may enact concurrent legislation.

Lastly, the cantons have sole power in matters over which the Confederation has no authority.

### b. Scope of cantonal powers

- In the private law sphere, the Confederation adopted a Civil Code in 1907 and a Code of Obligations in 1911, so that the private law sectors in which cantons can legislate are very limited and consist of those few areas in which they have a delegated competence under either code (Section 52.1 and 55.1 in the last chapter of the Civil Code; Section 686 of the Civil Code). On the other hand, the cantons have retained competence in respect of civil procedure insofar as proceedings take place before the cantonal courts, and the rules of civil procedure vary accordingly between cantons.
- Criminal law was also unified by the adoption of the Swiss Penal Code in 1937, so that the cantons no longer have the authority to define certain acts as crimes or offences, although Section 335.1 of the Penal Code concedes their power to legislate on petty offences not covered by federal legislation. The cantons have nonetheless retained competence in respect of criminal procedure insofar as trials are held before the cantonal courts, and the rules of criminal procedure vary accordingly between cantons.
- Public law differs in that the cantons have retained considerable legislative autonomy depending on the public law field, so that wherever the Confederation has only an enacted outline legislation the cantons hold some degree of legislative power. Such areas are spatial planning, regulation of forests, hunting and fishing and routine naturalisation of aliens. To take just the foregoing example, it can be pointed out that as set forth in Section 12 of the Federal Act on the acquisition and forfeiture of Swiss nationality, Swiss nationality is acquired under normal procedure, through naturalisation in a canton and a commune. An alien therefore becomes Swiss by acquiring citizenship of a canton. Section 15 of the same act merely lays down the minimum requirements stipulated for securing Swiss nationality, while the naturalisation procedure is arranged by the cantonal authorities.

The cantons may also legislate in areas where both they and the Confederation are competent, namely their own political institutions, the political rights of citizens at cantonal level, the judicial order, procedural law and taxation law.

Lastly, there are fields where the cantons may legislate exclusively; these are education, public works, public health, culture, church-state relations and worship, law and order, fire prevention, building regulations etc.

## 3. Inter-cantonal agreements

In those areas where they hold legislative power, the cantons may also conclude mutual agreements known as inter-cantonal concordats. These are the chief instrument of what is commonly termed co-operative federalism.

Though such use of them is rather uncommon in practice, these agreements may enable cantons comprising minorities, for example linguistic minorities, to



settle certain questions by common agreement without the federal authorities intervening.

#### B. Application of the law

The fact that certain matters rest with the Confederation does not completely remove them from the influence of the cantons. In Switzerland, legislative activity is the only field to which the principle of apportionment of powers between central and cantonal government applies absolutely. It is less rigidly adhered to in the field of judicial and executive activity.

In matters where legislation rests with the Confederation, it shares judicial power with the cantons. This is particularly so as regards private law and criminal law. Although the Civil Code and the Penal Code were enacted by the Confederation, disputes in private law and criminal law are settled initially by the cantonal courts. The application of federal law by the cantonal courts can result in differing interpretations of the same rule and have repercussions on the sometimes dissimilar settlements adopted by these courts in respect of litigation referred to them. One frequently mentioned example is abortion, for which Section 118 of the Penal Code provides prison sentences. While this provision is stringently enforced by certain cantonal courts, it has become virtually obsolete in other cantons, so much so that debate has arisen over the expediency of finding a federal solution, ie adaptable to each canton, to the problem of termination of pregnancy. This example shows that even in branches of law which have been unified there is room for some cantonal autonomy in the interpretation of the law.

These considerations also apply to the application of the law by the administrative authorities. Indeed, there are fields where the Confederation not only legislates but also takes decisions and has them enforced by federal officials, eg railways, postal services and customs. Elsewhere, however, legislation passed by the Confederation is carried into effect by the cantons in what is called executive federalism. In some cases, the Constitution explicitly provides for the enforcement of federal law by the cantons, for instance in the fields of civil defence (Article 22 bis (2)), nature conservation (Article 24 septies (2)), protection of animals (Article 25 bis (3)) and national highways (Article 36 bis (2)).

Legal practice and theory nevertheless concur in acknowledging that the federal legislator, even where not expressly authorised to do so by the Constitution, may delegate power to execute federal laws to the cantons. Executive federalism has moreover become a basic principle of Swiss federalism, enabling the cantons to retain some autonomy even in areas covered by federal legislation. The extent of this autonomy depends on the thoroughness of the federal legislation and the exactitude of the rules therein.

#### III. FEDERALISM AND ACHIEVEMENT OF AUTONOMY

Federalism is a type of political structure enabling minorities to achieve some degree of autonomy while averting secession. The constitutions of several federal states provide the possibility of establishing new federated states within the supreme state, but the Swiss Federal Constitution contains no such rules.

Nonetheless, there is no impediment to a minority incorporated into a canton achieving autonomy by forming a new canton, as witness the creation of Jura canton.

In 1815 the Jura districts with their predominantly Catholic French-speaking population were attached to the mainly Protestant, German-speaking Bern canton, although historically the Jura districts, at least in the North, had always had special links with France and the Basel area rather than with Switzerland.

This minority expressed its wish to become an independent canton on several occasions. However, this necessitated a curtailment of Bern canton's territory. In 1970 the population of this canton agreed to a change in its constitution to allow the organisation of plebiscites in the Jura districts possibly resulting in the formation of a new canton. Under the newly adopted provisions, three plebiscites were held in succession.

During the first plebiscite on 23 June 1984, the population of the seven Jura districts in Bern canton voted by a small majority for the creation of a new canton (the northern districts in favour; the southern districts against).

The principle of a new canton being established, its boundaries remained to be defined. This was done in the second plebiscite on 16 March 1975, when each district was asked whether it wished to separate from or stay with Bern canton. The three northern districts chose separation, the four southern ones the perpetuation of the status quo.

In a third and final plebiscite held in October 1975, eight communes on the dividing line between the northern and southern districts voted to join the new canton while six others expressed the wish to remain part of Bern canton.

The reception of a newcomer by the Confederation still had to be approved by the majority of the Swiss people and cantons. Approval was given at a constitutional referendum held on 25 September 1978. 82% of electors and all cantons voted in favour of creating the new Jura canton. The object of the referendum was to amend Article 1 of the Federal Constitution containing the list of Swiss cantons.

The creation of this new canton thus took place in compliance with two major principles, the first being the democratic principle: the majority of the population of Bern canton in 1970 accepted the principle of ultimate separation from the Jura districts and resultant loss of territory, while the majority of the Jura population chose separation. The second essential principle on which the whole operation was founded is the federalist principle: the Jura districts did not become a new canton in law until the majority of the Swiss people and cantons agreed to amend Article 1 of the Federal Constitution.

The case of Jura canton shows how a minority formerly incorporated into a larger political unit was able to fulfil its aspiration to autonomy by becoming a canton. Had it not formed itself into a fully independent canton, it might have assumed demi-canton status like three Swiss cantons which are divided into two. In one case, the division was carried out to enable the two denominational communities to lead separate lives.



#### IV. FEDERALISM, MINORITIES AND BASIC RIGHTS

The Federal Constitution of the Swiss Confederation contains no special provisions on minorities. Minorities can avail themselves of the basic rights secured to all citizens. Under Article 4 of the Constitution, these rights must be exercised without discrimination of any kind.

In two areas, however, minorities receive special protection. Firstly, certain guarantees are secured to linguistic minorities. Secondly, minorities of any kind have the opportunity to take part in the process of political decision.

##### A. Protection of linguistic minorities

###### 1. The territoriality principle

Article 116 (1) of the Federal Constitution provides that Switzerland shall have four national languages, German, French, Italian and Romansh. This constitutional provision does no more than to set the official seal on an existing situation, ie the division of Swiss territory into four language zones, the German-speaking region (some 75% of the population), the French-speaking region (about 20%), the Italian-speaking region (about 5%) and the Romansh region (less than 1%).

The French and Italian language minorities are concentrated in certain cantons where they make up the bulk of the population.

Article 116 (1) of the Constitution establishes the principle of territoriality. This is designed as a constitutional guarantee of Switzerland's linguistic plurality. Relying on this provision, the Confederation can take such measures as it deems necessary on behalf of languages which are in a minority or endangered. For instance, Article 116 (1) was the basis for the adoption by the Confederation of the Federal Act on subsidies to Grisons and Ticino cantons for the preservation of their culture and language.

The territoriality principle also enables linguistic minorities to make use, in their own cantons where they form a majority, of their own language in official relations with the authorities and in schools.

###### 2. Official languages

Of these four national languages, only three are official, viz German, French and Italian. Romansh, not being widespread enough, has not found sufficient favour with the constitutional power to be elevated to the status of an official language. However, the current preparations for a revision of Article 116 of the Federal Constitution include the question of Romansh as a further official language.

The recognition of three official languages in the Constitution has the effect of conferring on the minorities, particularly the French-speaking and Italian-speaking ones, the right to communicate in their own language with the political, administrative or judicial authorities at federal level. Another implication of the official languages principle is of course that these authorities are required to communicate with the minorities in their own language. Likewise, the three official languages are used for the publication of federal acts and for the conduct of Federal Parliament debates, with simultaneous interpretation. Within the federal administration, the three official languages can be used internally and in contacts with members of the public. Lastly, applications can be made to the Federal Court in each of the official languages, and its judgments must be set out in the language of the decision appealed from.

The territoriality principle and the official languages principle are also applied *mutatis mutandis* at cantonal level in the three bilingual cantons of Bern (French-speaking minority), Fribourg and Valais (German-speaking minorities). Each language may be used in relations with the cantonal authorities.

Grisons canton is the only trilingual one, with a German-speaking majority and two minorities using Romansh and Italian. However, the application of trilingualism is not all-embracing. Locally, the communes have a very wide degree of autonomy and consequently settle the official language problem in their own way. Matters are complicated by the fact that Romansh is not a single language but has five separate dialects. Efforts towards unification have resulted in a standard language, "Rumantsch Grischun", thanks to which it is hoped that a language threatened with extinction will be preserved.

As demonstrated above, at the level of the federal authorities the language minorities are duly represented in the Federal Council, the Federal Assembly and the Federal Court without the need to introduce a quota system.

##### B. Political rights

Political rights, particularly those of initiative and referendum, constitute the second area in which minorities enjoy special rights.

- The right of initiative enables 100,000 citizens to request the amendment of the Constitution (Article 121 of the Federal Constitution). This institution allows a religious, linguistic or other minority of the population to put forward at constitutional level a set of regulations in its own favour. As has been explained, this right can be exercised in constitutional as well as legislative matters by each canton (Article 93 (2)). It also enables any one canton inhabited by a minority (eg the Italian-speaking Ticino canton) to propose an amendment to the Federal Constitution or the enactment of a law on an issue concerning that minority. In order to take effect, the statutes proposed must of course be approved by the majority.

The right of initiative also applies in all cantons and can be exercised by their resident minorities.

- The right of referendum enables 50,000 citizens to request that any law passed by Parliament should be submitted to the people for approval. Here too, any minority considering itself disadvantaged by a law can therefore attempt to defeat it at referendum by collecting the required number of signatures. The same right can also be exercised by a minority of cantons (Article 89 (2)).
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## CONCLUSION

A few observations may be made to round off this succinct study.

In Switzerland, the solution to the problem of minorities lies chiefly in the fact that the country is primarily and essentially a political reality and much less a cultural entity. As a state, it is founded on common political convictions and ideals such as federalism, democracy, rule of law and determination to share these values. They are respected as long as they remain unchallenged by minorities, whatever their nature. On the other hand, when a state is not defined in terms of common political values but first and foremost by its linguistic and cultural characteristics, minorities have far more trouble in gaining acceptance.

Secondly, Switzerland is composed of older political entities, the cantons. These are historical realities which cannot always be defined in terms of their linguistic or denominational characteristics, three being bilingual and one trilingual. The cantonal boundaries thus do not coincide with the boundaries of the three language regions or indeed with the denominational communities. Because Switzerland is divided into cantons, not into three regions corresponding to the language regions, it cannot be split up into cultural, religious or linguistic entities. In other words, the political divisions of the country do not correspond to its cultural demarcations. As minorities are part and parcel of the cantons, the language regions are not the sole context of diversity but merely a further context.

This interweaving of the political and administrative boundaries with the linguistic and cultural boundaries makes it very hard for any group to predominate. As a result, Switzerland consists of a large number of minorities which offset and counterbalance each other. As pointed out earlier on, each Swiss citizen belongs to a minority in one way or another. This intricate patchwork is definitely more conducive to the protection of minorities than the clear differentiation and geographical localisation which often apply.