



LIBERALES INSTITUT

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LI-Paper

# In Praise of Non-Centralism

**Robert Nef / 2004**

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The doctrine of Federalism is a possession of humankind that cannot be surrendered. The Roman hierarchical ladder of *pax - amicitia - societas* -, the triple attribute of the classic *foedus* or alliance, is a ladder to heaven, but that is precisely why it is so difficult for mankind to scale it.

Fritz Ernst, *Die Vergänglichkeit des Grossstaats*, Zürich 1940, p. 33.

## 1. Introduction

The temptation of centralism is great, and so, too, is the half-life of its decay long. “National unification” is one of the major themes of recent world history, and it is closely linked to the idea of centralisation. To centralise appears to be a primal human drive, tied to the need for transparency, clarity, and hierarchies. Perhaps there is even an aesthetic and psychological need behind it, with deep-seated anthropological roots. There are also good reasons to regard centralisation as a crucial point in raising the efficiency of political systems and a main factor in the success of powerful nation-states. But how lasting is that success? Are not the increase of power and the unquestionable benefits of centralisation sooner or later outstripped by its costs – which are also linked to power? For power has the dangerous tendency to make those who hold it “stupid and happy,” because they enjoy at least a partial dispensation from the constant need to put their views across in competition with the non-powerful, and from the need to learn from others. Power is not only “evil in itself” (as Jakob Burckhardt remarked, endorsing Julius Schlosser); it also bears the seeds of its own destruction and is thus something dangerous not only for the subjugated but also for those who wield the power.

The example of France led to other countries throughout Europe – and indeed throughout the world - copying the same model. This model initially combined absolute centralism with mercantile and national-economic centralism and then with Jacobin egalitarian centralism, and thus enabled the country to achieve notable successes in culture, commerce, and in its *machtpolitik*. The struggle to gain political power, both outwards and inwards, finds its best allies in centralism. Against this background, it is obvious that, on the other side of the coin, scepticism about power and scepticism about centralism have to combine and form an alliance. In terms of the history of political ideas, liberalism and centralism did not manifest themselves as a thesis and an antithesis – even in Switzerland; on the contrary: advocates of freedom placed all their hope in what was at least a federal state central organ, which was, for its part, more disposed towards freedom than the most backward regional authorities of the confederation of the day; these being hostile towards the idea of freedom. The most striking example of this can be found in the federal state centralisation introduced in the USA in the light of the victory in the American War of Secession (1861-65) by the Northern States over the Confederate Southern States that had left the Union. The slavery in the South provided entirely liberalist reasons to justify this centralisation.

The “Devil” of absolutist, interventionist anti-liberalism was driven out by the “Beelzebub” of a relatively liberal centralism. What was ignored in the process was the fact that such a central government itself inevitably tends towards increasingly anti-liberal interventionism unless the necessary countervailing forces are mobilised.

Political theory has long suppressed the realisation that, given conditions of free or relatively free communication, open competition among systems quickly results in a high overall level of liberalism, even without the “detour “ of compulsory liberalisation via central governmental control (and this is true even among the most backward societies, which in the long run cannot afford expensive, uneconomical authoritarian systems when faced with the competitive pressure of more liberalised neighbours). Moreover, this has been corroborated in dazzling fashion by the more modern political economy (that of public choice). This realisation is based on facts known in part even to Edward Gibbon, then recognised by the American anti-federalists, and found explicitly in the thinking of Senator John C. Calhoun (1782-1850) – facts which are still doubted in many quarters to this day. In the European Union, for example, reliance is placed on centrally controlled harmonisation instead of on non-central deregulation. Many liberals have themselves long fallen victim to the discreet charms of centralism – and not to their advantage. Power always tends towards centralisation, and centralised power tends towards absolutism. Lord Acton’s warning against the absolutely corrupting effect of absolute power is at the same time a warning against centralism. Those who nourish the hope that it will be possible to keep central government free of the corrupting tendencies of power and to staff it with a freedom-loving elite, overestimate the virtues of both the electorate and the elected, and underestimate the normative power of structural processes even over well-intended functionaries.

Centralism as a national political strategy may very well enjoy success for one or even two centuries. But today, anyone examining the various studies on the global ranking of nation-states can hardly avoid the observation that a broad range of indicators provide empirical evidence for the success of smaller, non-central systems. Centralism and non-centralism have different rhythms of generating costs and benefits for the general public. The collective benefits of centralisation generally come in an early phase, which may last quite long: decades and even centuries in large systems such as France, for example. The general benefits of non-centralism, which are linked to learning ability, flexibility, robustness, and the avoidance of large-scale collective mistakes, often need a longer time to become visible and palpable. Wars, which may be seen as the pathological excesses of centralised power, create benefits for centralised systems that interrupt and mask the very gradual process of their decay. There is a “centralisation dividend” and a “non-centralisation dividend.” The former increases in times of war, the latter in times of peace. But in peacetime, as soon as centralism’s costs become greater than its benefits, centralised nations try to hide their lack of success by implementing the principle at its next-higher level in order to participate in the benefits of the competition of systems within a larger national or supranational structure. In this

way, the “moment of truth” about the failure of centralism may be postponed again for decades.

But do we really need to go through the collective experience of this programmed failure yet again?

These remarks are intended as a warning against “flight to a larger structure.” They urge that solutions to collective problems be found at the smallest possible level, and they propose structures in which only a minimum of problems requiring collective solutions will arise because responsibility is perceived and accepted not as “decentralised,” but rather as “non-central,” dealt with in small, peacefully competing units.

The somewhat uncommon use of the term “non-central” is more than merely a personal quirk of this author. The point is to find a descriptive term that avoids the aggressive use of “anti” and does not resort to the dangerous image of decentralisation. Decentralisation presupposes the centre, and thus remains attached to the very ailment for which it claims to be the cure. Naturally, given the prevalence of already centralised institutions, decentralisation seems an appropriate countermeasure, a kind of “orderly retreat” from misconceived structures. But there is an undeniable danger that this delicate operation would leave the mental ties to the centre untouched, so that the result would be merely a more refined form of centralised administration in which the political and economic costs are shoved off onto the periphery and the benefits remain with the centre. Anti-centralism, on the other hand, tends towards secession, which can inflict very high conflict costs. Non-centralism, however, leads to a kind of peaceful new ordering of responsibilities and delegated authority, which by its very nature must be structured from the bottom up, rather than from the top down, if constructive competition is to result from it.

World history offers few encouraging examples of this approach, because large empires have collapsed mostly as a result of wars and crises. Switzerland, with its confederated structure, cannot provide a model. The technique of political “cell division” – that is, the way to get from misconceived centralised structures to a more progressive non-centralism – has yet to be discovered. The thoroughly unpeaceable and not yet completed de-centralisation of Yugoslavia is not a particularly encouraging example. It may have generated a number of experiences which could be evaluated positively. But who is interested in these? Great powers and global powers prefer a transparent world with a few big (though comparatively less powerful) partners. Kissinger’s wish for a central telephone number at which he could “call Europe” is evidence of this, and the sympathy felt in America for what remains of the Russian empire (which is still far too big) speaks volumes. As to the annoying and economically successful small players, they are there to be dominated at least politically (and fiscally!). That is what all the fuss about the primacy of politics is about – for ultimately that adds up to the primacy of power and the state, with the subtle inclusion of military security for the big powers, for which the smaller must generally pay too great a price in losses of sovereignty.

In the course of my international lecturing on the subject of “Swiss Federalism and Non-Centralism” I am sometimes asked: “When did Switzerland begin its process of decentralisation?” Here is my response: It never began that process; all it has managed to do is to successfully avoid – or at least put the brakes on – the process of centralisation for an uncommonly long time. The country’s only centralist experiment, Helvetia under French dominance, lasted barely five years, from 1798 to 1803, or less than half of one percent of its 700-year history. Switzerland is moving very slowly in the direction of “more centralism,” and perhaps the first step towards non-centralism consists in active scepticism towards centralism, in the refusal to push the process forward and accelerate it.

The best political path to less centralism and more non-centralism has yet to be found, or invented. And it is to be characterised not as a “return” but rather as a new start, as perhaps the greatest and most exciting political challenge to liberalism in our new century. It is quite evident that the easily misunderstood term “decentralisation” is inappropriate for it, and that it would also be wise to avoid the idea of “secession,” which is equally susceptible to misunderstanding.

A more positively toned term would have to connote the level at which a large proportion of political problems can be resolved jointly and flexibly: the level of what is known here in Switzerland as the *Kommune* or the *Gemeinde* – that is, the township or municipality. In Switzerland, an autonomous township (with the power to levy taxes) is not simply an administrative unit with certain subsidiary powers left to it, and public funds assigned to it, by “higher” levels of government. With something of nostalgic emotion, it is often referred to here as the “primal unit of government.” Communalism, autonomism, localism, regionalism – there are reasons for and against the use of each of these terms. Negatively defined, the secret of Switzerland’s success resides in the persistent refusal of centralism; positively defined, it may be seen in the functioning of competitive municipal bodies, in the combination of personal autonomy and municipal autonomy.

There are various commonly used labels for these political principles. Most usual are “federalism” and “subsidiarity.” As I shall illustrate in a later chapter on terminology, both terms carry a high risk of misunderstanding and intentional or unintentional misinterpretation. The politically crucial question: “How does this affect centralism?” (or “How does it affect power?”) can be answered with respect to both those terms if the unequivocal concept of “non-centralism” is attached to them: Federalism in the sense of non-centralism, subsidiarity in the sense of a distribution of power in favour of personal autonomy on the one hand, and municipal autonomy on the other. All political structures above the level of the local township entity (and even that one as well, in fact) must be justified – and, from the standpoint of liberalism, the reasons for them must be very strong indeed.

Unfortunately, no nation-state is in the happy position of being able to reconstitute its political structures starting from a *tabula rasa* and to reorient them along the lines of a few fundamental principles. But at the level of Europe as a supraordinate entity, we are at an early stage of creating political structures, still in a

phase at which it would definitely be worthwhile to avoid making certain mistakes. At the national level, however, every proposal for political reform can be measured against the concepts of liberal ideals. The process of gauging its compatibility with liberalism could be supplemented by examining the reform's compatibility with non-centralism. This would help liberals not to be reinfected with the delusions of centralism. Perhaps we also need to have in reserve some proposals for political solutions, to be brought out after the grand collapse of the modern welfare state – a scenario that is not to be wished, but one that cannot be ruled out. Perhaps we should prepare a kind of peaceful and bloodless bankruptcy proceeding for central governments, one in which non-centralism could play an important role in any new beginning.

The following chapters will offer no formulas for achieving less centralism as quickly and peacefully as possible. But they will offer examples of how non-centrality may be practised more or less successfully. Switzerland today is the result of various constellations of rather unique circumstances. There are good reasons to view it as a special case in European history. Special cases cannot serve as models, because they cannot be very successfully copied if certain peripheral conditions are different. But although Switzerland is no model, it can be seen as a quite successful experiment, and something can be learned from experiments even when conditions vary greatly.

The Swiss political system rests on two main points: first, a scepticism about power and rejection of domination (which is always “foreign” domination, to a certain extent), and second, the realisation that there are collective problems which must be resolved in common, flexibly, as cooperatively as possible, and without outside intervention. Both these points are aptly presented in Friedrich Schiller's play “William Tell”: the anarchistic “Tell principle” and the communitarian “Rütli alliance principle.” A political system cannot survive on the basis of the negation of power alone. Neither the “anti” nor the “non” is sufficient as a long-term principle for political survival.

This document, “In Praise of Non-Centralism,” is also a small gesture of gratitude for a valuable gift which the Swiss Confederation was privileged to receive from a German citizen, and which will soon celebrate its 200th anniversary: Schiller's *William Tell*.

## 2. The Central Office, a Satire by Kurt Tucholsky

“The Central Office knows everything better. The Central Office has the overview, has faith in its overview, and keeps the record files. At the Central Office, officials are busy among themselves with endless problems, but they slap you on the shoulder and say: “My dear friend, you can’t judge these things from your individual vantage point! But we at the Central Office ...”

The Central Office has one primary concern: to remain the Central Office. God have mercy on any subordinate body that dares to do anything on its own initiative. Whether it was reasonable or not, necessary or not, urgent or not: first, the Central Office had to be consulted. Why else is it the Central Office? Just because it is – don’t forget that! And outsiders had better watch out.

The men who sit at the Central Office are not clever, just wily. A man who just tends to his own little job may be wily – but he isn’t clever. If he were, he would duck out of it; and for that, there’s only one thing to do: a reform proposal! The reform proposal leads to creation of a new department, which – it goes without saying – is subordinate and attached to the Central Office ... One man chopping wood, thirty-three others just standing around watching: that’s the Central Office.

The Central Office is an institution designed to put down the energy and initiative of subordinates. The Central Office comes up with no new ideas, and expects others to carry them out. The Central Office is just a tiny bit more infallible than the Pope, but doesn’t look anywhere near as good.

The practical man doesn’t have an easy time of it. He curses the Central Office furiously, tears up all its decrees into little pieces and wipes his eyes with them. That done, he marries his superior’s daughter, is promoted and winds up in the Central Office; it’s a promotion, after all, to be assigned to the records room. Once there, he clears his throat, straightens his tie, gives a tug on his shirt cuffs, and begins to govern. As part of the divinely appointed Central Office, filled with profound disdain for simple practical men, deeply engaged in endless problems with his colleagues at the Central Office, he sits there like a spider in a web built by others, prevents others from doing intelligent work, issues irrational orders, and knows everything better than everyone else.

(This diagnosis applies to crèches, foreign ministries, newspapers, health insurance companies, forestry offices and bank personnel, and is, of course, a humorous exaggeration. But there is one institution to which it doesn’t apply – yours.)”

(1925)

How did it happen that those liberal Germans, whose dream of achieving unity in freedom faded away with the 1848 Revolution, found themselves willing to give freedom for unity, and who ultimately turned into that ignominious breed that were labelled “National Liberals” at the end of the century?

In Wilhelm-Röpke-Brevier, Ed. Gerd Habermann, Thun 1999, p. 135.

### 3. The Renaissance of Federalism

Federalism and subsidiarity are in vogue once again. Persuaded of a three-pronged challenge from the centralist welfare state, from the European integration process and from globalisation, a strong political movement has formed in recent years. This movement is fighting under the banners of federalism and subsidiarity for greater proximity to the people and for public spirit, for those areas that touch on people’s lives and responsibilities to be more understandable, for more regional and local autonomy, and greater tax competition. The federalism movement is extremely heterogeneous. Those pushing for greater federalism include libertarians and Ordo-liberals, communitarists, anarchistically inclined left-wing and green factions, together with conservatives. The political motives of the federalism movement are just as wide-ranging as its backers in society. The liberals are sceptically disposed towards the centralist welfare, redistributionist state as well as towards the increasing harmonisation, legal unification and high degree of regulation in the European Union. The Left and the Greens are opposed above all to the social and ecological costs that result from globalisation, while Conservatives bemoan the increasing loss in the highly regulated and mechanised service and information society of integrating communities and institutions, customs and values that have been handed down over the years.

The considerable power of effect of this strategic alliance of representatives of all political leanings should not be underestimated. The resolved Liberals must, however, be intent on emphatically defending their understanding of federalism and subsidiarity. Globalisation presents a historically unique chance to limit the centralist welfare, control and redistributionist state effectively, and to transfer substantial legislative and fiscal powers back to smaller units that are at least partially autonomous.

The liberals’ struggle to achieve greater federalism, flexibility and competition is, however, one that has to be fought on several fronts at the same time. It is just as vital to repel the domestic advocates of centralising and regulating as it is to resist the centralist tendencies in the European Union. Moreover, it is essential to prevent any form of regional and municipal structures that are anti-competitive and opposed to property ownership, or any other structures that constitute a violation of the laws of a constitutional state. If these battles are not fought with the same consistency on all fronts, there is a danger that paralysis will set in. In a transferred sense, there

would then be a repetition of the fate that befell German liberalism in 1848. This came to grief because of the simultaneous creation of national unity and civil liberty.

The concept of federalism, which is sceptically disposed towards centralism, places special emphasis on the numerous advantages of a variety of competitive, political decision-making unities. Non-centrality and “decentrality” differ from each other, in that the latter implies that there is a centre, which, while retaining overall control in its hands, has still relinquished certain (administrative) powers to self-governing bodies. With non-centrality, on the other hand, there is no belief in a centrally regulating and rule-issuing authority.

The idea of federalism arose from the clash between centralists and anti-centralists. The latter are also described as “particularists”, albeit with a certain derogatory undertone, which in no way corresponds to their own conception of themselves: they see themselves as small autonomous units and definitely not as “particles”. Indeed, the term “autonomists” is more appropriate. In the 19<sup>th</sup> century, the nationalistic idea of a link between political autonomy and economic autarchy with a military defence capability gave rise to the disastrous call for a compulsory minimum size for states to ensure their ability to survive. Given that various small states went on to achieve considerable economic and political success, this theory was disproved in the 20<sup>th</sup> century. Moreover, Athens, Florence and Weimar all provide eloquent proof that culture has especially flourished in small and miniature states as well. The trend towards centralising was, however, not pushed ahead merely by the nationalist tendency towards greatness, but also by the increasing division of labour in the economy and the necessary specialisation in technical civilisation. The majority of the progressively minded therefore became committed supporters of centralisation.

The federalism controversy (the compromise between centralists and autonomists) has played a crucial role in the history of all federal states. In Switzerland, it took centre stage between 1798 and 1848 in particular. Clashes between larger and smaller centres and disputes to gain control of the political decision-making centre have, however, been a constant fact of life in world history, and especially in the history of Europe. We shall be recalling this in the subsequent pages of this work, with the help of various headwords. The formation of Western states and societies, which we are still going through even now, is, after all, a continuous interplay between centralism and particularism, accompanied by a simultaneous increase in socio-political and technical and scientific complexity and specialisation.

In the first phase, land monopolies arose against a backdrop of feudal-based rivalry among the noble families, and these monopolies had to be asserted against internal and external destabilisation. The territorial rulers of the time initially attempted to gain a power monopoly and on the levying of taxes by acquiring specific sovereign rights and the resulting administrative powers and subsequently by setting up a bureaucracy and a regular army. The knock-out struggle to

monopolise land and power reached its conclusion in the 17<sup>th</sup> century, in the form of the sovereign, territorial state.

The second phase brought the rivalry among different classes over the allocation of the state's power monopoly. The nobility, the clergy and the bourgeoisie fought over the distribution of power, with the rulers watching on from the middle, but having to balance the meting out of power as carefully as possible so as to secure their own political supremacy. Out of this specific configuration arose the absolute monarchy in continental Europe. And while the monarchy did not mediatise the different classes, it did subject them to a monarchic central power. This system of rule based on rank and monarchy collapsed only when elements of the bourgeoisie ceased to be dependent on class-based privileges as a result of technical and industrial revolution and considered them to be anachronistic and an obstacle to their advancement.

In the third phase, the "new" bourgeoisie in the 19<sup>th</sup> century established for itself an order that was based on legal equality, freedom of the individual and freedom of ownership, as well as on all state power being bound by the law. As a result, the whole particularist society of highly privileged nobles and the confederate system were turned upside down, and replaced by the national civic society.

The creation of nation states served to resolve the fundamental political conflict between the privileged nobility society and the civic society. In a fourth phase, the conflict arose under constitutional law over the vertical division of the state's power monopoly. Only now is it accurate to speak of federalism and centralism as opposing viewpoints in connection with the balance of power between central states and constituent states. The federalists, who included Conservatives and right-wing Liberals in particular among their number, fought for the sovereignty of individual states to be preserved as extensively as possible, whereas the centralists, that is to say the left-wing Liberals and the Socialists in particular, supported the idea of strengthening the power of the federal state.

In a fifth phase, the social-liberal collaboration after 1945 led to the regulation-intensive welfare and redistributionist state and to strong centralisation within the federal states in the areas of social services, economy, transport, development planning and environmental protection. The rapid growth in the number of state responsibilities meant a corresponding increase in the size of the state apparatus, the density of regulations, the state debt and the tax burden. Unification of international law through the concluding of state treaties and the expansion of community agreements, such as those relating to the European Union, meant a further undermining of communal and member state independence. Strong centralisation in many federal states has given new impetus to the federalism movement, and this has been further accelerated by the greater mobility of individuals, goods and capital resulting from globalisation and the increased calling into question of nation state institutions and rules.

Wenn wir so den Schwerpunkt der Gesellschaft wieder nach unten verlagern, so schliesst das ein, dass wir zugleich dem einzelnen – genauer gesagt, der Familie – die Standfestigkeit, Selbstbestimmung und damit auch Sicherheit der Existenz zurückzugewinnen suchen, deren Verlust das eigentliche Unglück der Millionen geworden ist.

Wilhelm Röpke, In: Masse und Demokratie.

hrsg. von A. Hunold, Zürich 1957, S. 35.

## 4. Federalism and subsidiarity: Ambiguous concepts

### 4. 1 Federalism – A strategy of compromise

The American political scientist William H. Stewart, who teaches at the University of Alabama, has determined no fewer than 495 different notions of federalism. He has managed to do this with a scientific precision combined with a refreshing slice of play instinct and an obvious passion for collecting things. His list is in alphabetic order with text excerpts and quotations, and is accompanied by an entertaining introductory essay. In so doing, he has proved not only the variety of federalist structures that are apparent in the study of political and social language, in the history of institutions and in the history of effects, but also the imagination of the scholarly and political commentators who have repeatedly succeeded in finding and inventing new 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” The term “spaghetti Federalism” also originates from the culinary world (“the image of spaghetti comes from simultaneous trends of diversity and convergence”, *Concepts of Liberalism*, p. 161). And then there is “sweet and sour Federalism”, where it is apparent that although federal aid is “sweet”, the conditions and requirements that have to be fulfilled for it to be granted can prove “sour” as well.

If a single language can produce 495 different notions for federalism, the difficulties really start to increase with translation and when the terms have to be used in the correct historical and national context of the time. A given designation has repeatedly served as a positive description of the programme of a particular grouping, but has also had to suffer the fate of being used as a negative label by a political opponent. The compromise between centralist and non-centralist tendencies is apparent even in the term itself. The classic debate on this was opened in the 1787 Federalist Papers by Hamilton, Madison and Jay (*The Federalist Papers*, 1964).

In English terminology, there is a rigorous distinction made between *federalism* (concerning the federal state) and *confederalism* (concerning the confederation). This distinction has also yielded two adjectives, “federalist“ and “confederalist“. The



this phenomenon has tended to be the rule rather than the exception. In the following pages, we shall be taking a brief look at some of the distinguishing features of these national peculiarities.

## France

The dialectics between national unity and federalism have shaped the whole history of France. The French state always viewed itself as a promoter of centralisation. The concepts of nationality, the existence of the state, justice, order and centrality have fused into a single collective idea in this country to such an extent that even decentralisation can only really be perceived as an activity carried out by the controlling centre. We need to pay special heed to this assertion when considering the French understanding of the European Union.

In France, the so-called Federation celebrations of 1790 were connected with the fusion of previously ill-disciplined militia into the centralised National Guard. The Federation movement represented an enthusiastic change of direction towards the centre. The Federalism movement, on the other hand, which was ultimately violently suppressed by the Jacobins, was a definite decentralism movement. Since that time, Federalism in France has had distinctly negative overtones and is associated with feudalism, clericalism, anti-democracy and, finally, secession.

## The Federal Republic of Germany

In the discussion of the constitution in the Federal Republic of Germany after the Second World War, there was debate over the question of Federalism. This was comparable with the debate that had taken place in Switzerland in the 19<sup>th</sup> century and may well have been influenced by that Swiss debate. As had been the case in Switzerland, the debate centred on three ideal-typical options, with the federalist option playing the role of mediator. In the current discussion about the European Union, however, the circumstances are different. Confederal and federal options have been discussed in that context, although a European Central State has never been a topic for debate. We would do well to remind ourselves of American English usage and to treat the use of “federalist” as a term that *intensifies* the central federalist elements in Europe rather than something that merely relativises them. Reference to a “federalist structure” is no cause for comfort in Europe for those who are striving for as much independence and as comprehensive protection for minorities as possible within the Community. European Federalists are supporters of a “Federal State of Europe” and, given the current confederal-federal EU hotchpotch, they tend to embrace centralising tendencies.

In his monograph about “Options of Federalism”, which, overall, shows benevolence towards the principle, the German political scientist Fritz Scharpf speaks of a “zero-sum conflict over respective areas of authority” (Fritz Scharpf, *Optionen des Föderalismus*, 1994). In view of the genuine shortage of finance at all levels and of the limited possibilities of securing additional fiscal resources, this is a

realistic assessment. According to Scharpf, federalism has no future in Germany, unless there is constitutional reform. And the aim of such a reform would be “to shift powers of legislation, taxation and structuring back to the *Länder*, for economic reasons, and more precisely, back to the individual *Länder*”. He rightly regrets the fact that this insight on his part has not been more widely accepted, since his reflections do not correspond to the prevailing trend in the Federal Republic towards centralisation. Indeed, they deserve just as much consideration as do his warnings about a European economic policy which “stifles the protectionist tendencies of the nation-states and replaces them by the growing protectionism of the Community” (p.12). The flexible “niche strategy” in Switzerland, which is praised by Scharpf (he cites the examples of tourism, financial services and boarding schools) was, however, initiated more by private autonomy than by an economic policy geared to a small or constituent state. And the criticism voiced by Scharpf against the EU concerning protectionism would be just as appropriate at domestic level in this case. Throughout the course of history, centralisation has repeatedly been propagated by Liberals and supporters of free trade as an antidote to member state protectionism and interventionism and as an aid to promoting the necessary economic free areas through privatisation and deregulation. For this reason, the Liberals in Switzerland were, like the Federalists in the USA before them, in favour of a greater number of federal responsibilities. On the basis of the somewhat dubious historical experiences with the formula “deregulation under the protection of the central controlling body”, we should ask ourselves whether this unification strategy that was rigorously pushed by Bismarck was not in fact a mistake, and whether free competition among the subsystems to find the best-possible solution might not ultimately have produced more autonomy for everyone in every respect, or indeed might still produce it in the future.

## United States

Federalism has played an important role in the history of the United States. The political debate was characterised by the opposition of the Federalists and the Autonomists (and subsequently the Secessionists as well) to the Anti-Federalists. There was no support for unitarian projects; in other words, there was no politically significant grouping that fought for a central and unitarian American state. The “Federalists” argued from a centralistic standpoint *against* unlimited autonomy of the constituent states in a relaxed confederation and *for* strong co-operation, with important powers being retained by the federal government, whereas the supporters of a confederate, but nonetheless liberalistically drawn up order were classified as “Anti-Federalists”. In English usage, the centralistic interpretation of the term “Federalism” has remained to this day. When at the start of the 1990s the word “federal” was to be included in the Maastricht Treaty, in the sense of allowing the member states the greatest possible independence, it was rejected by England on the grounds that it was expressing the wish for greater unity and centrality in Europe. And it was for this reason that the term “subsidiarity” made its first appearance. There is, however, a growing tendency in America for federalism to be

interpreted as decentralist, i.e. in the Continental European sense of the term, so as to curb the gradual strengthening of federal power in the 20<sup>th</sup> century.

After the Second World War, the freedom-imparting elements of federalism were repeatedly emphasised in the USA, and from the “value-conservative” viewpoint - which has continued to grow in popularity right up to the present day - it was glorified as a political moral postulate. Felix Morley wrote in his book “Freedom and Federalism” in 1959 “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.” The extremely worthwhile paper by Clint Bollick entitled “European Federalism” (IEA, Occasional Paper 93, 1995) contains a liberal plea for federalism with a decentralist tendency – in the European sense. In the work, he addresses Americans and Europeans and arrives at theses that are both concise and plausible.

## Switzerland

In Switzerland, the debate over federalism started at the beginning of the 19<sup>th</sup> century. Napoleon, often seen as the restorer of federalism in a Switzerland that was subject to French rule, abhorred federalism himself. For him, “les fédéralistes” embodied the concept of the enemy, and he contrasted them with “les patriotes”, the friends of France,

In an article concerned with Swiss federalism (*Kein neuer Mythos*, 1992), the Swiss historian Beatrix Mesmer warns of myth formation and of the Swiss complex about being a paragon and role model. “One should carefully analyse Switzerland’s federalism in the *pays réel* [as opposed to the *pays mythique*] before offering it as a political remedy to the European Community taken straight from the Swiss medicine cabinet.” Prof. Mesmer characterises Swiss federalism as a “compromise that is constantly shifting between the established structures”, as a sharing of responsibilities which has not yet been firmly established in writing and which is repeatedly being challenged by new requirements and demands.

In the discussion concerning Swiss federalism, it is also noteworthy that, generally speaking, only the relationship of Confederation and the cantons is touched on, and that the subject of “autonomy for the communities” or *Gemeindeautonomie* is, as it were, referred to another department. There are, of course, reasons for this. The cantons, which do stand up for their rights with the Confederation – at least verbally – and promote themselves as being anti-centralist (provided that it does not cost them anything) are, as a rule, centralist in their attitude towards the communities (if they are not dealing with decentralisation of costs or other politically-related charges). The numerous representatives of the municipal [*Gemeinde*] authorities constitute the only counterbalance to the centralism of the cantons. As a rule, these representatives form at least one third of the cantonal members of parliament. However, in assuming responsibility for retaining their independence, this “autonomy lobby” is predominately driven by financial interests and the will to increase their own personal political power; in other words, they want to give orders but not have to pay. In a subtle investigation of the

autonomy of the *Gemeinde* in the canton of Graubünden, to which too little attention has been paid in general, the American political scientist Benjamin Barber (*The Death of Communal Liberty*, 1974) demonstrates how “Federalism”, i.e. the integration of the Canton of Graubünden into the Federal State, ultimately accelerated the end of freedom for the *Gemeinde* within the canton and did not curb it at all. These findings may be of special interest to those who draw an analogy between the process that occurred when Switzerland was converted into a federal state and the integration process in Europe and who dream of increased cantonal, regional and local autonomy if Switzerland does join the EU, because “Brussels” is much further away than “Berne”. It could be a fatal mistake for a federation operating at a higher level to restrict its subordinate member state and deprive it of its power and instead to give greater powers to the communal, regional and cantonal level at the expense of the state level. On the basis of experiences thus far, surrendering sovereignty – at whatever level – is tantamount to driving down a one-way street. Perhaps it is no coincidence that it happened to be an American who, as an outsider, pinpointed the end of the freedom enjoyed by the *Gemeinde*, while this very same institution is still being hailed in our own Swiss civic studies textbooks as the “nucleus” of our state. The *Gemeinde* in Switzerland is, of course, far from dead. Its autonomy is, however, in a poor state of health and the reproductive power of these “nuclei” is as unimpressive as that of the cantons. Anyone who is serious about the “spirit of federalism” and the subsidiarity principle that is linked to it should, in my opinion, certainly not forget the autonomy of the *Gemeinde*. At local level, the best possibility would be to ensure transparency between tasks and expenditure. And any monitoring of power cannot concentrate solely on the institution as a whole, but must also cover the individual personnel. The *Gemeinde* could also experiment with reforms, such as privatisation schemes and voucher systems, and thus become pioneers of innovation instead of narrow-minded dinosaurs.

### Going down the wrong road . . . and new impulses

The rediscovery of the grass-root democratic and anti-bureaucratic elements of federalism has helped it to enjoy a new high standing again, even in left-wing circles. There was, however, a tendency to avoid the “handed-down” term of federalism; instead, the talk was of “citizens’ initiative groups” “regionalism” and “action groups”. In the 1970s, the philosophy of “small is beautiful” (E. F. Schumacher, *Small Is Beautiful: Economics As If People Mattered*, 1973, following on from Leopold Kohr, *The Breakdown of Nations*, 1957), of “conviviality” (Ivan Illich, *Tools for conviviality*, 1975) and of “small networks” established itself in connection with the ecology movement.

The federalism idea received a new impulse from the challenge of all manner of genuinely existing overlapping factors: ethnic groups, political and historical frontiers and structural and infrastructural complexities. In multicultural societies and societies that are highly geared to the division of human labour, the image of

the leopard skin is much closer to reality than that of the chessboard, and the model of “clear separation and demarcation” of territorial and fiscal sovereignty has clearly had its day in several respects. The ultimate consequence can be the insane practise of “ethnic cleansing”, as adopted by the Bosnians in their demonstration to the world of how *not* to behave.

The model propagated by the two economists Reiner Eichenberger and Bruno Frey of a “dynamic federalism” (*Eine „fünfte Freiheit“ für Europa, Neue Zürcher Zeitung, 30, 6.2.1996, and „Ein neuer Föderalismus für Europa“, 1997*<sup>1</sup>) may still bear certain utopian traits in various respects. Their reference to Functional, Overlapping, Competing Jurisdictions is as realistic as it is topical. The so-called “Focj”, called “Focus” in the singular, are determined “by the function that has to be fulfilled”, and, as each function demands another extension of jurisdiction, they compete with what they are offering for communities and citizens. They have autonomous taxation powers – and this is probably both the crucial factor and the weak point when it comes to their realisation. Perhaps we should not even take taxation as our starting point, but concentrate instead on prices, user charges or “membership fees”. After all, what regional administrative body, when faced with empty coffers, will want to give up any of its taxation powers, or which taxpayers are willing to accept additional tax collectors? The taxation screw can hardly be turned any tighter with an effective result, since the resulting loss in productivity or the additional resistance to paying taxes caused by this will, in any event, lead to falling tax returns. However, it is possible that so-called shortfalls in the state finances will very soon be recognised as constituting an impasse, which makes a U-turn obligatory. And after a forced U-turn of this ilk, it can only be hoped that there will perhaps be an increased willingness on the part of those concerned to reflect on such useful proposals as the “Zürich Focus Model”. It is creative because it does not concentrate on centralisation and harmonisation, but rather promotes diversity without sacrificing too much flexibility. It therefore possibly avoids the “integration trap” vividly described by Fritz Scharpf, whereby the readiness for consensus and compromise decreases, the willingness and capacity to pay are reduced, while the collective expectations, demands and requirements all grow – and all of this simultaneously. In such situations, it is time to rediscover private autonomy as a problem-solving strategy among those involved and those affected; this is a strategy where compromises are directly negotiated and financing is regulated “*inter partes*” and – as a rule – “*inter vivos*” (i.e. so that the burden does not fall on the generations to come). The borrowing limit of such legal entities is linked with their self-financing capacity or with their creditworthiness in this regard, and there is the threat of bankruptcy constantly hanging over the price-quality ratio like the proverbial sword of Damocles. Private law operates by flexible and not universally binding agreements and therefore allows for a “tailor-made legislation as required”, with minimum constraint and maximum efficiency. It is an open question

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<sup>1</sup> (*A “fifth freedom” for Europe, Neue Zürcher Zeitung, 30, 6. 2. 1996, and “A new federalism for Europe”, 1997*)

whether a logical continuation of the Zurich Focus approach does not ultimately lead to a co-operative style model of self-organization, or to other corporate enterprises and institutions structured on a private-enterprise and private-law basis. After all, what are service industries (either with or without a public stake and investment) if they are not separately accountable, functional, overlapping, competing players in the game – like the aforementioned “Focj”?

In the 1960s and 1970s, the buzz phrase was “Co-operative Federalism”. Indeed, it is still doing the rounds today and constitutes a true counter-concept to “Competitive Federalism”. “Co-operative Federalism” has promoted more centralising tendencies in connection with the so-called regionalism debate and has embraced the idea of “regional equilibrium”, which ultimately undermines local autonomy. The question as to whether the regions could become established either as the fourth level between communes and constituent states (federal states/provinces or cantons) or operating nationally or internationally across borders, and whether they would have to function alternatively or cumulatively with existing regional authorities has always remained a controversial subject among regionalists. It is therefore difficult to say whether these trends should be assigned to centralism or to non-centralism. Seen from a non-centralist viewpoint, the idea of a “Europe of regions” has to be rejected. The regions will always be dependent on a nerve centre that supports them and thus creates an “illusory autonomy”.

The idea of regional equilibrium and the economic endeavours made at regional level to promote certain areas by means of subsidies and special credits are especially popular among those who profit from this spate of redistributed funds. The policy of redistributing income between the federal government, the states and the communities is, however, ineffective in the medium term and counterproductive in the long term. Only rarely will the money have any effect on the “good causes” to which it has been promised and which expect to receive it, and most of it probably finds its way into the wrong channels (i.e. back to the central government). Consequently, there appears to be a fundamental flaw with this type of “development aid”, and at national and international level as well. The idea of redistributing state funds on a grand scale both within a region and between regions has in effect led to more discouragement than encouragement, and ultimately it is nothing more than an unsuitable interventionist correction of other forced adjustments: a botched correction of a botched correction. However – like all compensation projects where something is taken away from the “rich” and distributed to the “poor” – the notion of redistributing income and providing “aid” to regions that are financially and structurally weak enjoys great political popularity. Exactly how much of the funds that are intended for redistribution just trickle away or are misdirected within the bureaucratic apparatus or completely fail to reach those who are in need of them remains a secret among those who are responsible for reallocating them. And it is precisely this situation that bestows their status of legitimacy and irreplaceability upon them. There is, however, limited interest in monitoring the success of such an operation given that there are still remnants of

the times when constitutional law dictated that the administration should believe in and be happy about intervention and, indeed, partially finance any research into it.

## Conclusion

Classic continental European federalism is a constitutional/political movement which is committed to ensuring that as much independence and as many rights as possible are retained by the constituent states (cantons) of a federal state. It deals with non-hypothetical, existing spheres of life, and it is opposed to any form of centralism, unitarianism and collectivism. Federalism is a political order and *Weltanschauung* in the tradition of the Aristotelian-Scholastic social theory, which traces the political community back to the family as the smallest social unit. The model of small living and working communities (family, church and non-religious communities, professional associations, etc.) as a device against centralised states that are legitimised by treaties and based on progressive individualism has its roots both in *Politica* by Johannes Althusius, who was the spiritual father of classical federalism, and also in Catholic social doctrine.

In addition to this understanding of federalism, which had its origins in the Aristotelian-Scholastic *Weltanschauung*, a second notion that sprang from progressive thought gained acceptance in the 19<sup>th</sup> century. This notion bases itself on individual freedom and self-determination, on non-central, non-hierarchical structures, and on free agreements and unions. This scepticism, as a matter of principle, against power and rule, against centralisation, bureaucratisation and hierarchisation gained a following in both liberal and socialist quarters.

After 1945, a scientific/scholarly notion of federalism that was favoured in the spheres of sociology and the economy became established. Its arguments are based on the theory of the system and it considers political and social structures as “interaction systems” and as a complex interplay and delicate balance between minority and centrally regulated powers, between self-control of constituent units and central organisation. The more total systems are structured in a “gradated” and partially self-controlling manner, the more likely it is that they will become stable and able to adapt to new conditions. Systems that grant their sub-systems autonomy are complex, confused and difficult to control, At first sight, they appear to be more inefficient than centralist systems and have less power both outwards and inwards. The autonomy conceals the risk of suboptimal problem-solving. The efficiency of a total system should, however, not be gauged solely by its ability to wield power, but also by its ability to “detoxify” power and by its ability to learn and adapt. Peacefully competing subsystems that are as autonomous as possible, going right down to the smallest units, make it possible for there to be a permanent rivalry of structure blueprints and intervention and redistribution systems. Although allowing a variety of mistakes and errors, they do, however, avoid that centrally standardised major error and mistake. This situation can be optimised by means of cross-comparison: by looking at and learning from what has been successful and by deliberately avoiding the errors that are observed. The freer the communication is, the quicker and more

efficient the learning process will be. Autonomous subsystems are, in the sphere of politics, the counterpart to the market. As far as the economy is concerned as well, co-operation between non-centralised, decision-making units would clearly seem to be advantageous, especially since it can make the correlation between benefit and cost and between receivers and providers of public services more transparent and easier to calculate for those concerned.

## 4. 2 Subsidiarity – No miracle principle

Federalism is often connected with the principle of subsidiarity. This is, however, not restricted merely to state organisation, but also refers to social, economic, church, cultural and other spheres. The subsidiarity principle is based on a fundamental separation of individual, state and society, which was already implicit in the works of Aristotle. The principle of subsidiarity starts from the assumption that the smaller community is fundamentally responsible for solving common problems and that the higher entity should intervene only if the subordinate entity requires its social and political support. In this respect, the state is subsidiary, since the help which the subordinate entity gives itself, family help and charitable help all take precedence over the aid provided by the state, just as the solving of problems at communal level takes precedence over that at regional, constituent state, national and international level. What has now become the classic formulation of this can be found in the *Quadragesimo Anno* Encyclical Of Pope Pius XI (1931): “. . . what [individuals] 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.” The subsidiarity principle is today primarily seen as a principle of sharing responsibilities and duties between the different hierarchical levels of a federalist system, although it did originally seek to differentiate the sphere of private matters from the sphere of public, political matters, i.e. it should resolve the current issue of privatisation or nationalisation of responsibilities.

From a liberal viewpoint, the principle is a freedom-safeguarding defensive principle of individuals against the collective whole and especially against all forms of state coercion. It is expressed in the following formulas: “*in dubio pro libertate*” and “as much freedom as possible, as much coercion as necessary”. The classic formulation can be found in Catholic social doctrine: “. . . that man as an individual should carry out every task with which he is faced, provided that he is capable of doing so. The community must intervene on a subsidiary level only”. (F. Klüber, *Lexikon für Theologie und Kirche*, Freiburg in Breisgau. 1957, under the entry “Soziallehre” [social doctrine]).

Each of these formulations implies a leaning towards individual solutions in the smallest possible sphere. But all the formulations (“if in doubt, go for freedom”, “as much freedom as possible/as much coercion as necessary”, “provided that he

is capable”) clearly need to be correctly interpreted. There is a danger that the principle can be applied to a centralising tendency because of the interpretation that the higher association is a “more suitable”. In such a case, the whole principle is undermined. The principle is thus very frequently used to mean the opposite of what it really is, since new arguments are repeatedly being found as to why it is “better” attributed to more central and higher bodies.

It becomes even more difficult when the ability of an authority body to resolve problems is gauged by its capacity to finance. A centralised fiscal system will inevitably result in the “inability” on the part of subordinate authorities to execute infrastructural tasks and will virtually indicate a one-way ticket to centralisation. If the subordinate regional authority has its fiscal substratum removed, it is then easy subsequently for others to point the finger and diagnose a case of “insolvency”, which would then justify a further step towards centralisation. Even though the subsidiarity principle demands that common problems should be resolved at the lowest possible level, it does not lay down any criteria as to which solutions are considered “possible” in each individual case and at what level. It remains neutral as far as centralisation and non-centralisation are concerned and does, in practice, lead to further centralisations. Given that every government wants to claim the benefits for itself, but also to pass on the costs to the next level down, the subsidiarity principle dispenses with the brakes that governments apply in their own interest.

In view of the constraints of the centralist system, the subsidiarity principle needs to be more precisely defined and radicalised in such a way that it opts for authority, responsibility and financing to be returned to the smallest possible level of governance, or to a level of autonomy or private autonomy that is closest to the problem as soon as that problem can no longer be adequately resolved or financed with lasting effect at the higher level. The original, non-centralising trend of the subsidiarity principle must be enshrined in constitutional law: priority must be reserved for smaller or private forms of governance. In combination with the postulate for decentralisation, the subsidiarity principle demands that any failure on the part of the state or failure with centrality must result in privatisation, decentralisation and deregulation.

However, it is not ideal in every case to solve state problems at communal level. The communities can also misuse their autonomy by introducing rules and regulations that pander to democratic and populist tastes. The principle of “limited government” must apply at community level as well, and it is not possible to practice unlimited democracy at the expense of whatever minority. There are rules that exist at communal level which cannot be altered. These include important principles, such as rights of freedom, legal equality, free trade, protection of the individual, guarantee of ownership, as well as procedural principles such as an arbitrariness standard, “acting in good faith”, “due process of law”, “*in dubio pro libertate*”, “*in dubio pro reo*”. Also included is the principle that no measures should be retroactive when legal provisions are enacted and applied.

A large proportion of the problems over the last 30 years which, it has been thought, had to be organised and regulated by regionalisation, partnerships of convenience, fiscal federalism and centralisation, must, in future, be solved by privatisation (according to the principle that the user pays, although the state contributes its own subsidies).

If we pay the representatives of the people, we do not awaken in them an interest in fulfilling their duties in a conscientious manner; on the contrary, we merely instil in them an interest in ensuring that they continue to fulfil these functions.

Benjamin Constant, *Politische Schriften*, Fourth Volume, Berlin 1972, p. 79.

## 5. Non-centralism and the taxation system

Anyone who starts to talk about finances and taxation while using terms like “autonomy”, “identity”, “democracy” and “protection of minorities” in the same breath might well be suspected of being a materialist, whose intellectual horizon begins and ends with money. The financial dimension of a problem should never be absolutised, but nor should it be suppressed, either. He who pays the piper calls the tune. And anyone who has no financial autonomy does in fact have little that he can really decide on for himself.

No one likes paying taxes. And when the subject of the “Exchequer” comes up in discussions on social science and economic issues, it is one that really gets the specialists going. Given the important place that taxation systems play and have played in history, it is astonishing just how little easily understandable information has been published about this. Indeed, we pay too little heed to the fact that at least half of the history of political systems has in fact been a history of taxation systems, and a considerable number of changes in history started off as tax revolts. The beginning of American independence at the Boston Tea Party, a protest over tax policies, is the most celebrated, but definitely not the only example. The slogan that characterised the spirit of that time “No taxation without representation” has since become one of the principles of every sovereign and democratic state, even though this postulate is by no means satisfactorily adhered to in every quarter. Switzerland’s breakaway from the “Holy Roman Empire of the German Nations” had its origins in the refusal to pay Holy Roman Empire’s taxes. Fiscal issues have also been the reason for numerous other secessions, or at least in part.

The historical and political significance of state finances and taxation systems is frequently underestimated, while the ideological and national conflicts are overestimated. We are currently faced with a problem that has still not been resolved, namely that of trying to get to grips yet again with the consequences of the two World Wars and of the Cold War on state finances and taxations systems. Over the last two centuries, the significance of the nation-state as a fiscal system and as an apparatus for redistributing and providing has grown among both winners and losers to a dimension that is quite absurd for more peaceful times. Indeed, it really is time that political systems were given the significance that is appropriate for them in times of relative peace. Fiscal “disarmament” has not yet been completed. The power of our governments and the “nanny state” situation, where they make up the minds of the citizens for them, is a vestige of the state of emergency brought

about by wars, which triggers off a substantial need for public law, for intervention and for subsidy. The characteristic of a peaceful civil society should be that it can manage with limited state regulatory provisions, and few technical and socio-political infrastructures and that it allows its conflicts to be resolved between those concerned and those involved according to the principles of private autonomy.

Many endeavours to achieve autonomy would not even be necessary if the central governments concerned restricted themselves only to that which is absolutely necessary: limited rule, i.e. limited government power, limited “power to tax” and the limited provision – at no cost – of central, public institutions and services. The autonomy of regional authorities would be achieved by the same process as that which has given rise to private autonomy, namely through the ordered retreat of the political system from all spheres where it has no business to be operating in a peaceful civil society.

The struggle for regional and communal autonomy is identical with the struggle against an inordinately large, central political power and financing structure that is geared to the state of emergency brought about by war.

In the course of its history, the state has claimed for itself with great constancy two fundamental powers, the power of taxation and the power of conscription, i.e. the right to levy taxes by force and the right to recruit soldiers by force. Both of these intrusions upon the fortune and freedom of citizens have constantly been disputed, and the states have repeatedly put forward reasons as to why both of these powers are necessary. The ways in which these objectives are implemented or relativised are extremely varied. Indeed, we should perhaps not classify states according to their system of government (monarchy, oligarchy, democracy), but rather according to the combination of compulsory military service, liability to tax and the right to vote, the reciprocal agreement of rights and duties, as well as the universally binding redistribution system. From this point of view, the subsidiarity principle, which has quite rightly been discussed again since the Maastricht Treaty, is above all a model for taxation and financing. However, when it is detached from the question of who finances, distributes and redistributes what and for whom, it is an issue that is not correctly understood at all.

In the 20<sup>th</sup> century, Switzerland repeatedly resorted to the practice of delegating social and cultural tasks to the state, in the hope that the state would be able to enforce their implementation for all time. This force does, however, disturb and destroy any willingness on the part of citizens, the very element on which spontaneity, reciprocity and voluntariness are based, these being the only long-term guarantees of social behaviour. This behaviour arises and exists as a result of cultural and social traditions that are repeatedly becoming established and being further developed, and without these no society can exist in the longer term.

“He who pays the piper calls the tune” is one of the fundamental fiscal rules of democracy. No one should be taxed without being able to have a say in the amount that he or she is taxed and the concrete purpose – indirectly at least - for which the

taxation revenue is being used. This principle has extraordinarily far-reaching consequences. Against the background of the autonomy discussion, it leads to a fundamental limitation of the redistribution between different regions and communities. Any imposition of taxes and other burdens, as well as any distribution of taxes and any redistribution must be democratically authorised.

If we think the principle of democracy through to its logical conclusion in this connection, we arrive at another principle that can also be formulated as a slogan. It has far-reaching consequences for the autonomy discussion and reads as follows: “The more concerned we are, the more involved we have to be”. This principle is a key statement for autonomists. In many cases, it directly conflicts with the (radical) democratic principle of “one man, one vote”, which, when applied to a larger area, often leads to opposing results. In a heterogeneous, multiethnic area, a majority of the “involved” lobby can outvote a minority of the especially “concerned” lobby with the principle of “one man, one vote”. In the sphere of taxation, this gives rise to a particularly explosive dilemma. If we divide the population roughly into two categories, namely taxpayers and “taxeaters”, it is not only possible, but also even probable that a majority of “taxeaters” will outvote a minority of taxpayers. This can give rise to problems especially when the taxpayers – as is the case in Italy – live in the same region, namely in the North, while the “taxeaters” live in the South.

We can derive yet another autonomist principle from the principle of “The more concerned we are, the more involved we have to be”. Although somewhat overstated, it can be summed up as follows: “No representation without taxation”. This provocative thesis states that the representation of interests that are manifested in a given region or constituent state should be linked to the power – albeit a perpetually unpopular one – to levy the taxes necessary to finance the wishes of the voters. Or to express it even more pointedly: a regional authority, a region or a constituent state is a viable organism only if it also has financial autonomy, and that means its own direct financial autonomy, and not derived autonomy. Ultimately, it is necessary as well to have the power and the sense of duty to force payment of the revenue that is needed to resolve the share problems. There are four possibilities for this, although not one of them is totally satisfactory:

*First*, communal taxation powers can be centralised. This is possible, however, only if there are communal taxation resources available, and it would mean centralisation at the expense of local autonomy. Such an option would have little chance in the real political world, though. If regional autonomy has to be bought at the expense of local economy, this constitutes a retrograde step against the background of the subsidiarity principle. Whatever sympathy the author may have for the postulate of regionalisation and the autonomy of constituent states, the key postulates for tackling future tasks have to be *privatisation* and *local self-management*, and there are numerous indications that the economic and political success of Switzerland is based on a combination of private autonomy and communal autonomy.

*Second*, the constituent state or the region can set up a system of regional taxation cumulatively and in addition to the communal and national taxes. This option has little chance of succeeding, since the limits for taxation have mostly already been reached in the present system, and no party is willing to exploit additional sources of taxation or to hand over its own sources of taxation either downwards or upwards.

*Third*, the constituent state or the region can finance itself through a system of subsidies from above, if the central government allows this by making the corresponding funding available. Despite its widespread application and popularity, this procedure has to be viewed with some scepticism. Although it does give the constituent-state or regional officials a certain power, it also robs the regional authority concerned of its independence and makes it a mere agent of the central authority that is subject to the principle of “he who pays the piper calls the tune”. The whole regionalisation process, which takes place under the somewhat dubious label of “decentralisation”, is ultimately a deprivation of the right of decision of the small subsystems and a destruction of regional autonomy, as it makes the “small fish” dependent on the subsidies from the central government, a relationship that can, with good reason, be compared to an addiction or dependence. The officials who are concerned and involved do extremely well out of this, although sooner or later they do in effect represent – either knowingly or unknowingly – the interests of the central authority that is paying and come to embody a situation of ongoing legal corruption. Only those European regionalists who advocate financial separation from a central authority that both balances and redistributes are true supporters of regional and local autonomy.

And the *fourth* option would be for a region or constituent state to finance itself through contributions which the municipalities and, if need be, private individuals pay for use of their services and facilities. This financing reform is the most difficult one, but also the one that is most geared to the future. Indeed, it no longer has the character of compulsory taxation, but rather of “usage fees” or charges, which are paid in return for certain services to which a regional authority has “subscribed”. With this option, there are also overlapping sectors of a wide variety of public institutions; these are no longer defined according to their territory but rather by their function.

The fourth of these options carries the most advantages, although it has to be admitted that there is still a considerable utopic element to it. It no longer bears any resemblance to a traditional taxation system and, by its very nature, it is related to the concept of privatisation. It relieves the state regional authority of obligatory payments and compulsory taxes and makes it more like a business in the service sector that sells its services on a market. Regionalisation and communalisation are closely connected to privatisation and to the retreat of the state from the impasse of an explosion of tasks and an explosion of expenditure and from the debt trap.

The American Chief Justice John Marshall came out with the famous saying: “The power to tax involves the power to destroy“. And this expresses the biggest

and most fundamental dilemma concerning duties carried out by the state. Every government wishes to execute state duties and to organise redistribution of resources on behalf of the citizens that it governs. As a rule, then, no political system can eschew taxation. Taxation does, however, stunt motivation, the will to save and a willingness for personal and spontaneous solidarity – three important prerequisites for a society to function well over a long period. It is possible for state duties, expenditure and revenue to be optimised by creating cost transparency at all levels and by gearing the political decision-making process in such a way that it establishes equilibrium between these important factors. The smaller and clearer the framework is, the more likely it is that this will be possible in a democracy. From a liberal point of view, the aim must be to demonstrate a combined minimisation and limitation of state duties and redistribution.

In the vivid terminology that contrasts “taxpayers” with “taxeaters”, the principle could be summed up thus: “No tax-eating without taxpaying”. In other words, no consumption of public services without a contribution towards the costs. In Switzerland, it has also not been possible to buck the trend towards centralising public tasks at constituent state (i.e. cantonal) and federal level, even though the federative state structure does have certain mechanisms available to “put the brakes” on this.

The fundamental element that financing and funding represent as key constituents of constitutional law is usually underestimated. It is not merely a question of doing repair work and improvising here and there every year to ensure that the state obtains the funding it demands; there also has to be a clear restriction on access to finances, so that what is probably the most effective method can be implemented, namely that of reducing the share of government expenditure of the total GDP and thereby enhancing the standing of the economy. It is essential that taxation demands can be limited by imposing a threshold for their progression and for taxation overall, by decreasing the principle of “equal shares for all” when resources are redistributed, by a limited equalisation of revenue and costs between government and local authorities, as well as by competition between the municipalities, cantons and nation states for the power to impose taxation. Every effort needs to be made as well to lay down rules governing “brakes on expenditure”, a concrete curbing of debt and a politically more effective and more “enforceable” obligation to achieve budget equilibrium, although it has to be said that the appropriate “magic formulas” that could be established as part of constitutional law in this regard have yet to be thought up.

We cannot overestimate the danger of the so-called “race to the bottom”, a dash towards the zero-tax and zero-performance state. On the one hand, the lion’s share of taxes and other levies are used to finance state bureaucracies; and once established, these bureaucracies became part of those social structures that are most difficult to disband. On the other hand, it is all the more probable that there will be inadequate provision in terms of order and infrastructure, considering the possibilities for comparison with other regional authorities that better satisfy the

demand for such commodities. In many cases, a majority of taxpayers are even motivated into paying higher taxation in return for public commodities which they desire and which are in short supply, i.e. they are prepared to pay a higher price if the collective quality of life can be increased as a result. This notwithstanding, the federal competition between taxes and the provision of public services must not be distorted and deformed by a demand for uniformity of living conditions and, resulting from that, compensatory payments.

Do not destroy anything without good cause; squander nothing. In short, conduct yourselves in such a way that you will always command respect and always show yourselves to be worthy of the name that you bear.

From General Dufour's address to his army on 22 November 1847 before the campaign in the civil war against the *Sonderbund*.

## 6. Six historic steps in the development of Switzerland and six lessons to be learned from these

Switzerland is a successful country. The per capita income and standard of living are among the highest in the world, while unemployment, taxation and other levies are relatively low. Despite this, we should be wary about speaking of a “model Switzerland”. It would be more prudent to describe Switzerland as an experiment and as the result of a spontaneous process that has, thus far, yielded comparatively positive results.

One important reason for Switzerland's many and varied successes has been its complicated yet highly instructive historical development as a federal state. This process lasted 50 years and covered six phases. Each of these phases has its own “lesson”, separate from the historical and national context, and these are listed here in the form of headwords.

The heteronomous *Helvetik Republic* constitution (1798-1803), based on the French model, brought with it progress in terms of equality, in that it broke away from the old Confederation which had still largely been characterised by an aristocratic presence. It did, however, hold devotedly to the erroneous principle of centralism and created a centralised Helvetic state, which downgraded the cantons to mere administrative districts that did not even have their own rights.

Lesson: If the central power knew what was in the best interest of the public and were to apply this with intelligence, centralism as such would not be such a bad option. However, there is a danger that it will not be the wisdom that will be centralised and allowed to bring its influence to bear upon the bureaucratic corridors of power, but rather all the folly and errors. Indeed, it is far more likely that the latter will happen, rather than the wisest and most sensible taking their place with the central power and ruling. Although there are also foolish and bad governments with non-central structures, there is always a possibility for comparison and for learning. The chance of making gradual improvement is, therefore, far greater.

The so-called *Mediation Constitution* (1803-1813), which had been developed by Napoleon in consultation with parliamentary representatives from Switzerland, sought to reach a compromise between centralism and particularism. Its fate was sealed, however, with the collapse of Napoleon's France.

Lesson: Mediation is a successful principle, but it must be allowed to grow from within and cannot be forced from outside. A constitution without democratic authorisation that is imposed from above might serve as a useful exercise for gathering experiences, but it cannot be filled with inner life.

The so-called *Restoration* (1815-1830) sought to substantially restore the pre-revolutionary regime and created a confederation that consisted of 22 sovereign cantons with restored constitutions based on privilege and a common diet. This “step backwards” allowed a slowing down of the adjustment processes, but it failed to resolve the problems.

Lesson: We can learn from the past, but we should guard against the illusion that history holds the key to a return to earlier circumstances. Values change slowly, if at all. And this is why there are good reasons for remaining conservative in our values. Structures change as a result of technical advances. Those conservatives who stubbornly cling on to existing structures resist this, but are wrong to do so. Structures do have to be adapted repeatedly. And anyone who wishes to conserve values in changing surroundings must also carefully adapt and alter the corresponding structures.

The so-called *Regeneration* (1830-1847) has possibly been the most creative time in Switzerland’s history and it is still feeding off that to this day. This was a time of many competing experiments, and the cantons enjoyed considerable independence. The elite of Switzerland also studied the models of other states and, with the support that the country received from refugees and immigrants from the neighbouring countries which were under autocratic rule, Switzerland built up important worldwide communication networks. In many places as well, the politics of the day gave the civil society and small businesses considerable scope. Elsewhere, however, the politics were stubborn and interventionist.

Lesson: A political system that is not homogeneous provides considerable opportunities for learning by comparison, taking as its motto: “Look and learn”. With relatively free communication conditions, the results of contradictory experiments can be seen and felt rapidly, and often trigger off more internal learning and adjustment processes than any well-meant exercises in harmonisation and centralisation.

After the *Regeneration* period, Switzerland had to come through the crisis of the split between the rural, Catholic-conservative cantons and the more urban and liberal, Protestant Reformed cantons. This led to a civil war, the so-called *Sonderbundskrieg* of 1847, which was fought against a background of politics and in-fighting between religious denominations. The war was fought with determination, but also with great astuteness and restraint and with magnanimity towards the vanquished. The *Sonderbund* had committed an act of disloyalty to the alliance by involving foreign powers in the equation. The aim of this military invention was, however, not to destroy the opponent, but rather to achieve reconciliation and to find a new basis for co-operation.

Lesson: It is worth resolving conflicts openly, treating the opponent with utmost consideration and ensuring that the losers are integrated as swiftly and magnanimously as possible.

In the *Federal State* of 1848, a compromise was reached between centralism and particularism. The centralist element advocated by the victorious liberal parties played an important role as far as the new constitution was concerned. In effect, though, Switzerland consisted of relatively efficiently functioning, non-central and extremely meagre central structures. In comparison with other European states, the federal budget and the federal administration were very small and impotent. The Swiss Federal State started life with a minimal administrative system of fewer than a dozen professional civil servants, without direct and indirect federal taxes and with a minimal budget that was based entirely on customs duties and tolls.

Lesson: The secret of success of the burgeoning Federal State can in fact be attributed to the good fortune that it had to start life as a minimal state, based on a high degree of cantonal and local autonomy and with functioning political microstructures which were, nevertheless, more paternalistic than democratic – particularly at local level. These structures did not spring from a collective will to have a system of lean government, but purely and simply from the fact that there were no funds for anything else: there was no money in the state coffers, no civil servants and no central bureaucracy. The right thing was done because the financial and human resources were not available to do the wrong thing. Because of the “non-professional militia principle” in force, there was a mixture of improvisation and confusion at the poorly developed central headquarters of the Federal State, a “laissez-faire” attitude, which meant, for example, that the central excise duty had to be determined by the economy itself and not by civil servants, as too few qualified officials were available. This probably meant as well that the duty was favourably disposed towards the economy. Expressed in simple terms, the Swiss “economic miracle” of the 19<sup>th</sup> century was neither the fruit of liberalism being written into the constitution nor of democracy itself, but rather as the unplanned result of operating with a minimum of federal state structures. Nineteenth century Switzerland was progressive because its political system was – by the standards of the day – particularly reactionary. The subsidiarity principle worked, because private, local and cantonal structures were actually better equipped in terms of personnel and finance to carry out public responsibilities than the chronically “under-funded” central administration. This was the main reason for the absence of that economic policy which intervenes on behalf of the influential and the powerful on pretence of benefiting the economy as a whole and which thus conserves structures and hampers and paralyses the spontaneous forces for an upswing. The foundation of new states obviously also provides their economy with good possibilities for getting started, albeit less so because of the quality of their structures than because of the “light luggage” they have to carry in terms of the central administration and because of the limited possibilities for fiscal exploitation in the start-up phase.

In the centre of Europe, there lies a small country, Switzerland; this is a country that nature has not treated kindly. [...] But over the centuries its citizens have pursued a policy of capitalism. They have the highest standard of living in continental Europe and their country is one of the most significant centres of civilisation in the world.

Ludwig von Mises, *Vom Wert der Besseren Ideen*, Stuttgart 1979, p. 96

## 7. The identity of those who pay and those who benefit: Switzerland's tax system

In Switzerland, it is the citizens and taxpayers who, by direct democracy and with a majority decision, determine the amount of tax to be paid. Such a system can, however, not be transferred directly to other circumstances. Doubts are constantly being expressed as to whether governments and parliaments should be able or allowed to leave something as delicate as the responsibility for levying taxes in the hands of the taxpayers. If we allow a majority of the people to be responsible for fixing the taxation level at all levels of the state organisation, this presupposes that these different levels cannot be structured in a too progressive manner; otherwise it is possible that there will be “democratic heteronomy” for those taxpayers with higher incomes, and this will culminate in their “banishment”. Per capita voting works only if those parties concerned are comparable on a per capita basis as well.

The competing tax systems and the sharing out of the direct taxes between the three levels of confederation, canton and municipality led to an experiment in Switzerland that combined relatively low taxes with a good public infrastructure. The competition between different rates of taxation has a dual effect. On the one hand, Swiss citizens tend to “vote with their feet”, i.e. affluent taxpayers either move to or away from a given municipality because of the tax rate, while on the other hand there is the “power of attraction” for capital from other countries with higher taxation. This latter point explains the constant and deceitful demand by EU countries – and especially Germany – for a harmonised tax system, which would put a stop to any tax competition within Europe and, consequently, to continue the tax policy that has proved disastrous thus far at a higher level.

Switzerland's tax arrangements reflect the three-tier political system of confederation, 26 cantons and around 3000 municipalities. Taxes are levied at all three levels. The right to levy tax at these three levels is, however, limited by the constitution. Taxation powers are divided in such a way that the confederation, the cantons and the municipalities do not hinder each other and the taxpayers are not faced with an excessive tax burden.

The confederation was originally not able to levy direct taxes. However, because of the increased financial needs resulting from the economic crisis in the 1930s and the Second World War, an income and net wealth tax was introduced, together with a tax on profits and a capital tax. These have all been

retained since that time. Of the three aforementioned political units, the confederation still levies by far the smallest amount of these direct taxes (in the 1990s the figure was between 7 and 8 percent). The confederation receives around 30 percent of the total state revenue.

The Confederation may levy only those taxes that are laid down in the federal constitution. There are only relatively few types of tax which the Confederation is allowed to levy exclusively. This means that the cantons are left with more scope to arrange their taxes. According to the federal constitution, the 26 cantons (constituent states) are (with certain reserves) sovereign states and vested with taxation powers and tax sovereignty. The cantons are essentially free to choose which taxes will be levied, provided that the Federal Constitution does not stipulate the contrary. Numerous cantons have, for example, conducted plebiscites in recent years and abolished inheritance taxes for direct descendants and thereby increased the attractiveness of that canton as a domicile for wealthy private individuals.

The municipalities may levy taxes only within the framework authorised by the canton in question. The municipalities do, however, receive a reasonable share of income and wealth tax. In contrast to the original sovereignty, we therefore now speak of derived or delegated tax sovereignty. Nevertheless, this does not change the fact that they do enjoy true tax sovereignty, which, in addition to the tax sovereignty enjoyed by the Confederation and the cantons, is a key element in the overall Swiss taxation system picture. The municipalities have this taxation power because, as autonomous, self-governing bodies within the societal structure, they do play a highly significant role. Apart from the responsibilities that naturally accrue to them as the administrators of local community life, the municipalities are also entrusted to a large extent with powers that would be dealt with exclusively by the central governments elsewhere, such as the primary school education system, social welfare and the public health service. Even though these responsibilities are partially carried out under state supervision and with financial assistance from the state, the costs that ensue do essentially have to be met by the municipalities themselves. What emerges from all of this is the need to let the municipalities become involved when the available sources of funding are meted out. This means that the municipalities also have fiscal independence to go with the functional autonomy that they enjoy.

Although Swiss tax federalism is limited by the *Cantonal and Communal Direct Tax Harmonisation Law*, this does, however, govern only the basic principles of tax assessment and the collection of taxes.

The taxes levied in Switzerland are subdivided into income and wealth taxes, as well as excise, possession and expenditure taxes. The Confederation, the cantons and the municipalities levy individual taxes for both of these categories.

## Federal taxes

<p><b>Income taxes, direct levies</b></p> <ul style="list-style-type: none"> <li>• Income tax</li> <li>• Tax on profit</li> <li>• Withholding tax</li> <li>• Military and community service exemption tax</li> <li>• Stamp duties</li> </ul>	<p><b>Excise taxes</b></p> <ul style="list-style-type: none"> <li>• Value added tax</li> <li>• Duty on tobacco</li> <li>• Duty on beer</li> <li>• Duty on spirits</li> <li>• Duty on oil/fuel</li> <li>• Motor vehicle taxes</li> <li>• Customs duties</li> </ul>
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## Cantonal taxes

<p><b>Income tax, net wealth tax and other levies</b></p> <ul style="list-style-type: none"> <li>• Income and net wealth tax</li> <li>• Poll tax, personal tax, household tax</li> <li>• Tax on net profit and on capital</li> <li>• Inheritance and gift taxes</li> <li>• Tax on capital gain from the sale of property</li> <li>• Taxes on change of ownership</li> <li>• Tax on property</li> <li>• Tax on lottery winnings</li> </ul>	<p><b>Ownership and expenditure taxes</b></p> <ul style="list-style-type: none"> <li>• Motor vehicle taxes</li> <li>• Dog licence fees</li> <li>• Entertainment tax</li> <li>• Stamp duties</li> <li>• Taxes on advertising posters</li> <li>• Taxes on waterworks</li> <li>• Miscellaneous taxes</li> </ul>
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## Communal taxes

<p><b>Income tax, net wealth tax and other levies</b></p> <ul style="list-style-type: none"> <li>• Income and net wealth tax</li> <li>• Poll tax, personal tax, household tax</li> <li>• Tax on net profit and on capital</li> <li>• Inheritance and gift taxes</li> <li>• Tax on capital gain from the sale of property</li> <li>• Taxes on change of ownership</li> <li>• Tax on property</li> <li>• Tax on lottery winnings</li> <li>• Trade taxes</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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Sources: Tax information office of the Intercantonal Commission for Tax Declarations, Berne 2001.

It is not that politicians are “worse people” [...]; it is just the constraints and internal mechanisms of the whole business of politics. And, as we should have learned by now, these can prove to be devastating for countless people or even fatal for whole populations.

Roland Baader, *Die belogene Generation*,  
Gräfelfing 1999, p. 37.

## 8. Federalism and Democracy

In the federal state, the limiting of the majority principle does constitute competition for democracy. On the other hand, though, the federative principle does allow the democratic postulates to be reinforced through the creation of areas which affect our lives and functions that are easily understandable. Democratic involvement at different levels and the competition between regional authorities do, at least in part, neutralise the anti-liberal, centralising and socialising tendency of the majority principle.

The success of Switzerland’s political system is not based primarily on the principle of direct democracy, but rather on the combination of direct democracy with non-central, competing decision-making and taxation units. The compactness of the country also promotes a transparency between state responsibilities and state expenditure and taxes. This transparency is called for repeatedly by all those who use the infrastructure, who pay taxes and who vote. Those responsible in the world of politics must be prepared repeatedly to face direct scrutiny by their citizens. Although when combined with competing tax sovereignties, direct democracy, can curb a continuing increase in the share of government spending in the economy over a long period, it also has this same curbing effect on liberalising and deregulation programmes. Radical and liberal economic reforms would not be possible in Switzerland’s non-central, direct democratic system: they would be blocked by a coalition of opponents from all manner of camps and with the most varied of motives.

Self-determination and co-determination are, fundamentally, equal and combinable problem-solving processes. From a libertarian perspective, however, of these two, preference has to be given to self-determination. At best, co-determination is merely of secondary importance, since we often have the experience of belonging to the minority and of becoming heteronomous as a result. The loss of personal autonomy is alleviated only by the realisation that the majority can benefit from that solution for which it has voted itself. From this perspective, there is perhaps really a correlation between democracy and a feeling of happiness for the majority. But how do we compare and offset the relative feeling of happiness of the majorities against the minorities who are constantly outvoted? The society that provides most “happiness” is the one that allows a maximum of self-determination.

What remains open is to define those problems that can beneficially be resolved via collective and enforceable norms. These problems could even reduce

in number. Anyone who seeks to apply universally-binding coercion must be certain that what he is doing is right. He has to provide proof that such a course of action is really geared to achieving the best possible situation for the population as a whole. The fact that something is “popular” or “well-meant” is no longer sufficient. In future, it will become increasingly difficult to provide proof that coercive legislative norms, political programmes and projects are in fact necessary, able to function properly, efficient and financeable over a long period.

In a globally networked and highly complex society, the proportion of problems that need individual, short-term and “tailor-made” solutions is growing extremely rapidly, while the proportion of generally abstract, universally-binding and long-term compulsory solutions is essentially decreasing. This is the result of developments in technology and civilisation, and has little to do with ideology or party politics. Consequently, it will be more beneficial in the future if private autonomy is entrusted with the task of drawing up the norms that regulate our society, rather than democracy according to the spirit of the majority principle. Such a practice must, however, be restricted to a few unchanging, universally binding and universally comprehensible principles if it is to remain a credible, efficient and financeable practice. After all, it is not the rigorous limiting of state responsibilities and state expenditure, but rather their uncurbed and continuous over-extension by populist-controlled majority and mass movements, which ultimately lead to the collapse of the political system.

A world of federative self-administration, held together by attachments based on morals and conscience, is, naturally, quite different from a world of order-giving, hierarchical administration, in which mechanical and machine-like attachments prevail.

Adolf Gasser, *Gemeindefreiheit als Rettung Europas*, Basel 1947, p. 174.

## 9. Federalism and communal autonomy: Adolf Gasser revisited

Swiss federalism is a three-tier system. In discussions concerning federalism, the lowest level, the *Gemeinde*, or municipality, is hardly mentioned. However, anyone who takes “federalism” and “subsidiarity” seriously must also include municipal autonomy in the equation. Public spirit and the virtues of citizens can only really develop to their best advantage in a local context; if the relationship between responsibilities and expenditure is visible, it is possible to monitor the power exercised by the institution and by the personnel. If a direct democracy is to function, there are certain prerequisites. And only non-central federalism and municipal autonomy fulfil these, since it is only in these structures that the true needs and interests of the citizens come into their own effectively.

At the time of the Second World War, the Swiss historian Adolf Gasser penned an authoritative and pioneering work about “Freedom of the municipality as the saviour of Europe”. Demonstrating acuity and a veritable flair with language, Gasser develops his central thesis, which states that democratic constitutions can continue to exist only if they have federalist structures and if their municipalities enjoy extensive and guaranteed legislative autonomy. Gasser wrote that “the collapse of the liberal national constitution came about purely as a result of factors relating to internal politics, not ones relating to external politics. To be precise, democracy failed, without exception, in states where the population had been accustomed to political freedom since time immemorial. Because no one succeeded in achieving an organic combination of freedom and order, the social and political differences inevitably came to the fore and rendered any successful development of the democratic institutions impossible.” (Gasser, *Gemeindefreiheit*, p. 8).

What Gasser understood by freedom and order was a political and social constitution based on and built on the freedom of the municipalities. Freedom of the municipalities means the free social co-operation and classification of the individual. The desire to play a part in shaping society and having a share of the responsibility within a small sphere is also decisive. States that have inherited a system of local autonomy dating back to the time of yore have proved to be resistant both to monarchist and bureaucratic centralisation in the form of absolutism and also to right and left-wing totalitarianism. According to Gasser, the “old free” states in this category include Great Britain, the United States of America, the Northern European states, the Netherlands and Switzerland.

On the other side of the coin are the continental European “liberalised authoritarian states” of Spain, France, Italy and Germany. The great European

mainland states have remained most strongly imbued with the administrative command and subordination principle and therefore with the spirit of power [...] Consequently, the modern state in Italy, Spain-Portugal, France, Germany and Austria was also formed, unilaterally, from the top downwards. As a result, the individual social classes were purely mechanically joined together to bring about national unity by an administrative command and power apparatus, and they were not given any opportunity in their clearly structured local sphere to make a joint and self-responsible contribution towards ensuring the prosperity of the state or to trust each other politically.” (Ibid, p. 103).

“The interpretation of what constitutes a state is very different in a world where there is no municipal freedom from that in a world where municipal freedom does exist. With the latter, the system of government is based on the general desire for local self-administration, while the other is based on general subjugation to the bureaucratic apparatus.” According to Gasser, it is therefore “fundamentally wrong to compare the political and social differences of the authoritarian/centralist world with those of the communal/federative world. Anything that repeatedly threatens to degenerate into passion and hatred in the sphere of influence of the hierarchy of officialdom, particularly where there are liberal constitutions, will, as a rule, find itself greatly moderated by moral counter-forces when planted in the soil of extensive local autonomy” (Ibid, p. 181).

One matter of central concern for Gasser is the interdependence of democracy and municipal autonomy as a prerequisite for explaining a long-lasting, stable state system. “A sense of community in freedom is only really capable of surviving in a situation where an organisation has a clear and straightforward structure, where the people know each other personally and where they are accustomed to assessing the people and the members of the authorities which they have elected themselves, not merely on the basis of the party which they represent, but also, firstly, on their capabilities and, even more importantly, on their character. A lively “citizens’ forum” of this nature, in which different opinions and special interests have to wrestle with each other to ensure that a sensible balance is reached, can be achieved only with free, communal self-government” (Ibid, p. 166 and onwards).

Gasser’s vision of a new Europe after 1945 today seems of even greater significance than ever. “Europe can only become a world of universal and true democracy if it also simultaneously becomes a world of communalism and of living self-government. Its citizens have to set about liberating the centralistically governed power states from their system of bureaucratic hierarchy and therefore from the administrative principle of command and subordination, and building them anew from the bottom upwards.” Gasser proposes the following as a way of building a state anew from the bottom upwards and bringing this process to a successful conclusion: “The bureaucracy of the regional authorities has to be instructed without delay to cease dealing in any way with certain communal administrative matters. The partial autonomy secured as a result of this should then

be gradually developed into a “pouvoir communal” by assigning more and more duties elsewhere. This communal power should also be made safe from any intervention by corresponding legislation. To bring this about, it is essential to ensure that the municipalities are able to secure sufficient sources of revenue for themselves and that they are given full responsibility for determining their own budget with all the self-discipline that this entails. Unless they have this extensive financial self-responsibility, it is not possible for a desire to have a living self-government to grow up, and therefore there can be no sense of communal ethics within the community” (Ibid, p. 199).

Gasser does nevertheless concede that a ‘strategy of orderly retreat’ will encounter a number of hurdles that will be difficult to overcome. “In those places where they have been accustomed to a system of centralist bureaucratic hierarchy since time immemorial, demands for greater municipal autonomy are by no means especially popular. [...] But consideration should not be given to re-educating the people unless they are urged from above to tackle the process methodically and given step-by-step instruction. Such a move can only come through the insight of a strong and stable government” (Ibid, p. 204). It remains to be seen, though, whether this *modus operandi* indicated by Gasser is plausible, or whether it is not rather the pressure “from the bottom upwards” that will force the change to be made.

“The process of turning away from the authoritarian state and from the principle of administrative command and subordination, which is at the basis of every true communalisation process, ultimately requires that a new interpretation of the law prevails as well. To be more precise, the State can longer be considered as the source of all legislation; instead, we have to be able to consider the constituent parts of the states as the upholders of their own independent laws, in the same way as the legal system in early and mediaeval Europe was perceived: first come the individuals, family and communities, and these are later followed by districts and provinces. Under no circumstances can we content ourselves with bringing a comprehensive federalist system into being without subsequently being concerned about developing extensive municipal autonomy that has a solid legal basis for its protection” (Ibid, p. 205).

The question arises as to whether municipal autonomy and democracy are in fact still appropriate in a service and information society that is characterised by high mobility, the complex division of labour and interdependence. After all, are small-scale, democratic political units and communal autonomy not more rooted in those static, rural/agricultural small-town societies that are scarcely to be found any more these days? Gasser denied this, and above all he understood the role of municipal autonomy as a counterbalancing element in a social and welfare-state political system, for it is only in conditions that are easily understandable and true-to-life that the citizen can acquire “what is usually described as political perceptiveness and a sense of human proportions [...] Only here, in the soil of freedom, is it possible for that minimum of trust in the community to develop, and it is precisely this that usually effectively stems the tendency towards both

authoritarianism and anarchy.” (*Gemeindefreiheit und Zukunft Europas*, p. 463). An increasingly sophisticated, highly specialised society and economy can only function with non-central and, ultimately, local decision-making, where individuals take the initiative and are willing to assume responsibility. Such a system favours politically non-central solutions and is an indication of the increasing importance of municipal and private autonomy.

The highest degree of concurrence of expectations is achieved by the demarcation of protected areas.

Friedrich August von Hayek, In *Hayek - Brevier*, Ed. Gerd Habermann, Thun 1999, p. 66.

## 10. Federalism and minorities

It is often asserted that minorities (ethnic, linguistic, cultural and religious) would be more effectively protected by centralist structures than by federalist, non-central structures, since the central governments would have the financial and legal means at their disposal to allow them to intervene, to tax and to subsidise. Experiences in Switzerland have shown that minorities do have better chances when they live in smaller, competing political structures, in which overlapping minorities and majorities co-exist, and these can, in turn, provide each other with mutual support in changing coalitions. Those groups that are minorities at federal level are majorities at cantonal and communal level. Consequently, any feeling that they might have of being oppressed and discriminated against can largely be avoided. Swiss federalism produces a situation where all citizens can belong to both majorities and minorities simultaneously, and this allows social tensions and conflicts to be tackled more easily. Centralist governments tend at all levels to assimilate minorities by force or at least to define their identity, to settle boundaries and to form ethnically homogeneous regions. The central government may well be willing to pay subsidies; however, these subsidies make the minorities dependent on their financial benefactors and reduce the chances that the minorities will be able to decide independently about their own future. Competition between overlapping heterogeneous groups may not appear to be the best possible solution in every respect. In the medium and long term, however, it does offer all those concerned and involved the best possibilities for learning and the best chances for development.

Political borders are often the result of wars and mark the result of a power process. So-called “natural borders” also have something arbitrary about them, since peoples often opted to settle on both sides of a river or a pass so that they could exploit the traffic situation for trade purposes. As a country, Switzerland is typical, with some natural and some historical borders. Population groups that live in a settlement area that straddles a border find themselves under considerable pressure in times of war. If the two states in which they are living wage war against each other, they are faced with an insurmountable dilemma. To whom should they show their allegiance: their linguistic group or their state? If they opt for the linguistic group, they become traitors to their fellow citizens; if they choose the state, they are betraying their linguistic group. As a result, one way or another, they become an uncertainty factor, an unpopular group which is discriminated against and which others would like to see wiped out by forcing them to assimilate. This has been the experience of minorities over the last 200 years, a period characterised by the mania of nationalism and by national wars.

Although national wars have not exactly disappeared as a result of continental and global economic interlinking, such conflicts are more relicts of a form of politics that belongs to the past. There is a great hope that the time of nations warring against each other is over, and that this next century will see an epoch of intensive exchange of goods and services between countries. The starting position of a policy governing minorities is more favourable in peacetime, since it is a positive thing for a state to have minorities that know the language and the mentality of the neighbouring state and trade partner. Minorities no longer need to be shielded from nationalist fears and to be compensated for their disadvantages. It is far more important to allow them to become economically productive as part of the enlightened self-interest of the country and to let the whole country profit from that. From being a risk factor, bilingualism has now become a factor of good fortune.

Minorities do still have to ward off the threat of assimilation. At best, majorities consider the supporting of minorities as a necessary evil and a concession that is imposed from outside the country under international law. The detractors still look at the cost aspect and have still barely realised that the issue at stake here is not one of minimising risk in political terms, but also of maximising opportunities. The more purely economic thinking is allowed to assert itself over political/nationalist thinking, the better it will be for the minorities. We only need look here at Switzerland's experiences with the Canton of Ticino, the Italian-speaking minority, which makes up just 10 percent of the Swiss population. In the last century, Ticino was one of the poorest cantons. However, as a result of forging economic links with Northern Italy and the arrival of settlers from German-speaking Switzerland and Germany, it has now become an important economic factor, producing a positive balance for the national economy. Nevertheless, any attempt to quantify the advantages and disadvantages that minorities bring is always a questionable procedure, in view of their complexity. Nevertheless, it could well be the case that too much emphasis is all too frequently given to the disadvantages.

Minorities have often become the victims of an ethnic ideal among majorities of homogeneity and "cleanliness". Consequently, they run the risk, for their part, of trying to assert this ideal of homogeneity to the outside. Even though one might have a certain sympathy with this attitude, it cannot be viewed as the best strategy for their survival. The best strategy for them would be to adopt a stance that falls somewhere between adapting and asserting themselves, with the aim of creating a lasting "win-win" situation for themselves.

At first glance, homogeneity, ethnic and linguistic uniformity and centralising are economically more successful than heterogeneous pluralism. Historical and empirical evidence does not confirm this, however; or at least not always and with ever decreasing frequency. In a world where globalisation is on the increase, the economic value of diversity, of ethnic intermixing, of overlapping systems and of non-centrality is only just being properly discovered. The heterogeneous factions will have to exploit their advantage over the homogeneous factions. States that have already had experience in this regard should allow other states to share the benefit

of these experiences, but without being presumptuous and allowing themselves to act as role models in any way.

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 demand everything from that State and saddle it with their burdens.

Jacob Burckhardt,

Weltgeschichtliche Betrachtungen, Basel 1905

## 11. Summary: From the robustness of the complex

Non-centrality, diversity, intermixing, competition, flexible co-operation, straightforwardness instead of lucidity, deregulation instead of harmonisation – all of these characterise the political systems of the future that will be able both to learn and to adapt. The arrangement of structures into small units will prove to be a real advantage when the necessary political order is organised and guaranteed, provided that the threat by military and economic force is not allowed to come to the fore.

Within the framework of the limits imposed by the constitution, decisions can and should be taken by direct democratic means. This applies in particular to taxation as well. There should be as much direct involvement by the population in determining this as possible, with as few exceptions as possible. There should likewise be maximum direct involvement in monitoring government expenditure. A transparent finance and taxation policy repeatedly establishes the political links at all levels of the state organisation between the responsibilities, the expenditure and the tax burden. The so-called “exit option”, i.e. the possibility of “voting with one’s feet or with a removal truck”, should serve to counteract excessive taxation on high incomes and fortunes.

The more direct the democracy is, the more strongly the connection between taxes and what the State provides in return will be perceived, and this will thus become a subject of political debate vis-à-vis the authorities that levy the taxes and provide the infrastructure. The responsible taxpayer and the responsible citizen are then one and the same person. And this person will critically monitor the price/quality ratio of the services provided by the authorities which he has elected, while demanding and promoting thrift and transparency and being sensitive to any inadequate provisions. Votes conducted on a per capita basis work only if the parties concerned can be compared on a per capita basis as well.

In such a “hotchpotch” of political and fiscal structures, the result, from a liberal point of view will never be ideal everywhere. What does happen, though, is that we see the emergence of what amounts to a testing centre environment, a market of different political conceptions and taxation rates, in which the aforementioned option of “voting with one’s feet” (or with the removal truck) becomes all the more reasonable the smaller these regional authorities are. The solidarity that is demonstrated in “face-to-face” groups cannot be sacrificed to third parties or to a faceless large-scale society.

The danger of the so-called “race to the bottom”, a dash towards the zero-tax and zero-performance state is barely a reality, especially since competition among the regional authorities also allows comparison between them. Anyone who can offer better public infrastructure and therefore improve the collective quality of life as a result can fully expect to receive the support of the taxpayers. The same is also true for institutions from which not everyone derives a direct benefit. However, it is essential to prevent a situation where a general culture of “free-riding” becomes established. Transparent links between expenditure, benefits and the costs of bureaucracy, together with budgetary discipline, are all prerequisites for tax sovereignty to be delegated to the taxpayers. If we do not wish to destroy that ever-present willingness for solidarity that exists among the population, albeit in short supply, appropriate consideration must be given to the principle that infrastructures have to be paid for by those who use them at communal level as well.

In those cases where there is high communal autonomy and also high regional autonomy (and at European level national autonomy as well), we also have to accept the risk that there will be all manner of decidedly “unliberal” experiments and shortfalls in provision by the state. However, as soon as there are infringements of human rights, which as a rule cannot be tolerated, these experiments should not be allowed to continue. Such infringements require a system of sanctions beyond the local and regional level.

We should not hide the fact either that, when they strive for liberal aims, standardisation, harmonisation and centralisation can bring “more freedom”, particularly in areas that are lagging behind in this respect. Centralisation does, however, also involve the danger that the scholarly and political misconceptions becomes standardised as well. As far as freedom content and learning capacity vis-à-vis highly centralised systems are concerned, a number of minor, non-central misconceptions which compete against each other are more efficient in the long term and both outwardly and inwardly less dangerous.

## 12. Fourteen Theses

- The ambiguous concepts of “Federalism” and “Subsidiarity” need to be further clarified by using the unambiguous term of “Non-centrality”.
- According to liberal understanding, federalism is a political problem-solving process which mediates between autonomism and centralism, but which, tendentially, places non-centralist emphasis in favour of autonomy of the constituent state.
- The subsidiarity principle demands that joint problems be solved at the lowest possible level. As it does not stipulate any criteria as to what should be understood by the word “possible” in individual cases, it is neutral as far as centralisation and non-centralisation are concerned and in practice even allows for additional centralisation.
- The subsidiarity principle has to be defined more precisely and radicalised in such a way that it opts for powers, responsibility and financing to be given back to the most autonomous or private-autonomous level of administration if a problem can no longer be adequately resolved or financed at the central level.
- The status of communal autonomy has to be rediscovered in terms of its fundamental significance for ensuring political transparency. Political and fiscal powers should not be delegated down a hierarchical ladder, as is the case with the decentralisation procedure, but rather they should be passed over to and taken care of by small units.
- Per capita votes work only if those parties concerned are comparable and perceptible on a per capita basis as well
- There should be no taxation without the regional authority being involved in determining the form of the taxation. No one should be taxed without being able to decide on the amount he or she will be taxed and the purpose for which the tax levied will be used. “No taxation without representation”.
- A regional authority that is financed “from above”, i.e. from the central government, is, to a large extent, dependent and corruptible.
- No government power without taxation powers. The overall autonomy of a regional authority is very closely linked with its financial and fiscal autonomy. Any body that cannot levy its own taxes does not have true autonomy. Any body which wishes to rule (both executively and legislatively), and which derives the benefits of political popularity from redistributing resources for social and political purposes and from making public services available, should also bear the corresponding cost in terms of popularity of levying taxes. “No representation without taxation”.

- Rational reorganisation of public finances in a democracy is not possible unless transparency can be established between expenditure, responsibilities and the bodies that provide financing.
- The equalisation of revenue and costs between government and regional authorities impedes competition and transparency, and should be rejected as a policy. It results in those administrations that are thrifty and sensible being penalised, while the irresponsible and free-spending ones are rewarded.
- The aim behind a federalist, non-central, political and social constitution presupposes a strategy that provides for privatisation, limitation, decentralisation and deregulation.
- Non-central structures are not *a priori* better than central structures. They do, however, make experimentation and public comparison possible, they allow for “competition between the different regional authorities (municipalities, cantons/states, nation states)”, and they are therefore flexible, able to learn and able to adjust. In short, they embody those very qualities that are crucial in times of rapid change.
- In a world where globalisation is on the increase, the economic and political value of diversity, of ethnic intermixing, of overlapping systems and of non-centrality is only just being properly discovered.

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