

Switzerland

Self-rule

INSTITUTIONAL DEPTH AND POLICY SCOPE

The Swiss confederation was founded in 1848 after civil war between the protestant and catholic communities that now constitute its *cantons/Kantone/cantoni* (McRae 1983). The federation is described as “starkly decentralized” (Füglister and Wasserfallen 2014: 404) with “strong cantonal autonomy” (Linder and Vatter 2001: 96; Sciarini 2005). Exclusive federal legislative competences are civil and criminal law, consumer protection, competition policy, railways, shipping, air traffic, monetary policy, nuclear energy, public broadcasting, highways and distribution of energy, health and unemployment insurance, and old age and invalidity pension. However, cantons have strongly entrenched implementation powers (*Umsetzung*) in many of these policies (C 1848, Arts. 22–40, C 1874, Arts. 22bis–41, and C 1999, Arts. 57–125; Braun 2011; Church and Dardanelli 2005; Stauffer, Töpferwien, and Thalmann-Torres 2002; Swenden 2006; Watts 1999a, 2008). In 2004, a major reform sought to reduce the cooperative character of Swiss federalism by disentangling public competences. Thirteen competences were transferred from the federal to the cantonal level, and seven from the cantonal to the federal level. The upshot appears to be a strengthening of cantonal autonomy (Cappelletti, Fischer, and Sciarini 2014; Füglister and Wasserfallen 2014; Sciarini 2005; Wasserfallen 2014).

Cantons have wide-ranging competences in economic policy, education, environment, culture, health, transport, and local government and they exercise residual competences in areas not specified in the constitution as federal or joint federal–cantonal (though federal law has supremacy) (C 1874, Art. 3 and C 1999, Arts. 3 and 49; Cappelletti, Fischer and Sciarini 2014; Church and Dardanelli 2005; Council of Europe: Switzerland 2010, 2017; Fleiner 2014; Stauffer, Töpferwien, and Thalmann-Torres 2002; Swenden 2006; Watts 1999a, 2008).¹ Immigration and asylum is a federal competence, but citizenship is primarily cantonal (Church and Dardanelli 2005: 173; Fleiner and Hertig 2010: 343–344). The federation regulates the acquisition and withdrawal of citizenship by birth, marriage, or adoption, and it legislates minimum requirements for naturalization (C 1874, Arts. 43–44 and 69ter and C 1999, Arts. 37–38 and 121). The cantons can impose residence requirements and language and naturalization tests. Cantons have the right to conclude treaties with foreign states on matters that lie within their powers and, since the 1999 constitutional revision, have the right to participate in foreign policy (C 1874, Arts. 9–10 and C 1999, Arts. 55–56). Cantons score 3 on institutional depth and 4 on policy scope.

¹ Bern, the capital of Switzerland, is a municipality in the canton of Bern and the city is not subject to any specific legislation (Council of Europe: Switzerland 1998, 2010, 2017; Ladner 2009). In 2004, the federal government was in the process of drafting federal legislation concerning the status of the capital but abandoned this task in the same year. The costs incurred by Bern due to the presence of confederal institutions and foreign embassies and for particular responsibilities in matters of security and public order are refunded by the confederation (Council of Europe: Switzerland 2017).

Fourteen cantons have a second tier of subnational governance which usually takes the form of deconcentrated jurisdictions supervising municipalities, executing cantonal law, and serving as judicial districts.² Some of these intermediate tiers have a directly elected assembly and/or executive.³ Eight cantons have provisions in the cantonal constitution allowing municipalities to establish inter-municipal bodies (*Zweckverbände*) for cooperation.⁴ The remaining four cantons have municipalities.⁵

FISCAL AUTONOMY

The constitution grants fiscal autonomy primarily to the cantons and only secondarily to the federation. The federation is assigned particular taxes, while cantons are largely free to structure and frame their own tax system. The only restrictions are prohibitions on inter-cantonal and cantonal/federal double taxation (C 1999, Arts. 127.3 and 134; Soguel 2017: 175–176; Spahn 1997). The federation may tax heavy vehicles and consumption of fuel, tax 11.5 percent on personal income, and 8.5 percent on income of legal entities, plus VAT, securities, custom duties, and consumption taxes on tobacco, beer, spirits, automobiles, fuel, gas, and oil (C 1874, Arts. 41*bis* and 41*ter* and C 1999, Arts. 85–86, 128, and 130–133; Swenden 2006: 121–124; Watts 2008).

Personal income, wealth, and corporate income tax are concurrent between cantons and the federal government, with the understanding that changes in federal taxation are subject to cantonal agreement, constitutional amendments, and, therefore, popular referendum. While there has been some harmonization of cantonal tax regimes (C 1874, Art. 42*quinqüies* and C 1999, Art. 129), cantons continue to set their own tax bases and rates, as well as allowances and deductions (C 1874, Art. 42*quinqüies*.2 and C 1999, Art. 129.2; Schnabel 2020: 124–128; Spahn 1997).

BORROWING AUTONOMY

² The canton of Bern established two regional councils in 2006, the *Bernjurassische Rat* and the *Rat für französischsprachige Angelegenheiten des Verwaltungskreises Biel/Bienne* whose representatives are elected by citizens from municipalities in the *Verwaltungskreise Biel/Bienne* (*Biel* and *Leubringen*; about 55,000 citizens) and in the *Verwaltungskreise Jura bernois* (40 municipalities and about 50,000 citizens). Both regional councils advise the Bern cantonal and municipal governments, fund cultural projects, and coordinate schools and cross-border relations between the Bern and Jura cantons (Fleiner and Hertig 2010: 338; Law No. 102.1/2004).

³ These are eleven *Bezirke* in *Aargau*, five *Verwaltungsbezirke* in *Basel-Landschaft*, ten *Verwaltungskreise* in *Bern* (until 2010, twenty-six *districts*), eleven *Regionen* (*Departamente* before 2016) in *Graubünden*, three *districts* in *Jura*, five *Ämter* in *Luzern* (until 2011), six *districts* in *Neuchâtel*, six *Bezirke* (of which three are also municipalities) in *Schwyz*, five *Amteien* in *Solothurn*, five *Bezirke* in *Thurgau*, eight *distretti* in *Ticino*, ten *districts* in *Vaud*, thirteen *districts* in *Valais*, and twelve *Bezirke* in the canton of *Zürich*. The district assembly is the *Bezirksrat* or *conseil de district* and the directly elected executive is the *Statthalter(in)* or *préfet(e)*.

⁴ Appenzell Ausserrhoden, Basel-Stadt, Glarus, Obwalden, Nidwalden, Schaffhausen, St. Gallen, and Uri.

⁵ Appenzell Innerrhoden, Freiburg, Geneva, and Zug.

Cantons can borrow without restrictions imposed by the federal government (Council of Europe 1997). However, most cantons apply self-imposed restrictions for balanced budgets and the golden rule permitting borrowing only for capital projects (Joumard and Kongsrud 2003; Plekhanov and Singh 2007; Schnabel 2017: 77–96).⁶ Most cantons also impose the golden rule on their municipalities (Spahn 1997). In contrast to regional governments in other countries, cantonal fiscal policy, including bond issuance, is subject to referendum (Dafflon 2002).⁷

REPRESENTATION

Popular elections for cantonal parliaments take place every four years—except in Fribourg, Geneva, Jura, and Vaud where the parliaments have five year terms—and each canton has its own electoral cycle. Cantonal collegial executives (between five and seven persons) are directly elected.

Shared rule

LAW MAKING

Each canton has two representatives and each “half-canton”⁸ one representative in the upper chamber, the Council of States (*L1, L3*) (*Ständerat; Conseil des Etats; Consiglio degli Stati; Cussegl dals Stadis*). Upper house members were elected by cantonal parliaments until the 1920s, and since then they are directly elected (Bächtiger and Steiner 2004; C 1874, Art. 80 and C 1999, Art. 150). The upper house has veto powers on all issues (*L4*), though all federal laws can be overturned by popular referendum, which requires 50,000 signatures or the support of eight cantons (Bächtiger and Steiner 2004; C 1874, Arts. 84 and 89 and C 1999, Arts. 141 and 148; Linder and Vatter 2001; Vatter 2005). Individual cantons can also affect federal legislation directly through the cantonal initiative, which gives cantons the right to submit proposals to parliament (Bächtiger and Steiner 2004; C 1874, Art. 93 and C 1999, Art. 160). In addition, cantons have the right to be involved in the legislative process in cases enumerated by the constitution (C 1999, Art. 45; Fleiner 2002a). Such participation is required for foreign policy and federal legislation on school education (C 1999, Arts. 55 and 62.6).

EXECUTIVE CONTROL

The Federal Council (*Bundesrat/ Conseil fédéral/ Consiglio federale/ Cussegl federal*) depends heavily on cantons for the implementation of federal policy. Federal–cantonal consultation is particularly strong at the beginning of the policy process (policy formulation) and at the end

⁶ In 2011, all cantons except Appenzell Innerrhoden have introduced statutory provisions for balanced budget rules, fiscal rules, debt brakes, or budget constraints (Soguel 2017: 178).

⁷ All but one cantonal constitution contains provisions for holding a referendum for expenditures above a certain limit. The exception is Glarus, where the budget is approved by the *Landsgemeinde*, an annual assembly of all citizens.

⁸ Obwalden, Nidwalden, Basel-Stadt, Basel-Landschaft, Appenzell Ausserrhoden, and Appenzell Innerrhoden.

(implementation), but until 2008 it was primarily non-binding (Linder and Vatter 2001; Vatter 2005).

Cantons are frequently involved at the pre-parliamentary stage in expert commissions, nominated by the Federal Council, which assess the need for federal legislation, and cantons are formally consulted by the Federal Council before it submits proposals to the parliament (C 1999, Art. 45; Stauffer, Töpferwien, and Thalmann-Torres 2002; Swenden 2006: 203–204; Vatter 2005). At neither stage is the Federal Council required to follow cantonal advice. Since the constitutional revision of 1999 this practice has been tightened for foreign policy. The federal government is now formally required to consult cantons if its foreign policy decisions touch on cantonal powers, and while it can set aside cantonal preferences, it must justify why it does so (C 1999, Art. 55; Law No. 138.1/1999).

Cantonal–federal executive cooperation was put on firmer routinized footing with the creation of a contact body (*Kontaktgremium Bund-Kantone*) in 1978. This was replaced in 1997 with the federal dialogue (*Föderalistischer Dialog*) which takes place at least twice a year and focuses mostly on information exchange and inter-jurisdictional coordination (Council of Europe: Switzerland 2010).⁹

Cantons play an important part in the implementation of federal policy. Most federal programs are carried out by the cantons (or municipalities). To this effect the cantons have developed a dense network of inter-cantonal coordination in which the federal government is usually present to play a supportive role but is neither bound by cantonal decisions nor can it bind cantons (Bochsler 2009; Linder and Vatter 2001; Schnabel and Mueller 2017; Vatter 2005). There are currently fifteen thematic conferences of “cantonal directors” (a term which also refers to cantonal ministers) responsible for policy coordination.¹⁰ The first conference was established in 1897 to deal with education, and subsequent cantonal director conferences were set up for spatial planning, agriculture, forestry, energy, social policy, economy, health, and justice and police (Bolleyer 2009: 93-106; Bochsler 2009; Pfisterer 2015).¹¹ Inter-cantonal conferences have secretariats, meet several times a year, and have majority or consensus voting rules. They produce guidelines, benchmarks, recommendations, and binding inter-cantonal agreements (*concordats*).¹² The federal government usually sends observers to these meetings, but it is not bound by the outcomes (Bolleyer 2006a, b; Schnabel 2020: 21).¹³ Historically, the conference of cantonal finance ministers has been the most influential, but since 1994, the conference of cantonal governments (*Konferenz der Kantonsregierungen*) has supplanted it. This conference was created in December

⁹ Konferenz der Kantonsregierungen. “Bundesrat” and “Eidgenössische Räte.” <<http://www.kdk.ch/de/kooperation/bund>>.

¹⁰ In 2016, the total number of conferences was reduced from 16 to 15 when the *Konferenz der kantonalen Forstdirektoren* was merged with the *Konferenz der Jagddirektorinnen und –direktoren*.

¹¹ A list of more than 50 regional and statewide conferences is provided by Schnabel and Mueller (2017).

¹² *Concordats* usually require approval by cantonal parliaments or by referenda, but do not bind the federal government (Bochsler 2009).

¹³ Konferenz der Kantonsregierungen. <<http://www.kdk.ch/de/kooperation/direktorenkonferenzen>>.

1993 to coordinate policy toward the federal government, particularly in foreign policy (Fleiner and Hertig 2010: 336; Parker 2015: 146–147; Schmitt 2005: 353; Schnabel and Mueller 2017; Vatter 2005).¹⁴ Beginning in 2012 cantonal–federal coordination encompasses the EU (*Europadialog*).¹⁵

These institutions are technically horizontal, that is to say, inter-cantonal, but the vertical link with the federal government has strengthened over the decades. Since 2001, the confederation, the cantons, and cities and municipalities meet in the Tripartite Conference (*Tripartite Konferenz*) which meets twice per year to discuss agglomeration policy and, since 2017, policy regarding rural areas and mountainous regions (Council of Europe: Switzerland 2017; Ladner 2009). A 2008 constitutional revision opens the door for binding federal–cantonal coordination. This can happen when at least eighteen cantons request the federation to declare an inter-cantonal agreement binding on all cantons or require all cantons to participate in inter-cantonal agreements on criminal penalties, schooling, higher education, cultural institutions, waste management, waste water treatment, urban transport, medical science and specialist clinics, and institutions for the rehabilitation of invalid people. In addition, the decision of the federal government is subject to facultative referendum (C 1999, Art. 48a; Bolleyer 2009: 102; Braun 2009; Cappelletti, Fischer, and Sciarini 2014; Council of Europe: Switzerland 2017; Füglistner and Wasserfallen 2014; Schnabel 2020: 21). Cantons score 1 on executive control until 2007 and 2 from 2008 onwards.^β

FISCAL CONTROL

There are two ways in which cantons exercise fiscal control. The first is through the conference of cantonal finance ministers (*Konferenz der kantonalen Finanzdirektorinnen und Finanzdirektoren*), established in 1910, which coordinates cantonal positions prior to non-binding negotiation with the federal government (Braun 2009; Schnabel 2017: 77-96, 2020: 128-135).¹⁶ The second runs through the constitution, which enables the federation to collect tax revenues for fiscal equalization (Braun 2009; C 1874, Arts. 41^{ter}.5b and 42^{ter} and C 1999, Art. 135). Before 2003, the fiscal equalization law specified that the federation had to consult the cantons before determining contributions and before classifying cantons as, for example, mountainous regions which are entitled to additional federal grants (Law No. 613.1/1959, Arts. 2, 7, and 9 and No. 613.1/1973). This system was comprehensively reformed in 2003. First, the allocation key for the new equalization system was changed from a system based on the actual tax incomes of the cantons to one based on their tax potential. Second, the federation could now compel cantons to cooperate and, at the request of twenty-one cantons, the federation can declare the inter-cantonal agreement on fiscal transfers binding for all cantons for up to twenty-five years (Cappelletti, Fischer, and Sciarini 2014; Wasserfallen 2014; Law No. 613.2/ 2003, Arts. 10, 14, and 15).^β Cantons score 1 on fiscal control until 2002 and 2 as of 2003.

¹⁴ Konferenz der Kantonsregierungen. <<http://www.kdk.ch/de/die-kdk/grundlagen>>.

¹⁵ Konferenz der Kantonsregierungen. “Europapolitik.” <<http://www.kdk.ch/de/kooperation/bund/>>.

¹⁶ <<http://www.fdk-cdf.ch>>

BORROWING CONTROL

Borrowing is not regularly discussed in the conference of cantonal finance ministers. Neither the fiscal equalization law (Law No. 613.2/2003) nor intercantonal agreements (C 1999, Arts. 48 and 48a) seek to coordinate cantonal and federal borrowing (Schnabel 2017: 77–96; Trein and Braun 2016).

CONSTITUTIONAL REFORM

Constitutional change, whether introduced by parliamentary amendment or by citizen initiative, requires referendum approval by a double majority: a majority of the citizens in the country as a whole, and majorities of citizens in a majority of cantons in which each “half-canton” weighs half (Bächtiger and Steiner 2004; C 1874, Arts.120–123 and C 1999, Arts. 140 and 193–195; Fleiner 2002b; Stauffer, Töpferwien, and Thalmann-Torres 2002; Vatter 2005). Switzerland is unique in that both the government and citizens can initiate constitutional reform, but the decision is made entirely by citizens in a referendum. Incidentally, cantonal constitutional amendments also require approval in a referendum. Cantonal constitutional change requires also federal consent which is provided as long as a constitution is not contrary to federal law (C 1874, Arts. 2 and 6; C 1999, Art. 51; Schmitt 2012).

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Self-rule in Switzerland

			Institutional depth	Policy scope	Fiscal autonomy	Borrowing autonomy	Representation		Self-rule
							Assembly	Executive	
Cantons/Kantone/Cantoni	I	1950-2018	3	4	4	3	2	2	18

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Shared rule in Switzerland

		Law making						Executive control		Fiscal control		Borrowing control		Constitutional reform		Shared rule
		L1	L2	L3	L4	L5	L6	M	B	M	B	M	B	M	B	
Cantons	1950-2002	0.5	0	0.5	0.5	0	0	1	0	1	0	0	0	3	0	6.5
/Kantone	2003-2007	0.5	0	0.5	0.5	0	0	1	0	2	0	0	0	3	0	7.5
/Cantoni	2008-2018	0.5	0	0.5	0.5	0	0	2	0	2	0	0	0	3	0	8.5

National legislature has: L1 = regional representation; L2 = regional government representation; L3 = majority regional representation; L4 = extensive authority; L5 = bilateral regional consultation; L6 = veto for individual region. Total for shared rule includes the highest score of either multilateral (M) or bilateral (B).

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