

## In Praise of Non-Centralism

## Ideas on Liberty

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Robert Nef

liberal Verlag GmbH

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(translated from the German by Ritu Khanna)

Impressum:

1. Auflage, Juli 2004

© 2004 liberal Verlag GmbH, Berlin

Umschlag

Titelbild: Andrea Elbel

Gestaltung: altmann-druck GmbH, Berlin

Satz und Druck: altmann-druck GmbH, Berlin

Printed in Germany – ISBN 3-920590-11-2

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## Contents

1.	Introduction .....	7
2.	The Central Office – a Satire by Kurt Tucholsky .....	17
3.	The Renaissance of Federalism .....	19
4.	Federalism and Subsidiarity: Concepts Open to Interpretation .....	25
4.1.	Federalism – a Strategy of Compromise .....	25
4.2.	Subsidiarity – no Miracle Principle.....	41
5.	Non-Centralism and the Tax System .....	46
6.	Switzerland’s Historical Development: Six Steps, Six Lessons .....	56
7.	Who Pays and Who Benefits? .....	62
8.	Federalism and Democracy .....	67
9.	Federalism and Municipal Autonomy: Adolf Gasser Revisited .....	70
10.	Federalism and Minorities .....	76

<b>11. Summary: Complex is Robust .....</b>	<b>80</b>
<b>12. Fourteen Theses .....</b>	<b>83</b>
<b>Bibliography .....</b>	<b>87</b>
<b>About the author .....</b>	<b>93</b>

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# In Praise of Non-Centralism

The doctrine of federalism is one of humanity's most precious possessions. The Roman stepladder of *pax, amicitia, societas*, the triple attribute of the classical covenant, – is a ladder to heaven and hence difficult to climb.

Fritz Ernst (1940)<sup>1</sup>

## 1. Introduction

Centralism is tempting, but the half-life of its decay is long. National unification, an important issue in recent world history, is closely interwoven with the idea of centralisation. Centralisation seems to satisfy a primal desire for transparency, clarity, and hierarchy and may even be fuelled by an aesthetic and psychological need with deep anthropological roots. There are good reasons to believe that centralisation is the driving force behind efficient political systems and is the main factor in the success of powerful nation-states. But

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<sup>1</sup> Fritz Ernst: Die Vergänglichkeit des Großstaats (The Transitoriness of Large State), Zürich, 1940, p.33

can this success be sustained? Is it not true that, sooner or later, the growth of power – the undisputed benefit of centralisation – will be overtaken by its costs that are also related to power? For power has the dangerous tendency to make the powerful stupid and complacent by at least partially dispensing with the constant need to either assert themselves against the not so powerful or to learn from others. Power is not only ‘evil by nature’ (according to Jacob Burckhardt, the author of “The Civilisation of the Renaissance in Italy”, drawing on Julius von Schlosser), but also carries the seeds of its own decline, making it perilous for both the subjugated and the powerful.

France achieved remarkable cultural, economic, and political success by combining absolute centralism first with mercantilist national-economic centralism and then with Jacobin egalitarian centralism. France misled Europe, if not the world, which followed suit. Centralism is a close ally of the drive for political power both internal and external and, against this background, it is only obvious that the distrust of power must forge an alliance with the distrust of centralism. In terms of the history of political ideas, liberalism and centralism did not manifest themselves as thesis and antithesis, not even in Switzerland. On the contrary, advocates of freedom pinned their hopes on what was at least a federal-based centre more inclined towards freedom rather than on the backward, local governments of the respective confederation, hostile to the idea of freedom. The most obvious example is the federalisation (i. e. centralisation) of the

USA, which occurred as the northern states defeated the confederate southern states that had broken away from the Union in the war of secession (1861–65). Because of the slavery in the south, liberal reasons could be put forward to justify this centralisation.

While the 'Beelzebub' of relatively liberal centralisation had exorcised the 'devil' of absolutist and interventionist anti-liberalism, the tendency of the former to itself become increasingly interventionist and anti-libertarian – if countervailing forces are not mobilised – was ignored. Political theory has long ignored the knowledge that an open competition of systems in conditions of free or relatively free communication does not need to take the detour of compulsory liberalisation imposed by a central government, to achieve a healthy balance of freedom in a short time. (This is true even of the most backward states that simply cannot afford expensive and unviable coercive systems in the long run when faced with the competitive pressure of more liberalised neighbours.) This point has also been brilliantly endorsed by the more recent political economy (that of public choice) and is based on facts known in part to Edward Gibbon, historian of the Roman Empire, subsequently acknowledged by the American anti-federalists and explicitly mentioned in the writings and speeches of US Senator John C. Calhoun (1782–1850). Nevertheless, these facts continue to be widely questioned even today. The European Union (EU), for example, continues to favour centrally-steered harmonisation over non-centralised deregulation. Many liberals have also

long succumbed to the discreet charms of centrality but have emerged none the better for it. Power always inclines towards centralisation, and centralised power towards absolutism. Historian Lord Acton's warning that 'absolute power corrupts absolutely' is yet another warning against the dangers of centralism. Those who nurture the hope that the centre could be kept immune from the corrupting influence of power, and be occupied by a freedom-loving elite, overestimate the virtues of the electorate and underestimate the normative force of structural processes, well-meaning functionaries notwithstanding.

There is no doubt that centralism, as a national political strategy, can be successful for a century or two. However, a broad spectrum of indicators in various studies conducted on the global ranking of nation-states provides us with indisputable empirical evidence of the success of small and non-central systems. Centralism and non-centralism do not generate costs and benefits for all at the same pace. The collective benefit of centralisation emerges in what can be a fairly long first phase; in larger systems (France, for example) this phase could extend to decades and even centuries. Non-centrality – based on learning, adaptation, robustness, and the avoidance of large-scale collectivist errors – often requires more time before its overall benefit becomes visible and tangible. War, a phenomenon that can be interpreted as a pathological excess of centralised power, is to the benefit of centralisation. War conceals and interrupts the insidious process of decay inherent in centralised systems.

The dividends of centralisation are reaped during war while the dividends of non-centrality are reaped during peace. In peacetime, however, as soon as the costs of centralisation exceed its benefits, centralised nations try to cover up their mistakes by implementing the principle of centralism at the next higher level. This enables them to exploit to their advantage, the contest between systems within a larger national or supranational structure. The moment of truth for centralism, namely the failure of the system, is postponed yet again, perhaps by decades. Do we really need to relive the collective experience of this programmed failure?

This small treatise is intended as a warning against flight to a larger structure. It urges us to settle common problems at the lowest possible level while proposing structures in which problems requiring collective solutions are minimised because responsibility is not perceived and acknowledged as 'decentral' but rather as 'non-central', exercised in small, peacefully competing units.

The somewhat unusual usage of the term 'non-central' is not merely one of the author's personal quirks. It is an attempt to find a descriptive term that avoids the aggressive 'anti' without resorting to the dangerous image of decentralisation. By presupposing the centre, decentralisation remains attached to the very ailment it believes it can cure. Of course, given the already centralised structures, decentralisation seems to be the appropriate remedy, a kind of 'orderly withdrawal' from misconceived structures. However, the risk of the mental ties to the centre surviving this critical

operation cannot be denied, from which a more subtle form of central administration could emerge in which political and economic costs are pushed to the periphery while the benefits remain with the centre. Anti-centralism, on the other hand, has a tendency to develop into secession bringing with it the possibility of high conflict costs. Non-centralism, for its part, redefines responsibility and the delegation of authority without causing conflict. However, if constructive competition is to ensue, authority must be structured from the bottom up rather than 'top down'.

As the decline of most great empires has been prompted by wars and crises, world history has few encouraging examples to offer in this context. Neither can the Swiss confederation serve as a model. We have yet to discover the method of political 'cell division', namely the path from misconceived centralised structures to viable non-central structures of the future. While the extremely aggressive and as yet incomplete decentralisation of Yugoslavia is not a particularly encouraging example, several experiences made in this context may yield positive lessons. But who is interested? Superpowers and global powers would like to have a manageable world with some large (albeit relatively less powerful) partners. After all, Kissinger wanted a central telephone number at which he could 'call Europe', and American sympathy for the still highly centralised remnants of the Russian empire speaks volumes. Of course powerful countries would like to politically (and financially!) dominate the troublesome and economically successful smaller players.

This explains the fuss about political primacy, which is ultimately the primacy of power and the treasury, not forgetting military security for the big powers. In this regard, less powerful nations often have to pay a high price in terms of the loss of autonomy.

While speaking on the subject of Swiss federalism and non-centralism on lecture tours abroad, the author is sometimes asked, 'When did Switzerland start its process of decentralisation?' Here is the answer: it *never* started; it only succeeded in circumventing or slowing down the process of centralisation for an extremely long time. The only centralist experiment – the Helvetic Republic established under French auspices – lasted just about five years from 1798 to 1803, i. e. less than half of one percent of the country's 700-year-plus history. Switzerland is inching towards greater centrality and the first step towards non-centralism is probably the active scepticism about centralism, and the refusal to push ahead with and accelerate the process.

The best political path to less centralism and more non-centralism has yet to be discovered or invented. It should not be viewed as a point of return but rather one of departure, and is, perhaps, the greatest and most exciting political challenge facing liberals in the new century. It should now be obvious to us why the misleading term 'decentralisation' is inappropriate in this case and why the equally misleading term 'secession' should be avoided.

A term of positive hue must refer to the level at which a large number of political problems can be resolved jointly and flexibly, namely the level of the *Kommune* or the *Gemeinde*, as local authorities are called in Switzerland. In Switzerland, the autonomous local government (with tax sovereignty) is more than just an administrative unit with some residual powers and public funds assigned by higher levels of government. There is an element of nostalgic pathos in the description of the 'primal unit of government'. Communalism, autonomism, localism, regionalism – there are arguments for and against the use of each of these terms. Negatively defined, the secret of Switzerland's success lies in its staunch rejection of centralism; positively defined, it can be seen in the functioning of competitive local bodies, and in the combination of personal and communal autonomy. These political principles normally have a range of labels, the most common being 'federalism' and 'subsidiarity'. As will be explained in a later chapter on terminology, there is a high risk of these terms being misunderstood and intentionally or unintentionally misinterpreted. The politically crucial question, 'How does this affect centralism?' (or 'How does it affect power?') can be answered with reference to both terms if the unequivocal concept of non-centralism is introduced: federalism in the sense of non-centralism, subsidiarity in the sense of power distribution that favours both private and communal autonomy. All political structures established above the level of local government (and, in fact, this as well) must be justified, and, from the liberal viewpoint, the reasons must be sound and solid.

Unfortunately, no nation-state is in the happy position of being able to start political restructuring with a *tabula rasa*, a clean slate, and orient itself exclusively to a few fundamental principles. In the European Union, we are still in the early stages of political structure-building, a phase in which it would certainly be wise to avoid certain mistakes. At the national level, too, each and every proposal for political reform can be evaluated on the basis of a liberal ideal. Testing the reform's compatibility with liberalism should be supplemented with a similar test of its compatibility with non-centralism, if liberals are not to succumb yet again to the delusion of centralism. Perhaps we should also have political solutions handy that may be required after the grand collapse of the redistributive welfare state – a scenario that one does not hope for but nevertheless must reckon with. Perhaps we should pave the way for a kind of peaceful and bloodless bankruptcy of central governments following which non-centralism would be assigned a more important role in a new beginning.

The following chapters do not prescribe procedures for bringing about less centrality promptly and peacefully, but analyse experiences that describe how non-centrality can be practised with some degree of success. Modern-day Switzerland is the product of various constellations of rather unique circumstances and there are good reasons to start with a special case. Special cases cannot serve as models because they cannot be successfully replicated in different conditions. Even if Switzerland is not a model, it is still a rel-

atively successful experiment and one can always learn from experiments even if conditions are vastly different.

The Swiss political system is based on two generally accepted historical viewpoints: first, scepticism about power and the rejection of domination, which is always to some extent foreign domination. Second, the realisation that there are common problems to be resolved jointly, flexibly and as cooperatively as possible, without outside interference. The two points are very aptly portrayed in Friedrich Schiller's popular drama, *William Tell*, based on the legendary Swiss hero and patriot: the anarchic 'Tell principle' and the communitarian 'Rütli alliance principle'. A political system cannot survive if it is based only on the negation of power. Neither the 'anti' nor the 'non' is viable as the sole long-term principle for political survival.

*In Praise of Non-Centralism* is also presented as a small token of gratitude for Schiller's *William Tell*, a valuable gift from a German to the Swiss confederation, which is about to celebrate its 200th anniversary.

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## 2. The Central Office

### A Satire by Kurt Tucholsky<sup>2</sup>

The Central Office knows everything better. The Central Office watches over everything, it has faith in its overview, and keeps the record files. At the Central Office, men are busy among themselves with endless quarrels, but they slap you on the shoulder and say: 'My dear friend, you cannot judge this from your individual vantage point! We at the Central Office...'

The prime concern of the Central Office is to remain a Central Office. God have mercy on the subordinate entity that dares to act independently. Whether something is sensible or not, necessary or not, urgent or not – the Central Office must first be consulted. Why else is it the Central Office? Just because it is – make a note of that! Subordinates outside better learn to cope.

The men at the Central Office are not clever but wily. A man who tends to his own little job may be clever, but he is not wily. If he were, he would duck out of it and for that there is only one thing to do – the reform proposal! Thanks to this

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<sup>2</sup> Kurt Tucholsky (1890–1935), German writer, poet and satirist.

proposal, a new department is created, which, it goes without saying, is subordinate to the Central Office and under its charge... One person chops wood and thirty-three others just stand around and watch – this is the Central Office.

The Central Office is designed to put down the energy and initiative of its subordinates. The Central Office has no ideas and expects others to implement them. The Central Office is just a tiny bit more infallible than the Pope but nowhere near as good-looking.

The practical man does not have it easy. He curses the Central Office violently, tears all its decrees to shreds, and uses them to wipe his eyes. That done, he marries his boss's daughter, is promoted and winds up in the Central Office – making it to the records room is advancement, after all. Having arrived there, he clears his throat, straightens his tie, tugs his shirt cuffs down and starts to govern – as part of a god-given Central Office, riddled with contempt for the simple practical man, deeply engaged in endless problems with his colleagues at the Central Office. He sits there like a spider in its web spun by others, prevents others from doing sensible work, issues irrational orders – and knows it all better.

(This diagnosis is true of child-care centres, foreign ministries, newspapers, health insurance agencies, forestry departments, and bank personnel and is, of course, a humorous exaggeration that does not apply to one institution: yours.)

(1925)

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How was it possible that these liberal Germans, whose dream of achieving unity in freedom faded away with the revolution of 1848, were willing to trade freedom for unity and ultimately became the ignominious breed called the National Liberals at the end of the century?

Wilhelm Röpke (1948)<sup>3</sup>

### 3. The Renaissance of Federalism

Federalism and subsidiarity are back in fashion. The three-pronged challenge – of the centralist welfare state, the European integration process, and rapid globalisation – has fostered the development of a strong political movement in recent years. Under the banners of federalism and subsidiarity, it campaigns for greater proximity to the people, a sense of community, clearly-defined living and working spaces, greater regional and local autonomy, and increased tax competition. The federalism movement is extremely heterogeneous, with libertarians and Ordoliberalists, communitarians, anarchic left-wingers and green factions, and conservatives as well – all backing greater federalism. The political

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3 Wilhelm Röpke: *Die deutsche Frage* (The German Question), 3<sup>rd</sup> ed., Zürich 1948, p.213; quoted from: Gerd Habermann (ed.): *Das Maß des Menschlichen. Ein Wilhelm-Röpke-Brevier*, Thun 1999, p.135

motives for the movement are just as diverse as its social advocates. Liberals are sceptical not only about the centralised welfare and redistributive state but also about greater harmonisation, legal uniformity, and the maze of regulations that characterise the European Union. The Left and the Greens primarily oppose the social and ecological costs of globalisation while conservatives complain about the increasing loss of integrating communities and traditional institutions, customs, and values in a highly regulated and mechanised society based on services and information.

The possible impact of this 'alliance of convenience' – forged by members of all political orientations – should not be underestimated. Committed liberals must, however, be prepared to stand up firmly for their understanding of federalism and subsidiarity. Globalisation offers a historically unique opportunity to effectively put the brakes on the centralist, welfare-oriented, control and redistributive state and transfer substantial legislative and tax-related powers back to smaller units that have at least partial autonomy.

However, the liberal struggle for greater federalism, flexibility, and competition must be conducted simultaneously on different fronts. It is just as important to repel the proponents of centralisation and regulation within one's own country, as it is to confront and combat the centralist trend in the European Union. It is also essential to stem trends in regional and local structures that obstruct competition, oppose the right to private property and violate the rule of law. If these battles are not equally fought on all fronts, there is a danger of

paralysis setting in. Figuratively speaking, there would be a repeat of the fate that befell German liberalism in 1848, which failed to combine national unity and civil liberty concurrently.

The concept of federalism, with its distrust of centralist trends, spotlights the many advantages of a range of competitive political decision-making units. Non-centrality and 'decentrality' differ from each other in that the latter implies a centre which, while delegating certain (administrative) powers to self-governing bodies, still retains overall control. Non-centrality, in contrast, does not believe in a centrally regulating and organising authority.

The debate between centralists and anti-centralists gave birth to the idea of federalism. Anti-centralists are also derisively called 'particularists', a term that does not correspond in the least with their understanding of themselves as small, independent units, and certainly not 'particles'. The term 'autonomists' is more accurate. In the 19th century, the nationalist idea of a link between political autonomy and economic autarchy with military defence capability led to the disastrous call for states to be of a minimum size in order to be viable.

The economic and political success of various small states disproved this theory in the 20th century. Athens, Florence, and Weimar are witnesses to the fact that culture thrived especially in the smallest of the world's countries. The trend towards centralisation, however, has been fuelled not only by the nationalist propensity for greatness, but also by the

growing division of labour in the economy and the subsequent specialisation required in the technical age. This explains why most progressive-minded people have been active proponents of centralisation.

The controversy surrounding federalism – the compromise between centralists and autonomists – has played a decisive role in the history of all federal nations. In Switzerland, this occurred mainly between 1798 and 1848. World history – particularly so European history – is rife with struggles between larger and smaller centres in their attempts to become leading political decision-making hubs. This study will use keywords to draw attention to this phenomenon. The ongoing formation of states and societies in the West is a continuous interplay between centralism and particularism accompanied by a simultaneous increase in political, social and technological complexity and specialisation.

In the first phase, feudalism-induced rivalry among the nobility led to land monopolies, which had to be asserted against internal and external destabilisation. The respective territorial rulers initially attempted to monopolise power and taxation by acquiring specific sovereign rights and the authority to administer these rights. A bureaucracy and a standing army were established to this end. By a process of elimination, the struggle for monopoly on land and power in the 17th century culminated in the emergence of the sovereign, territorial state.

The second phase saw the three classes – the nobility, the clergy and the bourgeoisie – compete for the distribution of the state's power monopoly. In the middle of this tussle, the rulers had to carefully balance the meting out of power in order to secure their own political supremacy. This specific configuration led to the establishment of the absolute monarchy in continental Europe, which did not mediatise the different classes but subordinated them to the central power of the monarchy. The dynamics of technology and industry brought about the downfall of this ruling order based on rank and monarchy, when sections of the middle class outgrew their dependence on class-based privileges, considering them anachronistic and an impediment to their advancement.

In the third phase, the 'new' middle class in the 19th century created an order based on legal equality, personal freedom and freedom of ownership. State power was bound to the law. The entire particularist society of highly privileged nobles and the confederate system were thrown into disarray and replaced by national civil society.

The creation of nation-states resolved the fundamental political conflict between the privileged nobility and civil society. The constitutional conflict for the vertical distribution of state power occurred in the fourth phase. Only now can we accurately speak of federalism and centralism as opposing interpretations of the balance of power between the centre and constituent states. Federalists, comprising mainly conservatives and right-wing liberals, were in favour of the greatest

possible sovereignty for individual states while the centralists, mainly left-wing liberals and socialists, advocated greater power for the federation.

The post-1945 solidarity between socialists and liberals led to the highly-regulated welfare and redistributive state in the fifth phase, as social services, the economy, transport, development planning and environmental issues were increasingly centralised within the federal states. Burgeoning state responsibilities inflated the bureaucracy and led to more regulations, higher state debt and taxes. Agreements between countries and the expansion of community agreements, for instance those relating to the European Union, were responsible for uniform international laws, and further eroded communal and member state independence. The drive towards centralisation in many federal states has provided fresh impetus to the movement for federalism. It has been spurred on by the increased mobility of people, goods and capital, thanks to globalisation, and by the increased questioning of national institutions and regulations.

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If we shift the focal point of society back to the lower levels, it means that we are seeking to win back stability, self-determination, and, therefore, security for the individual or, to be more exact, the family, for it is the loss of these very things that has been the source of misfortune for millions.

Wilhelm Röpke (1957)<sup>4</sup>

## **4. Federalism and Subsidiarity: Concepts Open to Interpretation**

### **4.1. Federalism: a Strategy of Compromise**

The American political scientist, William H. Stewart, who teaches at the University of Alabama and has an obvious passion for collecting things, has meticulously compiled no fewer than 495 different concepts of federalism. He has arranged these in alphabetical order with text excerpts and quotations. There is an entertaining introduction to the work, which is both scientifically thorough and refreshingly light. Stewart's work proves the diversity of federal structures that have existed in the history of concepts, institutions, and effects, and bears witness to the imagination of academic

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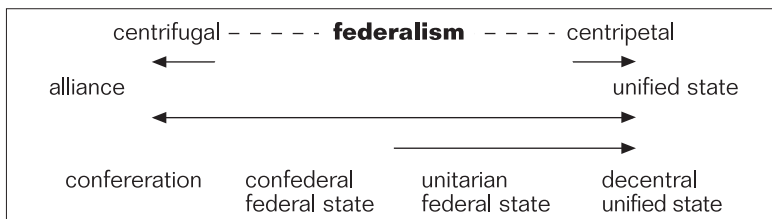
4 Wilhelm Röpke: *Masse und Demokratie* (The Masses and Democracy), ed. A. Hunold, Zürich, 1957, p.35

and political commentators who have consistently discovered or invented novel adjectives and metaphors to express the complexity of the subject. Morton Grodzin, for example, describes American federalism as 'marble cake federalism', in which 'ingredients of different colors are combined in an inseparable mixture, whose colors intermingle in vertical and horizontal veins and random swirls'. From the culinary world we also have the term 'spaghetti federalism' ('the image of spaghetti comes from simultaneous trends of diversity and convergence', *Concepts of Liberalism*, p. 161) and 'sweet and sour federalism', which shows that while state assistance is sweet, the accompanying conditions could be sour.

If one language alone has 495 different concepts of federalism, then the difficulties of comprehending the term are multiplied in translation and in the attempt to use it in its proper historical and national context. The concept has always served to describe one's own political programme but has also had to suffer the fate of being used as a negative label by the political opponent. The compromise between centralist and non-centralist efforts is apparent in the term itself. The classical debate on the subject was initiated by Hamilton, Madison, and Jay in 1787 (*The Federalist Papers*, 1964).

English clearly differentiates between 'federalism' (the federal state) and 'confederalism' (the federation), giving us two adjectives: 'federalist' and 'confederalist'. The German equivalent of the latter term is unfortunately not commonly used and thus there has been multifarious misunderstanding particularly in discussions about an EU constitution.

To avoid the chaos brought about by an in-depth study of political and social terminology and to circumvent the problems arising out of translation, it is perhaps best to adhere to a literal translation. In the original sense of the word, 'federalists' belong to a league or federation (*foedus*). Hence the Anglo-Saxons, who tend to sense the centralizing tendency, are not completely off the mark. The European Union is generally perceived as an institution that has both confederalist and federalist characteristics. 'Federalist' is not merely the opposite of 'centralist' but also the alternative to 'autonomist', 'particularist', and 'confederalist'. This means that in the debate with autonomists, particularists, and confederalists, federalism expresses the centralising tendency while in the debate with centralists it expresses a decentralising tendency. This is illustrated in the following diagram:



Source: Dieter Nohlen (ed.), *Federalism in: Wörterbuch Staat und Politik*, Munich, 1991

The Janus face of federalism is also reflected in the terminology. In German, 'federalism' means strengthening the constituent parts of a state community and is, therefore, the very antithesis of centralism. With the founding of the Ger-

man empire in 1871, nationalism and particularism that had hitherto formed the two ends of the political spectrum, gave way to the new constitutional polarity of centralism and federalism. Federalists were those who defended the federal structure of the German constitution against centralist trends. Between 1798 and 1848, an extremely interesting period in Switzerland in terms of the history of political ideas, particularists, federalists, and Unitarians were all opposed to each other. This period in Swiss history is very relevant in terms of the unification process in Europe, although one must exercise caution when transferring the Swiss experience to the European level. Probably even then, the necessary liberalisation had exacted too high a price in terms of centralisation. Swiss federalists, in their opposition to the unitarians, were and continue to be anti-centralists; they support autonomy for constituent states, i. e. cantons, within the framework of the federation.

Different national traditions have interpreted terms differently. With reference to the history of political terms this phenomenon has been more often the rule than the exception. Some of the distinguishing features of these national peculiarities will be briefly described in the following pages.

### *France*

French history is characterised by the dialectics between national unity and federalism. France has always seen itself as the torchbearer of centralisation. Nationality, statehood, justice, order, and centrality have coalesced into a single

idea to the extent that even decentralisation can only be understood as an activity carried out and controlled by the centre. This should be kept in mind, particularly in the context of the French understanding of the European Union.

In France, the so-called federation celebrations of 1790 were in honour of disorderly citizens' militia groups that coalesced to form the centralised National Guard. The federation movement was an enthusiastic change of direction towards the centre. In contrast, the federalism movement – ultimately suppressed brutally by the Jacobins – was, without doubt, a movement for decentralisation. As a result, federalism in France has always had distinct negative connotations being associated with feudalism, clericalism, anti-democracy, and secession.

#### *The Federal Republic of Germany*

After the second world war, discussions about the constitution in Germany also included a debate on federalism. This was similar to the Swiss debate of the 19th century, and was probably even influenced by it. As in Switzerland, the discussion centred on three ideal-typical options, with the federalist option playing a mediating role. However, the current discussions about the European Union are taking place in different circumstances. Confederal and federal options are being debated while there is as yet no talk of a European central state. It is pertinent here to recall the usage of the term in American English and interpret the federalist element as intensifying rather than qualifying the central federalist ele-

ment in Europe. Reference to a federalist structure in Europe is no cause for comfort for those who are striving to achieve the greatest possible independence and protection for minorities within the Union. European federalists believe in a 'Federal State of Europe' and, given the present mixture of confederalism and federalism in the Union, they incline towards centralism.

In his monograph on the options of federalism, the German political scientist Fritz Scharpf is overall positive about the principle and speaks of a 'zero-sum conflict of fields of competence' (Scharpf, *Optionen des Föderalismus*, 1994). This is a realistic assessment, given that there is genuine financial scarcity at all levels and the possibilities for tapping additional fiscal resources are limited. According to Scharpf, federalism in Germany has no future without constitutional reform, a reform which, "for economic reasons, would aim to transfer powers to pass legislation, impose taxes, and structure society from the centre back to the *Länder* (states) or more precisely, to the individual *Länder*." He is rightly disappointed by the lack of understanding for this concept; indeed, his thoughts are at odds with the prevailing trend towards centralisation in Germany. His thoughts deserve as much attention as his warnings against a European economic policy that "weakens protectionist tendencies in nation-states, replacing them with the growing protectionism of the community" (p.12). He praises the flexible 'niche strategy' in Switzerland (he cites the examples of tourism, financial services, and boarding schools), which, however,

has been initiated by private autonomy rather than by an economic policy based on a small or constituent state. Scharpf's criticism of protectionism within the European Union could be levelled with equal force against economic policy at the internal level. Historically, centralisation has been propagated by liberals and free marketers as the antidote to small-state protectionism and interventionism and as a means of fostering essential economic freedom through privatisation and deregulation. This was why liberals in Switzerland, like federalists in the USA, backed the expansion of federal responsibilities. Given the dubious historical experiences connected with 'deregulation under the protection of the centrally controlling body', one is compelled to question whether this strategy of unification, so consistently pursued by Bismarck, was not in fact a mistake. If subsystems had been allowed to compete freely for the best possible solution, would the ultimate result not have been more autonomy for all in the past and in the future too?

### *The United States of America*

Federalism has played an important role in the history of the USA. Its political discourse has been marked by the opposing views taken by the federalists and the pro-autonomy (later also secessionist) anti-federalists. Unitarian projects found no support; in other words, there was no politically significant group that advocated a central and unitarian state in America. The federalist argument, based on centralism, *opposed* unlimited autonomy of constituent states in a loosely

woven confederation, and *favoured* close cooperation, with important powers being retained by the federal government. Proponents of a confederate political order, but one that was liberal nonetheless, classified themselves as anti-federalists. In English, the centralistic interpretation of federalism still survives. In the early 1990s, when the word 'federal' was about to be adopted in the Maastricht Treaty as an expression of the greatest possible autonomy for member states, it was rejected by England on the grounds that it expressed the will for greater unity and centrality in Europe. This was a sign for the term 'subsidiarity' to make its first appearance. Nevertheless, in the USA, there is a tendency to interpret federalism in decentralist terms – in line with the continental European interpretation, in order to curtail increasing federal power in the 20th century.

After the second world war, the USA attached increasing importance to the freedom component in federalism and the increasingly popular value-conservative opinion glorified it as a political and moral postulate. In his book *Freedom and Federalism*, written in 1959, Felix Morley claims 'that liberty under God is man's most precious birthright, and that our best means of securing Liberty is through the political device of Federalism'. A liberal plea for 'decentralist' federalism, in the European sense, is to be found in the very readable paper by Clint Bolick entitled *European Federalism* (IEA, Occasional Paper 93, 1995), in which he addresses both Americans and Europeans and develops concise and credible theses.

## Switzerland

In Switzerland, the discussion on federalism started in the early 19th century. Napoleon, who is often seen as having restored federalism in French-occupied Switzerland, intensely disliked federalism himself. He saw '*les fédéralistes*' as the enemy and contrasted them with '*les patriotes*', the friends of France.

In an article on Swiss federalism (*Kein neuer Mythos*, 1992), the Swiss historian, Beatrix Mesmer, warns of the dangers of creating myths and of the Swiss complex about being a paragon and role model. She says that "federalism in Switzerland should be analysed in detail in the *pay réel* (as opposed to the *pay mythique*), before offering it to the European Community as a political remedy straight out of Switzerland's medicine chest." Professor Mesmer characterises Swiss federalism as a "continuously shifting compromise between established structures", and as a sharing of responsibilities that has not yet been specified in writing, which has to repeatedly face the challenge of emerging needs and demands.

It is to be noted that the discussion on federalism in Switzerland usually concentrates on the relationship between the confederation and the cantons while the subject of communal autonomy is relegated to a different department. There are reasons for this. The cantons insist, at least verbally, on their rights vis-à-vis the confederation and maintain an anti-centralist profile (as long as it costs nothing), but are usually centralist when dealing with local governments (unless it

is a question of decentralising costs or other political burdens). The numerous representatives of local government (*Gemeinde*) who usually comprise at least a third of the cantonal members of parliament are the only counterweight to the centralism of the cantons. However, in taking on responsibility for retaining their independence, even this 'autonomy lobby' is driven primarily by financial interests and the desire to expand personal political power, i.e. give orders but not pay. In a study of communal autonomy, a subject that is unfortunately not given enough attention, the American political scientist, Benjamin Barber (*The Death of Communal Liberty*, 1974) subtly illustrates how federalism – the integration of the canton of Graubünden into the federal state – actually hastened the demise of freedom for the *Gemeinde* within the canton, instead of preventing it. This conclusion may be of interest to those who, drawing an analogy between the process in Switzerland when it became a federal state and European integration, dream of greater liberty for the cantons, regions, and local authorities when Switzerland joins the European Union, because Brussels is further than Bern. The idea that a federation at a higher level, which restricts and deprives subordinate member states of power while strengthening the local, regional, and cantonal authorities at the expense of the state level, could prove to be a fatal mistake. Experience has shown that surrendering sovereignty, at any level, is a one-way street. It is perhaps no coincidence that, an American, as an outsider, should have diagnosed the death of communal liberty while the very institution, i. e. the *Gemeinde*, is still hailed in Swiss civic studies textbooks as the

'nucleus' of our state. Of course, the *Gemeinde* is by no means dead but its autonomy is not in good health and the reproductive power of these 'nuclei' is as weak as that of the cantons. In my opinion, if we are serious about the spirit of federalism and the related subsidiarity principle, we must include communal autonomy into the discussion. Transparency between tasks and expenditure is best ensured at the local level while power monitoring could cover institutions and individuals. The *Gemeinde* can also experiment with reforms like privatisation schemes and voucher systems and can be innovative instead of blinkered.

### **Mistakes and new impulses**

The rediscovery of democratic and anti-bureaucratic elements at the grass roots has helped federalism regain respect in left-leaning circles too, even if leftists tended to avoid the term – burdened as it was with its “negative legacy” – and spoke of 'citizens' initiatives', 'regionalism', and 'grass-roots groups'. The philosophy of 'small is beautiful', a slogan created by Leopold Kohr (*Breakdown of Nations*, 1957) and taken up by E. F. Schumacher (*Small is Beautiful: Economics As If People Mattered*, 1973), of 'conviviality' (Ivan Illich, *Tools for Conviviality*, 1973) and of 'small networks' established itself in connection with the ecological movement in the 1970s.

The idea of federalism was boosted by the challenge of a range of overlapping factors such as ethnic groups, political and historical borders, and economically interlinked structures and infrastructure. The image of the leopard skin is a

more accurate description of multicultural societies with clear divisions of labour than the chessboard, even as the model of neatly defined and clearly demarcated territorial and fiscal sovereignty is, in many ways, obsolete today. It could culminate in the insanity of ethnic cleansing à la Bosnia, which has shown the world how not to behave.

The model of a 'dynamic federalism' propagated by two Swiss economists, Reiner Eichenberger and Bruno Frey (*Eine 'fünfte Freiheit' für Europa, Neue Zürcher Zeitung*, 30, 6 February 1996, and *Ein neuer Föderalismus für Europa*, 1997) may still be utopian but their reference to Functional, Overlapping, Competing Jurisdictions (FOCJ) is realistic and relevant even today. FOCJ, or Focus in the singular are determined "by the function to be fulfilled", as jurisdictions expand according to the function, they compete for local municipalities and citizens. They have their own tax sovereignty, which in practice is both the crucial point and the Achilles' heel. Perhaps, instead of taking taxes as the starting point, we should consider prices, user charges or membership fees. After all, which existing local authority would want to give up its right to levy taxes when faced with empty coffers? Also, how many taxpayers would be prepared to accept additional tax collectors? There is not much point in tightening the screw further, as the ensuing loss in productivity or greater resistance to taxes will lead to falling tax revenue. The so-called blockages in public finances will probably soon be recognised as an impasse forcing a U-turn. Hopefully, this will encourage those responsible to ponder useful proposals, such as the Zurich

Focus Model. The model is creative, because it does not back centralisation and harmonisation but promotes diversity without sacrificing too much flexibility. In doing so, it probably circumvents what Scharpf has graphically described as the ‘integration trap’ – a growing reluctance to concur and compromise, not wanting to and not being able to pay while the collective expectations, demands, and requirements continue to grow. At moments like this, the rediscovery of individual liberty comes into its own as a problem-solving strategy for concerned and involved persons. It is a strategy that directly negotiates compromises and regulates finances *inter partes* and usually *inter vivos* (not at the cost of future generations). The borrowing limit of such legal entities depends on their self-financing capacity or their relevant creditworthiness, and bankruptcy, like the salutary sword of Damocles, is constantly hanging over the price–quality ratio. Private law operates with flexible, non-binding treaties, which make for “legislation based on need and necessity”, achieving maximum efficiency through minimum coercion. It is an open question whether persistence with the Zurich Focus approach will eventually yield a cooperative model of self-organisation or other private-sector enterprises and institutions based on private law. After all, what are service industries (with or without public involvement and investment) if not legally independent, functional, overlapping, competitive actors – in other words, FOCJ?

The catchphrase ‘cooperative federalism’, coined in the 1960s and the 1970s, is still making the rounds today and is

really the counter-concept to 'competitive federalism'. In the context of the so-called regionalism debate, cooperative federalism has fostered centralisation and embraced the idea of regional balance, which, in the final analysis, implies the erosion of local autonomy. The questions as to whether regions should constitute the fourth level between local governments and constituent states (federal states and/or cantons) or should be assigned to a category that transcends national or international borders, and whether they should function as alternatives to existing local authorities or work in tandem with them, have always been controversial among regionalists. Whether these trends are centralist or non-centralist is as yet unclear. Non-centralist opinion rejects the idea of a 'Europe of regions'. Regions will always depend on a centre that supports them thus creating an "illusory autonomy".

The idea of regional balance, and efforts undertaken at regional level to promote certain areas through subsidies and special loans, is particularly popular among the profiteers of redistribution. The concept of interregional financial equalisation, i. e. redistributing income between the federal government, states and local governments, is ineffective in the medium term and counterproductive in the long term. It is rare for the money to have any effect on the good deeds promised and expected; most of it probably flows into the wrong channels (i.e. back to the centres) proving that 'development aid' of this kind is fundamentally flawed, in the national and European context as well. The idea of redistrib-

uting public funds on a large scale within and between regions has, in effect, created more disincentives than incentives and is ultimately nothing but a useless interventionist correction intended to set right forced harmonisation – indeed, a mistake to rectify mistakes. However, like all compensation projects that take from the ‘rich’ to give to the ‘poor’, the concept of financial equalisation and ‘aid’ for financially and structurally weak regions enjoys considerable political popularity. Those responsible for allocating funds can claim legitimacy and indispensability for only they are aware of the funds that trickle down to the bureaucracy or end up in the wrong hands, instead of where they are needed. Needless to say, the administration shows barely any interest in monitoring the results of such an operation, as the research is financed by the very same government, and there are still remnants that date back to the times when constitutional law dictated that an administration should believe in and encourage interventionism and even partially finance any research into it.

## Conclusion

Classical continental European federalism is a constitutional and political movement that campaigns for constituent states to retain as much independence and as many rights as possible within the framework of a federation. It is based on non-hypothetical, existing spheres of life and rejects all forms of centralism, unitarianism, and collectivism. As a political order and a *Weltanschauung*, federalism is in the tradi-

tion of Aristotelian-Scholastic social theory that traces the political community back to the family as the smallest social unit. The model of people living and working in small communities (family, church and secular communities, professional associations, etc.) as a device against unitary states legitimised by treaties and based on enlightened individualism underlies both the *Politica* of Johannes Althusius, the intellectual father of the classical federalism and the Catholic Social Doctrine.

In addition to the understanding of federalism based on Aristotelian-Scholastic philosophy, enlightened thought in the 19th century yielded a second interpretation based on personal freedom and self-determination, non-central, non-hierarchical structures, and free agreements and unions. As a principle, this skepticism about power and rule, centralisation, bureaucratisation and hierarchisation was favoured among liberals and socialists.

After 1945, a (natural) scientific understanding of federalism was backed by sociologists and economists. Its arguments are based on systems theory, and it perceives political and social structures as 'interaction systems', as a complex interplay and fragile balance between particularist and centrally regulated forces, between the self-steering of small units and central control. The more a complete system is structured in a 'gradated' and partially self-steering manner, the more likely it is to be stable and capable of adapting to new conditions. Systems that grant autonomy to their subsystems are complex, unmanageable, and difficult to admin-

ister. At first glance, they appear to be more inefficient than centralised systems and seem to have less internal and external power. Autonomy conceals the risk of sub-optimal problem-solving. The efficiency of complete systems, however, is not measured only by their ability to wield power but also by its ability to 'detoxify' power, learn and adapt. Peaceful competition among autonomous subsystems, preferably down to the smallest unit, makes for constant competition between blueprints for political orders and between interventionist and redistributive systems. While allowing for a wide-range of mistakes and errors, they avoid the centrally standardised greatest error and mistake. The system can be optimised by making cross-comparisons: learning from and copying successful experiments while deliberately avoiding mistakes that have been observed. The freer the communication, the swifter and more efficient the learning process. In the political world, autonomous subsystems are the counterpart to the market. Even from the perspective of the national economy, cooperation between non-centralised decision-making units would be beneficial, particularly as the co-relations between cost and benefit and between providers and receivers of public services can be made more transparent and calculable for all those concerned.

#### **4.2. Subsidiarity – No Miracle Principle**

Federalism is often associated with the principle of subsidiarity. This principle is not, however, confined to state organisation, but also involves social, economic, religious,

cultural, and other spheres. The principle of subsidiarity is based on the fundamental separation of individual, state, and society, laid out in the work of Aristotle. The principle of subsidiarity places the onus of solving common problems on the smaller community; the higher level is to intervene only if social and political support is required. From this perspective, the state is subsidiary because the subordinate body's help for itself, the help of the family and welfare have priority over the state assistance. Furthermore, problem-solving at the local level takes precedence over that at the regional, constituent, national, and international levels. The encyclical letter, *Quadragesimo anno*, by Pope Pius XI (1931) contains what has become the classic formulation of this: "...Just as it is gravely wrong to take from individuals what they can accomplish by their own initiative and industry and give it to the community, so also it is an injustice and at the same time a grave evil and disturbance of right order to assign to a greater and higher association what lesser and subordinate organisations can do. For every social activity ought of its very nature to furnish help to the members of the body social, and never destroy and absorb them." Today, the subsidiarity principle is understood primarily as a principle that divides authority and tasks between the various hierarchical levels of a federal system. However, it was originally sought to separate the private sphere from public and political spheres; in other words, it should answer the current crucial question of whether responsibilities should be privatised or nationalised.

Liberals see subsidiarity as a defensive principle that secures the liberty of the individual vis-à-vis the collective, and offers the individual protection against all forms of state coercion. It finds expression in the phrases *in dubio pro libertate* and ‘as much freedom as possible, as much coercion as necessary’. According to the Catholic Social Doctrine, “...people as individuals should fulfil each task that comes their way themselves, as long as they are capable of doing so. The intervention of the community must be only on a subsidiary level.” (F. Klüber, *Lexikon für Theologie und Kirche*, Freiburg in Breisgau, 1957; under the entry *Soziallehre*).

All these expressions establish a trend towards finding individual solutions within the smallest possible sphere but the formulations (‘if in doubt’, ‘as much freedom as possible/as much coercion as necessary’, ‘as long as they are capable’) clearly need to be correctly interpreted. If the higher level is taken to be the more ‘appropriate’ level, there is a risk of the principle will be applied to a centralising tendency and will, as a consequence be eroded. The principle is often completely reversed, as newer and newer arguments are formulated as to why it is ‘better’ attributed to the center of to higher authorities.

It becomes even more difficult when financial viability is used as a measure of problem-solving skills. A centralised tax system will without doubt indicate the ‘inability’ of subordinate authorities to execute infrastructural tasks, thereby virtually signalling a one-way-street to centralisation. If the local authority is deprived of its tax substratum, it is subsequent-

ly quite simple to diagnose 'insolvency' and thus justify yet another step towards centralisation. Although the principle of subsidiarity calls for common problems to be resolved at the lowest possible level, it does not stipulate criteria indicating which solutions are 'possible' in each individual case and at which level. The principle is neutral with regard to centralisation and non-centralisation, but leads to greater centralisation in practice. As every government wants to claim the benefits for itself while transferring the costs to the next higher level, the subsidiarity principle lacks the brakes that can be operated by governments in their own interest.

Given the constraints of centralised systems, the definition of the subsidiarity principle must be made more precise and radicalised so that it opts for competence, responsibility, and financing to be returned to the smallest possible autonomous unit or to the level closest to the problem, as soon as the problem can no longer be adequately resolved or sustainably financed at the higher, central level. The subsidiarity principle, with its original element of non-centralisation, must be constitutionally entrenched: priority for smaller or private units. The subsidiarity principle, combined with the postulate of decentralisation, calls for privatisation, decentralisation, and deregulation if the state or centrality should fail.

However, resolving state issues at communal levels is not always the optimal solution. The communities can also misuse their autonomy by passing regulations that appeal to democratic and populist tastes. The principle of limited gov-

ernance must be enforced at the communal level too, and it should be ensured that unlimited democracy is not pursued at the expense of any minority. There are rules that may not be altered at the communal level. They include important principles like the rights to freedom, equality, free trade, protection of personality, guarantee of property and principles of procedure such as arbitrariness standard, acting in good faith, due process of law, *in dubio pro libertate*, *in dubio pro re* and the prohibition of retroactive action when statutory regulations are enacted and applied.

Over the last 30 years the prevailing opinion was that a large share of the problems could only be managed and regulated through regionalisation, partnerships of convenience, financial equalisation, and centralisation. In the future, however, these problems must be resolved by privatisation, in line with the concept of the user pays, the state provides targeted help.

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By paying the representatives of the people we do not awaken in them an interest them to be more conscientious in their work; on the contrary, we merely instill in them an interest in ensuring that they stay in office.

Benjamin Constant (1815)<sup>5</sup>

## 5. Non-Centralism and the Tax System

Anyone who talks of finances and taxes in connection with autonomy, identity, democracy, and minority protection, could easily be suspected of being a materialist whose intellectual horizons start and end with money. While the financial dimensions of a problem cannot be absolute, they should also not be ignored. He who pays the piper calls the tune. Without financial autonomy, there is little that a person can actually determine himself.

Nobody likes paying taxes and when the subject of the 'exchequer' crops up in sociological and economic discussions, specialists really go to town on it. Considering the historical – and continuing – importance of taxation systems, the glaring lack of comprehensible information about them

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<sup>5</sup> Benjamin Constant, *Politische Schriften*, 4<sup>th</sup> ed., Berlin 1972, p. 79

comes as a surprise. We pay too little attention to the fact that at least half the history of political systems is that of taxation systems, and that numerous historical changes originated as tax revolts. The Boston Tea Party, a protest against tax policies that triggered American independence, is the best known, but certainly not the only example. The slogan coined at the time – ‘No taxation without representation’ – has since become one of the basic principles of all sovereign and democratic states, even though its postulate has by no means been satisfactorily adhered to in all places. The refusal to pay the Empire’s taxes was the first step in Switzerland’s breakaway from the Holy Roman Empire of the German Nation. On several other occasions, fiscal policy has been at least one of the reasons for secession.

We often underestimate the historical and political significance of a state’s finances and taxation system while overestimating the importance of ideological and national conflicts. We did not even manage to solve the problems of our state finances and tax systems caused by the two World Wars and the Cold War. In the last two centuries, the significance of the nation-state as a fiscal and redistributive system that provides for the people, has taken on proportions that are absurd in peacetime, both for the winners and the losers. It is time to accord political systems the importance they deserve in times of relative peace. Financial ‘disarmament’ is still incomplete. The power of our governments and the nanny state are still oriented to war-like situations which means that there is an enhanced need for public law, inter-

vention, and subsidy. A peaceful civil society would be characterised by a minimum of rules and regulations and limited technical and socio-political infrastructure; those concerned and affected would resolve their conflicts in line with the principle of private autonomy.

There would be no need to strive for autonomy if the central government were to restrict itself to what is absolutely necessary – limited rule, i. e. limits on the power of the government, limits on the power to tax, and limits on free provision of central public institutions and services. Local governments would gain autonomy much in the same way as individuals – through the ordered withdrawal of the political system from all spheres in which it has no place in a peaceful civil society.

The struggle for regional and communal autonomy is akin to the struggle against a disproportionately large, central political power and fiscal structure geared to war-like situations.

In the course of its history, the state has consistently claimed for itself the two basic competencies of taxation and conscription, i. e. the right to collect taxes and the right to recruit soldiers, both by force. Encroachment upon wealth and liberty has always been controversial and states have never failed to provide motives justifying their claim to this authority. A wide range of methods has been used to implement or temper these objectives. Perhaps one should not classify states according to their systems of government (monarchy, oligarchy, democracy, etc.) but according to how they com-

bine compulsory conscription, taxation, voting rights, and mutual agreements on rights and obligations, as well as the universally binding redistributive system. Hence the subsidiarity principle, which is rightly being discussed again since the Treaty of Maastricht, is primarily a taxation and financing model; it cannot be properly understood if divorced from the question of who finances, who distributes, and who redistributes what for whom.

In the 20<sup>th</sup> century, Switzerland frequently delegated social and cultural tasks to the state in the hope that it would be able to fulfil them for all time. However, this coercion disrupts and destroys the willingness of citizens that underlies all spontaneity, mutuality, and voluntariness – the only long-term guarantors of proper social behaviour. This behaviour emanates from and is based on long-standing cultural and social traditions that are constantly being established and further developed and are essential for the long-term survival of a society.

As mentioned earlier, 'He who pays the piper calls the tune', is one of the fundamental fiscal rules in a democracy. Nobody should be taxed if he or she cannot determine, even indirectly, the rate of taxation and the concrete purpose for which the revenue is to be used. This principle has extremely far-reaching consequences. Against the backdrop of the discussion on autonomy, it basically restricts redistribution between various regions and local governments. All taxes and levies, all distribution of taxes and all redistribution must bear the stamp of democracy.

In this context, if the principle of democracy is consistently thought through to the end, we arrive at yet another principle that too can become a slogan. It reads as follows and has sweeping consequences for the discussion on autonomy: 'The greater your concern, the greater your involvement'. This principle is the core of the argument put forward by autonomists. It often clashes directly with the radically democratic principle of 'one man, one vote', which often has conflicting results when applied to a larger area. In a heterogeneous, multi-ethnic area, a majority of the people involved can use the 'one man, one vote' principle to outvote a minority of especially affected people, causing a particularly explosive dilemma for taxation. If we divide the population roughly into two categories – tax-payers and tax-eaters – it is very likely that a majority of tax eaters will outvote a minority of taxpayers. Problems can arise here, as proved by the example of Italy where taxpayers live mainly in the north while the tax eaters live in the south.

Another principle of autonomy can be derived from the principle of 'the greater your concern, the greater your involvement'. Although a bit extreme, it can be expressed as follows: 'No representation without taxation'. This provocative thesis maintains that the representation of interests manifested in a particular region or constituent state should be linked to the eternally unpopular power to levy the taxes required to finance the relevant concerns. Or, more to the point, a local government, a region, or a constituent state can survive only if it is financially autonomous, implying its

own direct financial autonomy and not derived autonomy. Furthermore, it is necessary to have the authority and the sense of duty to produce by coercion the revenue required to resolve common problems. Of the following four possible ways of achieving this, none is completely satisfactory.

*First*, the authority to levy communal taxes can be centralised. However, this is possible only if there are any communal tax resources available and centralisation would be at the cost of local autonomy. A solution like this does not stand much chance in the real world of politics. Given the principle of subsidiarity, it would represent a setback if regional autonomy were to be bought at the cost of local autonomy. With all due respect for the postulate of regionalisation and constituent state autonomy, it must be said that the central postulates for future tasks are privatisation and local self-management. There is ample evidence to prove that Switzerland's economic and political success is due private autonomy coupled with communal autonomy.

*Second*, in addition to (cumulative) communal and national taxes, a constituent state or region can establish a system of regional taxation. This solution has virtually no chance of success because the limits of taxation have usually already been exhausted in the present system and no party is willing to explore new sources of taxation or give up its own sources of taxation, whether upwards or downwards.

*Third*, a constituent state or region can employ a subsidy system to finance itself from the top if the central government

provides the necessary funds. Despite its widespread application and popularity, this procedure is to be viewed sceptically. Although it does grant constituent-state and regional officials a certain amount of power, the local authority concerned is robbed of its independence and becomes an agent of the central authority and is subject to the maxim, 'He who pays the piper calls the tune'. In the final analysis, the entire process of regionalisation, which takes place under the dubious label of 'decentralisation', deprives smaller subsystems of their right to self-determination. It destroys regional autonomy, as smaller systems become increasingly dependent on central subsidies – a relationship that can rightly be compared to addiction. The officials involved do well out of this but, sooner or later, consciously or unconsciously, they represent the interests of the central authority – the paymaster – and come to embody ongoing legal corruption. European regionalists who back financial separation from a central authority that compensates and redistributes, are the only genuine proponents of regional and local autonomy.

*Fourth*, a region or state can finance itself with the money that is paid by municipalities and private individuals for the use of its services and institutions. Although this is the most difficult form of financing, it has the brightest prospects. It is not a mandatory charge but a user charge, much like a price paid for certain services that a local authority has 'subscribed' to. In this case, a wide range of public institutions have overlapping sectors and the defining factor is no longer the territory but the task.

The fourth solution seems to be the most optimal even if one has to admit that it is still fairly utopian. It has nothing more in common with a traditional tax system, and, by its very nature, is related to the concept of privatisation. It relieves local authorities of imposing mandatory charges and taxes, and the service sector begins to resemble an enterprise that sells its services in the market. Regionalisation and communalisation are closely linked with privatisation and the state is no longer trapped in the impasse of burgeoning tasks, expenses, and debt.

The American Chief Justice, John Marshall, made the famous remark, 'The power to tax involves the power to destroy'. It expresses the greatest fundamental dilemma of a situation in which the state carries out duties tasks. Every government would like to carry out public tasks and organise redistribution on behalf of the people it governs. Therefore, no political system can do away with taxation per se. However, taxes invariably dampen the motivation to work, to save, and to express spontaneous solidarity – three important conditions for a society to function smoothly for long periods. The state's tasks, expenditure, and revenue can be optimised if costs are transparent at all levels and if the political decision-making process ensures that a balance is maintained between these three vital factors. The smaller and clearer the framework, the greater the chances of success in a democracy. Liberals must strive to minimise and limit state tasks and redistribution.

The contrasting terms of 'taxpayers' and 'tax eaters' could illustrate the principle as follows: 'No tax eating without tax-paying'. You cannot enjoy the benefits of public services without sharing the costs. Even in Switzerland, it has not been possible to halt the trend towards the centralisation of public tasks at cantonal and federal level, even though the federal state order does have some means to apply the brakes on this.

The financial constitution is a core area of constitutional law and we tend to underestimate its fundamental element. It is not merely a question of acquiring requisite funds for the state by improvising from year to year, but one of setting clearly-defined limits on financial intervention and discovering the most effective method of reducing the state's quota and strengthening the economy. It is important to restrict taxation demands by setting upper limits on progression and overall taxation, by diluting the watering-can principle when redistributing resources, by restricting financial equalisation between the central government and local authorities, and by fostering competition between municipalities, cantons and nation states in levying taxes. We must strive to apply the brakes on expenditure, set concrete curbs on debt and make a more 'enforceable' commitment to balance the budget more effectively at the political level. However, magic constitutional formulas in this regard have yet to be invented.

We should not overestimate the danger of a race to the bottom the race for a state with zero taxation and zero per-

formance. First, a substantial part of all taxes and levies are used to finance the state bureaucracy. Once in place, these bureaucracies become an integral part of the social structure and are extremely difficult to dismantle. Second, it is highly improbable that political order and infrastructure will be neglected as there is always the possibility of making comparisons with local authorities that are better equipped to meet these demands. Most taxpayers can often be persuaded to pay higher taxes for public commodities that they desire but are difficult to come by. In other words, people are prepared to pay higher prices if the product or service helps to enhance the collective quality of life. However, competitive taxes and public services at the federal level should not be distorted and deformed by the demand for uniform living conditions and financial equalisation.

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Do not destroy anything unnecessarily, squander nothing; in a word, behave in a manner that earns you respect and is worthy of your name.

Excerpt from the address given by the Swiss General Guillaume Henri Dufour to his army on 22 November 1847, just before the campaign in the civil war against the *Sonderbund*

## **6. Switzerland's Historical Development: Six Steps, Six Lessons**

Switzerland is a successful country. Its per capita income and standard of living are amongst the highest in the world, while its levels of unemployment and rates of taxation are relatively low. Nevertheless, one should be wary about speaking of 'The Model Switzerland'. It would be wiser to describe Switzerland as an experiment, the result of a spontaneous process that has had comparatively good results so far.

An important factor behind Switzerland's multiple successes is the complex and highly instructive development of its federal structure. The process covered a span of 50 years and can be divided into six phases, each of which has its own 'lesson' to impart, independent of the historical and nation-

al context. These lessons are briefly described in the following pages.

The French-based constitution of the Helvetic Republic (1798–1803) furthered the cause of equality by breaking away from the old and still very autocratic confederation. However, it subscribed to the fallacy of centralism and created a uniform Helvetian state that relegated the cantons to the level of pure administrative districts without rights of their own.

Lesson: If the centre were to understand what is in the best interest of the public and implement it intelligently, centralism as such would not be a bad thing. However, the danger of folly rather than wisdom being centralised and influencing the bureaucracy is infinitely greater than the hope that the centre will be occupied by the country's best and most sensible citizens. While non-central structures also could have inefficient and foolish governments, it is always possible to compare and learn and the chances of gradual improvement are much greater.

The so-called *Act of Mediation Constitution* (1803–1813), drafted by Napoleon in consultation with Swiss parliamentarians, was an attempt at achieving a compromise between centralism and particularism. However, the collapse of Napoleon's France sealed its fate.

Lesson: Mediation is a successful principle, but it must come from within and cannot be imposed from outside. A constitution imposed from the top without democratic legitimacy can merely be another addition to the repository

of socio-political experience but does not have a life of its own.

The *Restoration* period (1815–1830) tried essentially to re-establish pre-revolutionary conditions and created a confederation comprising 22 sovereign cantons with restored constitutions and a common diet. This 'step back' slowed down the adjustment process, but failed to resolve the problems.

Lesson: While one can learn from the past, one should not live with the illusion that a country can revert to earlier conditions and their attendant values. Values change slowly, if at all, and there is, therefore, good reason to adhere to conservative values. But those conservatives who oppose structural changes brought about by technical progress are wrong. In fact, the readjustment of structures must be an ongoing process. If values are to be preserved in a changing environment, care should be taken to adapt and alter the structures accordingly.

The *Regeneration* period (1830–1847) was probably Switzerland's most creative era and the country is still living off it. A plethora of competing experiments flourished at the time and the cantons enjoyed substantive independence. The Swiss elite also studied models of other countries and, with the help of asylum seekers and immigrants from neighbouring authoritarian countries, important communication networks were established all over the world. Civil society and small business enterprises were granted substantial political

autonomy in many fields, while elsewhere, the politics remained rigid and interventionist.

Lesson: A non-homogeneous political system offers great opportunities to learn by comparison, i. e. look and copy. It usually does not take long for the results of conflicting experiments conducted in conditions of relatively free communication to be tangible. It is these results that often act as catalysts for more internal learning and adjustment than all the well-intentioned efforts to harmonise and centralise.

After the Regeneration period, Switzerland had to overcome the crisis of a split between the rural, Catholic, conservative cantons and the urban, liberal, reformed cantons. This culminated in a political and religious civil war – the *Sonderbund* War (1847) – fought with great determination but also with astuteness and restraint; the victors treated the vanquished with great moderation. The *Sonderbund* had violated allegiance to the alliance by joining hands with foreign powers. The aim of the military intervention was not to decimate the opponent, but to achieve reconciliation and renew the basis for cooperation.

Lesson: It pays well to resolve conflicts openly and to treat opponents with moderation. The vanquished should be integrated as promptly and magnanimously as possible.

The *Federation* of 1848 reached a compromise between centralism and particularism; the centralist element advocated by the all-conquering liberal parties played an important role in the new constitution. Switzerland, in fact, was made up of

relatively well-functioning, non-central, and extremely inadequate central structures. In comparison with other European countries, its federal budget and federal administration were very small and ineffectual. The Swiss federal state started life with a minimal administrative system of less than a dozen professional civil servants, without any direct or indirect federal taxes and with a very small budget based only on customs duties.

Lesson: The secret of the young federal state's success was the opportunity to start out as a minimal state in which cantons and local authorities enjoyed a high degree of autonomy. It also had functioning political micro-structures, albeit more paternalistic than democratic, particularly at the local level. These structures were not born of a collective desire for lean government, but simply because there was no money: No money in the state coffers, no civil servants, no central bureaucracy. The state took the right decisions simply because there was neither the staff nor the money to do anything wrong! Moreover, as there was a non-professional militia principle in force, improvisation and confusion were the order of the day at the poorly developed federal centre – a kind of laissez-faire where, for example, the central excise duty was not fixed by civil servants (as there were no experts) but was regulated by the economy itself, which explains why it was geared to the needs of the economy. In simple terms, the 19th century economic miracle in Switzerland was not the fruit of constitutional liberalism or democracy, but the accidental result of functioning with very few

centralised federal structures. Nineteenth-century Switzerland was progressive because, based on the criteria of the time, it had a particularly primitive political system. The principle of subsidiarity was effective as private, local, and cantonal structures were better equipped with staff and funds to provide public services than the chronically 'under-funded' central administration. This was essentially why there was no economic policy of the kind that uses the national economy as a pretext to intervene in favour of influential and powerful groups thereby preserving structures that impede and paralyse the spontaneous forces of a boom. New states also appear to offer the economy a good launch pad, not so much because of the quality of their structures but more because of the 'light load' in terms of the central state apparatus and because possibilities for financial exploitation are limited in the early stages.

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In the centre of Europe lies a small country, Switzerland, that has been sparsely endowed by nature [...]. But its citizens have pursued capitalism for hundreds of years. They have achieved the highest standard of living in continental Europe and their country is one of the world's most important centres of civilisation.

Ludwig von Mises (1958)<sup>6</sup>

## **7. Who Pays and Who Benefits? The Swiss Tax System**

In Switzerland, citizens and taxpayers take part in a direct vote and majority decision determines the rate of taxation. This model cannot be directly transposed to other conditions. Whether governments and parliaments can – and should – confer direct responsibility on taxpayers for something as critical as the power to tax, is an eternal field of discussion. However, if the majority decision is allowed to fix the tax rate at all levels of state organisation, then it must be on the condition that rates are not too progressively structured, as 'democratic heteronomy' could affect and eventually oust taxpayers with higher incomes. Votes per capita are effective only if concerns per capita are comparable.

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6 Quoted from: Ludwig von Mises: *Vom Wert der Besseren Ideen* Stuttgart, 1979, p. 96

In Switzerland, competitive tax systems and the sharing out of direct taxes among the levels of the confederation, canton, and local governments led to an experiment that combined relatively low taxes with good public infrastructure. Competitive taxation has a two-sided effect. On one hand, the Swiss vote 'with their feet'; in other words, wealthy taxpayers move to or away from different regions. On the other hand, Switzerland has the power to attract capital from countries burdened with higher taxes. This explains why EU countries, Germany in particular, erroneously continue to call for tax harmony, which would in fact, eliminate all tax competition in Europe and what has hitherto proved to be a ruinous tax policy will only be continued with at a higher level.

The Swiss tax system reflects the three-tiered political system of the confederation, 26 cantons, and about 3000 municipalities. Taxes are levied at all three levels. However, the constitution limits the power of each of these levels to levy taxes. The power to tax is divided in such a manner that the confederation, cantons, and municipalities do not hinder each other and the taxpayer is not unduly burdened.

The confederation was initially unable to levy direct taxes. When the economic crisis of the 1930s and the second world war created a greater need for money, taxes on income, wealth, profits, and capital were introduced and retained at the federal level. The confederation levied the smallest share of these direct taxes, and continues the trend today, with a share of 7%–8% in the 1990s. Of the total state revenue, 30% now goes to the confederation.

The confederation can levy only those taxes that are anchored in the constitution. There are relatively few taxes and duties that can be imposed exclusively by the confederation. This permits the cantons considerable scope to devise their own taxes. According to the federal constitution, the 26 cantons are sovereign states (with certain reservations) vested with taxation powers and tax sovereignty. They are free to choose the taxes that they would like to levy, provided the federal constitution does not stipulate otherwise. For example, in recent years, many cantons have held plebiscites and abolished inheritance tax for direct descendants, in the hope of attracting affluent private individuals.

The municipalities can collect taxes only within the scope authorised by the canton. They do, however, receive a reasonable share of income and wealth tax and, therefore, we now speak of derived or delegated tax sovereignty and not original sovereignty. Nevertheless, this does not alter the fact that the municipalities enjoy true tax sovereignty, which, along with federal and cantonal sovereignty, constitutes a pivotal element in the Swiss tax system. The municipalities have the power to tax because, as autonomous self-administrative bodies, they represent a vital component in the social structure. In addition to their natural tasks as administrators of local community life, the municipalities have also been granted wide-ranging powers that elsewhere would normally be in the exclusive purview of central governments: primary school education, social welfare, and public health.

Even if some of these responsibilities are conducted under the supervision and with the financial assistance of the centre, the costs incurred are borne mainly by the municipality. This implies that municipalities must be involved when the available financial resources are meted out. Their financial autonomy goes hand-in-hand with the functional autonomy they enjoy.

While Switzerland's tax federalism is limited by the Cantonal and Communal Direct Tax Harmonisation Law, this only affects the basic principles of tax assessment and collection.

Taxes in Switzerland are subdivided into two categories of income and wealth tax and excise, property, and expenditure tax. The confederation, cantons, and municipalities levy individual taxes for both categories.

### Federal taxes

<b>Income tax, direct taxes</b>	<b>Excise tax</b>
■ Income tax	■ Value added tax
■ Profits tax	■ Duty on tobacco
■ Withholding tax	■ Duty on beer
■ Military and community service exemption tax	■ Duty on spirits
■ Stamp duties	■ Duty on oil/fuel
	■ Motor vehicle tax
	■ Customs duties

## Cantonal taxes

<p><b>Income, net wealth taxes, other duties</b></p> <ul style="list-style-type: none"> <li>■ Income, net wealth tax</li> <li>■ Poll tax, personal tax, household tax</li> <li>■ Profits, capital tax</li> <li>■ Inheritance, and gift tax</li> <li>■ Taxation of capital gains on property</li> <li>■ Tax on change of ownership</li> <li>■ Property tax</li> <li>■ Lottery tax</li> </ul>	<p><b>Ownership and expenditure taxes</b></p> <ul style="list-style-type: none"> <li>■ Motor vehicle tax</li> <li>■ Dog licence fees</li> <li>■ Entertainment tax</li> <li>■ Stamp duty</li> <li>■ Tax on advertising posters</li> <li>■ Taxes on waterworks</li> <li>■ Miscellaneous taxes</li> </ul>
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## Municipal taxes

<p><b>Income, net wealth taxes, other duties</b></p> <ul style="list-style-type: none"> <li>■ Income and net wealth tax</li> <li>■ Poll tax, personal tax, household tax</li> <li>■ Net profit tax, capital tax</li> <li>■ Inheritance, gift tax</li> </ul>	<p><b>Ownership and expenditure taxes</b></p> <ul style="list-style-type: none"> <li>■ Dog licence fees</li> <li>■ Entertainment tax</li> <li>■ Miscellaneous taxes</li> </ul>
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Source: *Interkantonale Kommission für Steueraufklärung* (tax information office of the Inter cantonal Commission for Tax Declarations), Bern 2001.

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It is not that politicians are 'worse people' [...]; the constraints and internal mechanisms of the whole business of politics are what matter. We should know by now that these can prove to be devastating for countless people or can even be fatal for whole populations.

Roland Baader (1999)<sup>7</sup>

## 8. Federalism and Democracy

In the federal state, 'one state, one vote' is in conflict with the majority principle of 'one person, one vote'. Conversely, the federative principle underpins democratic postulates by creating clearly defined spheres that affect our lives and functions. Democratic involvement at different levels and competition between local governments neutralise – at least partially – the anti-liberal, centralising, and socialising tendencies of the majority principle.

The success of the political system in Switzerland is not primarily due to the principle of direct democracy, but to the combination of direct democracy and non-central, competitive decision-making and taxation units. The compactness of

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<sup>7</sup> Roland Baader: *Die belogene Generation* (The Betrayed Generation), Gräffling, 1999, p. 37

the country also facilitates transparency between state tasks, expenditure, and taxes, and it is this transparency that is repeatedly demanded at the local level by people who use the infrastructure, pay taxes and vote. Politicians must always be directly accountable to their people. Although direct democracy coupled with competitive tax sovereignty can slow down increased government spending over a longer period, it can have the same effect on liberalisation and deregulation programmes. It would be impossible to introduce radical liberal economic reforms in Switzerland's non-centralised, direct democratic system, as they would be thwarted by a coalition of opponents from all manner of camps with a wide spectrum of motives.

In principle, self-determination and co-determination are equal and combinable problem-solving procedures. From the libertarian perspective, however, self-determination should be given priority. Co-determination is, at best, of secondary importance because we often make the experience of belonging to the minority and of becoming heteronomous as a result. The personal loss of freedom is only alleviated by the knowledge that the majority can enjoy the benefits of a solution that it has chosen itself. From this perspective, there is perhaps a genuine correlation between democracy and a feeling of happiness for the majority. Still, how does one compare and offset the relative happiness of the majority against the unhappiness of the minority that is always out-voted? The 'happiest' society is the one with maximum self-determination.

Problems that can be resolved better by collective, enforceable norms still have to be defined. Such problems could even decrease. One must be absolutely sure of what one is doing before resorting to universally binding coercive measures. It has to be proved that, in the long run, these measures are the best option for all. The fact that something is 'popular' or 'well-meant' is not enough. It will become increasingly difficult to prove that legal coercive norms, political programmes and projects are necessary, function properly, and are efficient and financially viable in the long-term.

In a globally networked and highly complex society, the proportion of problems requiring individual, temporary, and tailor-made solutions is rapidly increasing while the proportion of generally abstract, universally binding and long-term coercive solutions is essentially decreasing. This is due to developments in technology and civilisation, and has little to do with ideology or party politics. For this very reason it may be better in the future to entrust the norms regulating a society to the private sector rather than to democracy based on the majority principle. To be credible, effective, and financially viable, this practice must be limited to a few unchanging, universally binding and universally comprehensible principles. After all, a political system collapses not because of the consistent limits set on state tasks and expenditure but by their unchecked growth fuelled by majority and mass movements which are governed by populist measures.

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A world of federative self-administration held together by ties based on morals and conscience is, per se, completely different from the world of hierarchical, order-giving administration, dominated by mechanical and machine-like ties.

Adolf Gasser (1947)<sup>8</sup>

## **9. Federalism and Communal Autonomy: Adolf Gasser Revisited**

Switzerland has a three-tier federal system. The lowest level – the Gemeinde or municipality – is rarely mentioned in the discourse on federalism. However, if federalism and subsidiarity are to be taken seriously, then municipal autonomy deserves our attention. Only in the local context can a sense of community and citizens' virtues be developed to the full. Only at the local level is there a clear-cut relationship between tasks and expenditure making it possible to monitor institutional and personal power. A direct democracy can only function in conditions that have originated in non-central federalism and municipal autonomy; only in these struc-

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8 Adolf Gasser: *Gemeindefreiheit als Rettung Europas* (The Freedom of Local Communities as the Salvation of Europe), Basel 1947, p. 174

tures can the genuine needs and interests of the people be effectively expressed.

During the second world war, the Swiss historian, Adolf Gasser, wrote *Gemeindefreiheit als Rettung Europas*, a well-reasoned and pioneering on municipal autonomy as the saviour of Europe. With intellectual acumen and brilliant language, Gasser develops the main thrust of his thesis: countries with democratic constitutions can only be viable if they have federalist structures and the municipalities have extensive, legally guaranteed autonomy. According to Gasser, "internal and not external policy was responsible for the collapse of libertarian state constitutions. Democracy failed in all countries with a tradition of political freedom because, as liberty and order could not be combined into an organic whole, it was only obvious that opposing social and political forces would take over and hamper the successful development of democratic institutions" (*Gemeindefreiheit*, p. 8).

By liberty and order, Gasser means a socio-political constitution that is based upon and builds on municipal autonomy. Municipal freedom means the free social cooperation and classification of the individual. The will to be involved and take on responsibility within a small sphere is crucial. Countries that have inherited systems of local autonomy dating back to times immemorial have effectively resisted both monarchic and bureaucratic centralisation in the form of absolutism as well as left- and right-wing totalitarianism. In Gasser's opinion these 'old free' states include Great

Britain, the USA, the north European countries, the Netherlands and Switzerland.

At the other end of the spectrum are the 'liberalised authoritarian countries' of continental Europe like Spain, France, Italy, and Germany. "The large mainland states have completely absorbed the principle of administrative command and subordination and are therefore imbued with the spirit of power [...] Consequently, the modern state in Italy, Spain-Portugal, France, Germany, and Austria was also built unilaterally, from the top down. Thus individual classes of society were mechanically fused together by an administrative command and power apparatus to form a national unit, leaving the people with no opportunity in their local sphere to work together and shoulder collective responsibility for the prosperity of the state, while learning to trust each other politically" (Ibid, p. 103).

"Interpreting what constitutes the 'state' is very different in a world with municipal freedom and in a world without it. In the former, state order is based on the general desire for local self-administration while in the latter, it is based on general subjugation to the bureaucratic apparatus." In Gasser's opinion, it is, therefore, a "fundamental mistake to somehow try and compare the social and political differences of the authoritarian, centralist world with those of the communal, federative world. When situations within the hierarchy of officialdom threaten to degenerate into passion and hatred, even where there are liberal constitutions, the moderating

effect of moral counter forces will prevail in conditions of wide-ranging local autonomy” (Ibid, p. 181).

Gasser’s central concern is to illustrate the interdependence of democracy and municipal autonomy as a precondition for a permanently stable state. “Living together in freedom is viable only if an organisation has a clear and transparent structure, people know each other personally and usually judge others and members of their self-elected local governments not only by the party they belong to, but by their skills and even more by character. Such a vibrant ‘citizens’ school’ where different opinions and special interests are in constant competition to ensure that a sensible balance is achieved, can be realised only if there is a free municipal self-government” (Ibid, p. 166 and onwards).

Gasser’s vision of a new Europe after 1945 carries greater weight today than ever before. “Europe can only become a world of true universal democracy, if, at the same time, it becomes a world of communalism and vibrant self-government, if steps are taken to liberate centralist countries from bureaucratic hierarchy and from the administrative principle of command and subordination, and to rebuild from the bottom up.” To carry out this process successfully, Gasser proposes giving “prompt and strict instructions to the district bureaucracies to refrain from handling certain matters that come under the purview of the municipal administration. The partial autonomy secured in this manner will then gradually develop into a “*pouvoir communal*” by allocating more responsibilities elsewhere and communal power should be legally

safeguarded against intervention. Municipalities would have to be in a position to secure for themselves adequate sources of revenue, and be given full responsibility for determining their own budget with all the self-discipline that this entails. Without being responsible for their own finances, neither the desire for living self-government nor communal social ethics will be able to flourish" (ibid, p. 199).

Gasser however admits that there would be several hurdles impeding a "strategy of ordered withdrawal" and these would be difficult to overcome. "In places where people have always been accustomed to an administration based on centralist bureaucratic hierarchy, demands for greater municipal autonomy are not particularly popular [...] (ibid, p. 204). Re-education should be considered only if a strong and stable government acknowledges the necessity, tackles the process methodically and gives step-by-step instruction." It remains to be seen whether this is a realistic method or whether change can only be induced through pressure 'from the bottom up'.

"The rejection of the authoritarian state and the principle of administrative command and subordination that underlies all genuine communalisation ultimately require a new interpretation of the law. This means that the state should no longer be the source of all legislation; we must perceive the constituent parts of the state as upholders of their own independent laws as was the case in early and medieval European law: individuals, families and communities first, followed by districts and provinces. On no account should one

be content with comprehensive federalism unless there is comprehensive and legally secure municipal autonomy” (ibid, p. 205).

Are municipal autonomy and democracy still suitable in a service- and information-based society characterised by mobility, complex labour division, and interdependence? Are small, democratic social units and communal autonomy not rooted in static, rural-agricultural, and small-town societies that are virtually non-existent today? Gasser denied this and singled out municipal autonomy as the balancing element in a social and welfare-state political system. He believed that only in conditions that people understand and are true-to-life can they acquire “what is described as political intuition and a sense for human proportions [...]; only here, on the ground of freedom, does a modicum of belief in the community develop that can effectively curb the tendency towards authoritarianism and anarchy [...]” (*Gemeindefreiheit und Zukunft Europas*, p. 463). An increasingly sophisticated and highly specialised society and economy can only function if decisions are taken locally and the process is decentralised, in other words, people take the initiative and are prepared to take over their own responsibility. This speaks in favour of politically non-central solutions and underscores the growing importance of communal and personal autonomy.

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The highest degree of agreement of expectations is brought about by the demarcation of protected areas.

Friedrich August von Hayek (1973)<sup>9</sup>

## 10. Federalism and Minorities

It is often claimed that minorities – be they ethnic, linguistic, cultural, or religious – would be better protected in centralist rather than in federalist, non-central systems because central governments have the financial and legal means to intervene, tax, and subsidise. Experiences in Switzerland have shown that minorities are better off if they live within smaller, competitive political structures where overlapping minority and majority groups co-exist and can provide each other mutual support in changing coalitions. As minorities at the federal level become majorities at the cantonal or communal level, they do not really harbour feelings of being oppressed or discriminated against. In the Swiss form of federalism, all citizens belong to both majority and minority groups, and it is thus easier to overcome social tensions and conflicts. Centralist governments tend to force minorities to

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<sup>9</sup> Friedrich August von Hayek: *Recht, Gesetzgebung und Freiheit*, Vol1., Landsberg 1981, p.147; quoted from: Gerd Habermann (ed.) *Philosophie der Freiheit. Ein Friedrich-August-von-Hayek-Brevier*, Thun 1999, p.66

assimilate at all levels or, at least, to define their identities, settle borders, and establish ethnically homogeneous regions. Although the central government may be willing to subsidise minorities, this makes them dependent on their benefactors and reduces their chances of taking independent decisions with regard to their own future. While competition between overlapping, heterogeneous groups may not be the best possible solution from every point of view, in the medium and long terms it does offer all parties concerned the best opportunities to learn and further their development.

Political borders are often the results of wars and are indicative of power struggles. Even so-called 'natural borders' have something arbitrary about them because people frequently settle down on either side of a river or a pass to exploit the location for the transport of goods. Switzerland is typical of a country that has both natural and historical borders. In times of war, population groups settled in areas that straddle borders come under tremendous pressure. When the countries in which they are living go to war, these groups are faced with an insurmountable dilemma. Does their allegiance lie with their linguistic group or with their country? If they choose the former, they betray their fellow citizens; if they chose the country, they betray the members of their linguistic group. One way or another, they are regarded as a factor of uncertainty; an unpopular group that is discriminated against and which one would like to assimilate by force and obliterate. This has been the experience of the minori-

ties over the last 200 years, characterised by war and the delusion of nationalism.

Continental and global economic networks may not have put an end to war but it is now virtually a relic of an obsolete form of politics. Europe has hopefully seen the last of wars between nations on the continent and, the next century, can look forward to a period of lively exchange of goods and services. The minority policy has a better launch pad in peacetime because minorities familiar with the language and mindset of the neighbour and trading partner are an asset for a country. Minorities no longer have to be shielded from nationalist fears, neither do they have to be compensated for their disadvantages. It is much more important to allow them to become economically productive in the enlightened self-interest and to the benefit of the entire country. Bilingualism is no longer a risk factor but an opportunity.

Even today, minorities have to ward off the threat of assimilation. Majorities often consider it a necessary evil to support minorities, believing that international law compels them to make these concessions. The cost factor continues to be an issue although the question at stake is not one of minimising political risks, but also of maximising economic opportunities. Minority groups stand to gain when thinking along purely economic lines asserts itself over thinking along political and nationalist lines. Let us take the example of the canton of Ticino in Switzerland with an Italian-speaking minority that accounts for less than 10 percent of the country's population. In the last century, Ticino was among Switzerland's poorest

cantons. Economic ties with northern Italy and the influx of migrants from German-speaking Switzerland and Germany have boosted its economic importance, producing a positive balance for the national economy. Given their complexity, it is never easy to weigh the advantages of minorities against the disadvantages, but there is too often a tendency to overstate the disadvantages.

As minorities are often victims of an ethnic ideal harboured by the majority that rests on homogeneity and 'cleanliness', they run the risk of trying to prove to the world that they subscribe to the ideal of homogeneity. Even if one sympathises with this attitude to some extent, it is not the best survival strategy. The best strategy for survival would be for minorities to adopt a stance that falls somewhere between adapting and asserting themselves and create a long-lasting win-win situation.

At first glance, homogeneity, ethnic and linguistic uniformity, and centralisation are economically more successful than heterogeneous pluralism. However, a historical and empirical test disproves this assumption, or at least shows that it is not always true and is becoming increasingly less so. In a globalising world, the economic value of diversity, ethnic intermingling, overlapping systems, and non-centrality is only just being properly discovered. Heterogeneous groups must exploit their advantage over homogeneous groups. Countries with minorities should share their experiences but without being presumptuous and acting as universal role models.

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Gradual habituation to a State which exercises total control over its population does, however, ultimately kill any initiative; the people expect everything from the State. The result is that, at the first shift of power, the people not only demand everything from that State but also saddle it with their problems.

Jacob Burckhardt (1905)<sup>10</sup>

## 11. Summary

### Complex is Robust

Non-centrality, diversity, intermingling, competition, flexible cooperation, systems that are manageable and not arranged, deregulation instead of harmonisation – these are all features of future political systems that will be equipped with the ability to learn and adapt. It will be an advantage to have small units, making it easier to organise and guarantee the necessary political order, once the threat of military and economic power has receded into the background.

Decisions can and should be made in a direct democratic process within the framework of the constitution. This is particularly true of taxation and curbs on government spending. As far as possible, the people should be directly involved in decisions concerning these matters. At all levels of state

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<sup>10</sup> Jacob Burckhardt: *Weltgeschichtliche Betrachtungen*, Basel, 1905

organisation, transparent finance and tax policies invariably establish the political interlinkages between tasks, expenditure, and the tax burden. The exit option – the possibility of voting with the feet or with the removal truck – will counteract excessive taxation on high incomes and wealth.

The more direct the democratic process, the more people will perceive the connection between taxes and the services provided in return. This will become a subject of political debate with regard to the authorities that levy taxes and provide infrastructure. This implies that politically responsible taxpayers are politically responsible citizens who critically monitor the price-performance ratio of the services provided by the officials elected by them, demand and promote thrift and transparency and express their disapproval when services are not up to the mark. Votes per capita are effective only if concerns per capita are comparable.

From the liberal standpoint, the 'hotchpotch' of political and fiscal orders will not produce optimal results everywhere but will create an experimental field – a market of political concepts and tax tariffs – where one can reasonably expect citizens to vote with the feet (or with the removal truck), if these local authorities are small. The solidarity of face-to-face groups should be surrendered to third parties or to a large faceless society.

There is hardly any danger of a race to the bottom, towards the zero-tax and zero-performance state, less so because competition between local authorities allows for compar-

isons. It is very likely that the best public infrastructure and the best collective quality of life will earn the support of the taxpayer. While this may also be true of facilities that do not directly benefit all concerned, “free riders” should be discouraged. Transparent relations between expenditure, performance, bureaucracy costs, and budgetary discipline are prerequisites for delegating tax sovereignty to the taxpayer. At the local level, one must give due consideration to the principle of users paying for infrastructure, if one is not to destroy the willingness of the people to express solidarity – something ever present yet also in short supply.

Substantive communal and regional autonomy (and, at the European level, national autonomy) highlights the risk of anti-liberal experiments and bottlenecks in the supply system. Experiments must be halted when they border on human rights violations, which are not to be tolerated and should be subject to sanctions beyond the local and regional level.

It should not be kept secret that in the pursuit of liberal goals, standardisation, harmonisation, and centralisation can achieve more freedom, particularly in areas that are lagging behind in this respect. However, centralisation involves the danger of standardising technical and political errors. In terms of freedom content and learning ability, a number of minor, non-central mistakes, in competition with each other, are more effective over a longer period and pose less internal or external danger than highly centralised systems.

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## 12. Fourteen Theses

Ambiguous terms like 'federalism' and 'subsidiarity' can be better explained if injected with unambiguous non-centrality. Liberals understand federalism as a political problem-solving procedure that mediates between autonomism and centralism; it usually inclines towards non-centralism and promotes the autonomy of constituent states.

According to the subsidiarity principle, common problems must be resolved at the lowest possible level. As the criteria to determine what is meant by 'possible' in each individual case is not stipulated, the principle remains neutral with regard to centralisation and non-centralisation and, in fact, allows for even more centralisation in practice.

If a problem can no longer be satisfactorily resolved or financed at the central level, the subsidiarity principle must be made more precise and radicalised so that authority, responsibility, and financing are returned to the most autonomous or private-autonomous level of administration.

The status of communal autonomy must be rediscovered in terms of its fundamental significance for ensuring political transparency. Political and fiscal authority should not be del-

egrated from top down on a hierarchical ladder, as is the case with the decentralization procedure, but should be transferred directly and taken care of by small units in line with the norms of non-centrality.

Votes per capita are effective only if concerns per capita are tangible and comparable.

No taxation without a clearly defined participation of the local authorities: nobody should be taxed without being able to determine the rate and purpose of the tax. No taxation without representation.

A local authority financed "from above" or by the centre is usually dependent and corruptible.

The power to govern is incomplete without the power to tax. The operational autonomy of a local authority is very closely interwoven with its financial and fiscal autonomy. If it does not have the right to levy taxes, it is not fully autonomous. An authority that wants to govern (executively and legislatively) and reap the benefits of the political popularity, which comes with social and political redistribution and the provision of public services, must also pay the price in terms of political unpopularity that comes with imposing taxes. No representation without taxation.

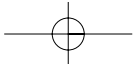
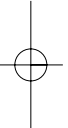
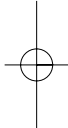
In a democracy, state finances can only be sensibly reorganised if there is transparency between expenditure, tasks, and financing organs.

The policy of financial equalisation between local authorities should be rejected, as it inhibits competition and transparency. It penalises governments that pursue sensible economic policies while rewarding the reckless spenders.

The goal of a federalist, non-central, political constitution requires a strategy of privatisation, limitation, decentralisation, and deregulation.

Non-central structures are not a priori better than central structures, but they facilitate experimentation and public comparisons and allow for competition between the local authorities (municipalities, provinces/states, nation-states) and are, therefore, flexible, able to learn and adapt. In brief, they incorporate features that are crucial in rapidly changing times.

In a globalising world, the economic and political value of diversity, ethnic intermingling, overlapping systems, and non-centrality is only just being properly discovered.



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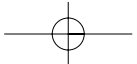
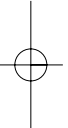
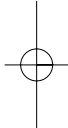
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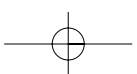
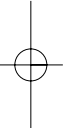
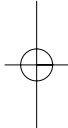
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## About the author

Robert Nef was born in 1942 in Herisau, St. Gallen, Switzerland. He attended the local cantonal school, where he completed his *Matura*. He graduated in law (Lic. Jur) from Zürich and Vienna. From 1968–91 he worked as a part-time assistant (for Professor Martin Lendi) at the Institute for Local, Regional, and Country Planning and in the faculty of law at the ETH (the Federal Institute of Technology) in Zurich. Since 1979, he has been the director of the Liberal Institute in Zurich, a foundation for the promotion of liberal thought.

Robert Nef has written numerous essays and articles on liberal issues, space and environmental policies, and Switzerland's security policy for technical journals and newspapers, including the *Neue Zürcher Zeitung*, the *Aargauer Zeitung*, and the *St. Galler Tagblatt*. His treasury of quotations for planners and non-planners appeared in 1975, titled *Sprüche und Widersprüche zur Planung*. In 1992, he published a collection of essays called *Wege in die Freiheit* (Liberales Institut, Zurich) and in 1994, the volume *Contending with Hayek* (Peter Lang, Bern). Together with Gerhard Schwarz, he published *Neidökonomie, Wirtschaftspolitische Aspekte eines Lasters* in 2000. He is the editor of the quarterly journal *Reflexion* and, since September 1991, editor-in-charge

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Robert Nef is a regular contributor at international conferences and seminars on liberal issues and the Swiss political system and has several contracts to teach political education. He is honorary president of the board of *Ostschweizerisches Kinderspital*, the children's hospital in St. Gallen, Switzerland.

He lives in St. Gallen, is married and has two grown-up sons.

