



# **Federalism and Multiculturalism**

**The Main Constitutional Principles  
of Multicultural Switzerland**

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# The Main Constitutional Principles of Multicultural Switzerland

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We know that some constitutions are based on the homogeneity of the culture of their people. Those states promote and enhance the cultural heritage of the country. The common language is considered an essential element to guarantee homogeneity and democratic communication as proclaimed in the famous Maastricht decision of the German constitutional court. In those states, smaller language groups are tolerated at best as guests who are allowed to use the mother tongue as a second language for private needs. In worst cases, they are feared as potential enemies who might in number democratically overthrow the existing cultural majority. The constitution of those states has to define what is good for "us" as what is good for the majority culture.

Other states ignore culture as a nation building factor. Their constitutions are based on a set of universal values uniting all citizens as political beings within a specific territory. The constitution of such a state has to define what is good for "all citizens of the nation" living in the specific territory. Those states consequently ignore ethnicity as an essential political factor. Cultural diversity divides while politics unites.

Immigration states, finally, have to integrate the various cultures of the diverse rooted peoples within one constitutional design. They deny the culture of native peoples and unite diversity of the immigrants by integration based on some common values, such as the notion of the American dream. They ignore the diversity of the cultures of the immigrants as a political factor. The constitution defines what is good for "us immigrants" ignoring the values of native peoples.

The constitutionalism of modernity is based on the concept that human beings are universally equal as *Homo sapiens*. Factors which may promote particularities are either denied or ignored as politically irrelevant. Thus culture as a political factor is ignored or at best considered as a nation

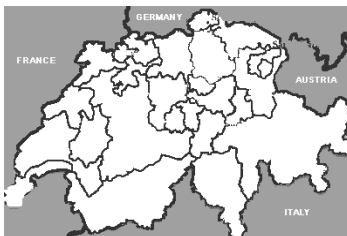
building factor for homogeneous nations. Thus modern constitutionalism excludes the reality that 95% of the world population is living in a multicultural society, and ignores the fact that many citizens are not satisfied to be only politically respected as reasonable citizens without cultural roots. They require political recognition as cultural human beings equal as human beings with reason and understanding, but unequal with regard to their language, religion and historical roots.

The Swiss constitution has in fact tried to develop a special type of federal state developed and determined by its multicultural environment. This special type of a federal state is based on the following 14 principles:

### Coping with Language and Religious Diversity

Switzerland is a small country of 7 million inhabitants surrounded by Germany, France, Italy, Austria, and the principality of Liechtenstein. Although the first development of small local state units seeking independence from foreign kingdoms dates back to the twelfth century, modern Switzerland was constituted out of 26 sovereign cantons (including six half cantons) with the first Federal Constitution of 1848. The twenty-sixth canton (Jura) was constituted more recently by separation from the Canton of Berne at the end of the 1970s. Seventeen cantons are German-speaking, four cantons are French-speaking, one canton is Italian-speaking, three cantons are bilingual (German-French), and one canton has three languages (German, Romansh, and Italian). In 1874, there was a general constitutional revision approved by the majority of the voters and the majority of the cantons adopting a new constitution. This constitution remained in force until 1999, although it was modified by approximately 140 amendments.

Figure 7. Map of Switzerland



Source: [www.jpmoser.com](http://www.jpmoser.com)

A new Constitution was introduced on 1 January 2000. The new federal Constitution did not radically change the political system, but with regard to federalism, it includes important new provisions, which may be the beginning of new federal developments in Switzerland.

Swiss federalism has developed out of several different, independent, and very diverse communities. They were not integrated into the nation-

building process of Europe in the eighteenth and nineteenth centuries. On the contrary, they formed their own governmental system and constituted a state composed of different sovereign cantons, that is, of very diverse political units, different language communities, and different religions. The main purpose of the alliance (*Bund*), which later developed into a federal state, was to rule the political affairs of the cantons and of the alliance independently and according to their own values of democracy.

This policy was the reason that at the edge of the three big language groups of Western Europe (German, French, and Italian), some 25 democratic corporations could unite in an alliance around the Alps. In 1848, this alliance was transformed after a short civil war (Sodenbundskrieg) in 1847 into a federal state with a federal constitution. The federation is still called the Swiss Confederation for several reasons – in particular, because the German name (*Schweizerische Eidgenossenschaft*) cannot be translated into French and Italian. The very legitimacy of this unit is based on the constitutional autonomy of the cantons (self-rule) and on their constitution-making power at the federal level (shared-rule). The Swiss Confederation exists through and by the will of the cantons.

Each of the cantonal democratic communities could thus live and develop according to its own culture, history, language, and religion. Each canton acknowledged the legal culture of its neighbors but established its own perception of the state, law, democracy, and even state-church relations. They retained their own perception of a cantonal nationhood and state legitimacy. In turn, they maintained their own cantonal and municipal citizenship. Thus, to the present day, every Swiss has kept a three-fold citizenship: municipal, cantonal, and federal (Art. 37 par. 1 of the Constitution).

The cantons and the Swiss Federation have thus adapted in a very diverse manner to modern constitutionalism, while also maintaining their corporativism in a rural environment and culture. According to the Swiss Constitution's Preamble, they did not adopt the melting-pot solution of "We the people of..." (cf., the United States Constitution). On the contrary, they decided to remain according to Article 1 of the 1874 Constitution ("the peoples of the cantons..") a composed nation.

Up to the end of the nineteenth century the causes of conflict within Switzerland were much more religious, between Protestants (55 percent) and Catholics (44 percent), than cultural between the different language groups. This changed radically in the twentieth century. Today, religion as a cause of conflict is fading away. Much more important is the language issue. Taking into account these emerging new tensions among different linguistic communities, the new Swiss Constitution emphasizes the obligation of the

federation to enhance peace and understanding among the different linguistic communities. As did the previous constitution, the new Constitution declares all four languages, namely, German (63.7 percent), French (19.2 percent), Italian (7.6 percent), and Romansh (0.6 percent) as official languages of the country (Art.4). The three main languages (German, French, and Italian) are on equal footing. In the case of the Romansh language, Article 70 of the Swiss Constitution provides only the guarantee for the Romansh-speaking citizens to have their official contact with the federal administration in their own language.

With regard to the other three official languages, they are legally respected with a constitutionally guaranteed equal value. No language has priority; every language has the same original priority. In case of conflict, a judge has to decide according to the most reasonable interpretation, not according to the language in which the statute has been drafted.

The principle of freedom of language is very controversial. Two main principles conflict. Those who advocate the protection of minority languages feel threatened by the majority. They try to defend their language territories by invoking the collective right of the language group within its own territory to impose the language of the territory. This conflicts with the principle of an individual right to language. In fact, the new Constitution provides a compromise on this issue. Article 18 guarantees freedom of language as one of the fundamental individual liberties. At the same time, Article 70, par. 2, stipulates that every canton shall designate its official language. In doing so, the cantons shall, on order to preserve harmony between linguistic communities, “respect the traditional territorial distribution of languages and take into account the indigenous linguistic minorities.” In a conflict between the individual right to language and collective right for community to defend its language territory, the collective right wins, if it is for the sake of harmony and peace.

Peace among language groups is also an issue refereed to in Art. 70, par. 3, which requires the federal and cantonal authorities to “encourage mutual understanding and exchange between the linguistic communities.”

Multiculturalism, diversity, and complexity have often been shaped out of brutal religious wars and ideological controversies that in the past risked breaking the country into pieces. Switzerland thus remains a composed nation with an important potential for conflicts. However, there is today, certainly, a large consensus that minority interests should not be pursued with violence but rather by peaceful political means. What are the reasons that make all the different communities renounce violence and accept peaceful decision-making processes? The basic reason is to be found in the

legitimacy of the unity of the nation. But as the nation is not ethnically homogeneous, the only factor which does unify the country is a shared commitment to the same political values and the internalized acceptance of the rules of the game of a corporate local and federal consensus democracy. Such a general acceptance, however, cannot be based solely on specific principles of shared rule; it depends just as much on the self-rule principle, that is, on the autonomy of cantons and municipalities.

The most provoking challenge of Swiss federalism is its multiculturalism. This multiculturalism is not the outcome of immigration as in such federal countries as the United States, Canada, and Australia. Multiculturalism has its roots in the ancient history of communities that have always lived in Switzerland. The as yet not fully solved challenge in immigration countries with regard to their indigenous populations is more comparable to the multiculturalism European countries such as Switzerland have to cope with. The major and most challenging question thus is: how can so diverse a society as the Swiss community, which is not homogeneous like Germany, find its unity and legitimacy in common political values? How can the exclusive political values of local democracy and federalism, which are not universal and inclusive, enable a composed people to be united within a European environment, which today bases political unity on universal values such as democracy, rule of law, and human rights?

The legitimacy of the Swiss Confederation is based on the peoples of the cantons as well as on a "Swiss nation" composed of different cultures and religions. This nation is fragmented by the cantons, which represent the political units of the federation. The peoples in the cantons are politically committed to their respective cantons and to the federation, but culturally they are also linked to the strong culture of the related people in their respective neighbor countries. The unity of the state thus is based on the common understanding and on the common perception of these fundamentals of Swiss politics. This historical reality ultimately shapes the federal structure of the federation. If the Constitution did not take this reality into account, the Confederation would ultimately split into the different ethnic communities.

The paradoxical formula of "diversity in unity" (preamble) describes the federal principle according to the Swiss understanding of its multicultural reality. Diversity in unity is the starting point of different theories on federalism. It not only emphasizes that different cultural communities can be united by their firm will to be a political union, but it expresses also the dialectic tension between self-rule, shared rule, and solidarity. Federalism as a structural principle depends on the constitutionally established and protected balance between self-rule and shared rule. All measures of the

federal government and, in particular, federal statutes have to respect this balance in order to accomplish the mandates of the constitution.

### **The Main Constitutional Principles**

#### ***Legitimacy***

*Principle: Take Cultural Diversity Seriously*

The constitutionalism of modernity is based on the concept that human beings are universally equal as *Homo sapiens*. Factors which may promote particularities are either denied or ignored as politically irrelevant. Thus culture as a political factor is ignored or at best considered as a nation building factor for homogeneous nations. Thus modern constitutionalism excludes the reality that 95% of the world population is living in a multicultural society, and ignores the fact that many citizens are not satisfied to be only politically respected as reasonable citizens without cultural roots. They require political recognition as cultural human beings equal as human beings with reason and understanding, but unequal with regard to their language, religion, and historical roots.

In order to take cultural diversity seriously those constitutions that deny or ignore culture as a political factor need to change their policies and to recognize culture as an essential political factor, which in multicultural states enhances cultural diversity based on the unity of universal values. States based on the pre-cultural homogeneity of the people will have to recognize culture as a political factor not only for one, but for all cultural communities must be given a political recognition, which enables them within a guaranteed autonomy culturally to develop and to participate on decisions to be taken with regard to the common destiny of the common state.

Example:

Preamble of the Constitution:

*“Determined to live together with their diversities respecting each other in equity.”*

*Principle: Fatherland / Motherland for Minorities*

A constitution that wants to take diversity of languages and cultures seriously cannot treat minorities only as tolerated guests. It must, rather give different language communities a proper constitutional status within the polity they constitute. Cultural communities must have state status in order to identify their state as their fatherland. Indeed they will only be able to recognize the state within which they live as their Fatherland or Motherland if they participate in the “ownership” of the state as “their” state.

Example:

Article 37 Nationality and Citizenships

(1) Everyone who holds citizenship of a Commune, and of the Canton to which it belongs, has Swiss citizenship

*Principle: Composed Nation*

A culturally diverse political system requires a new fundament for its legitimacy. Such bases can only be built upon the concept of a composed nation. Up to now the nation concept united human beings by the social contract on the basis of “we” against “them” the “we” being united on the basis of political (what is good for all) or homogeneous cultural values (what is good for us). A composed nation will need a political social contract to unite different cultural communities and to recognize some internal cultural values, including also political particularities. The constitution of such states will be based on values which are good for “us” as common values and in addition good for “our different communities” but not necessarily good for all human beings in the sense of universality.

Example:

Article 1: The People and the Cantons of Zurich, Berne, Lucerne, and Jura form the Swiss Confederation.

*Principle: Of Double and Multiple Loyalties*

Most states are built on the basis of the one and only loyalty of their citizens. Dual citizenship is prohibited. A state which recognizes the political value of its different cultural communities will have to be based on a concept of multiple loyalties, a concept that will have to rely on double or even multiple citizenships as for instance the citizenship of the European Union.

### **Rule of Law**

*Principle: The Right to be Different versus the Right to be Equal*

Our actual concept of equal rights is based on the assumption that all human beings are equal because they want to have the same opportunities within the political community. However, in multicultural states people want to have the same opportunities within their community and then achieve equal opportunities of their community with regard to other cultural communities. Thus, with regard to cultural diversities, human beings require equal rights as individuals with regard to their community, and the right to be equal as belonging to a community respected as an equal unit with regard to other communities. Being rooted within their culture, they want to be



respected as being different from human beings belonging to other cultural communities. Their cultural particularity has to be recognized in the sense that their difference is considered to be a value and not a burden.

Example:

Article 4 National Languages

The National Languages are German, French, Italian, and Romansh.

*Principle: Four Dimension of Freedom: From, By, To, Within, the State  
Collective Rights*

Individuals belonging to different cultural communities should not only be protected in their equal rights as individuals, but they should also be respected as equal within their rights as being part of their community. Good relationships among different communities have to be built on the recognition of the equality of their cultural value. When a minority culture is not recognized as a culture with equal cultural value with regard to the majority culture, those human beings belonging to this minority culture will feel discriminated. Harmony between the different cultural communities is in particular based on this equal cultural recognition and also political recognition of the different communities. The collective value of culture has to be appreciated on the same level with regard to other communities not taking into account numbers or statistics.

The first dimension of liberty is the liberal negative right to require the state to abstain of any infringement within the unalienable rights according to the Lockean concept. The second dimension: Liberty by the state embraces the social rights. Without education, liberty of the press becomes an empty right. Without social security, in case of illness, age or accident nobody can enjoy liberty and those who are in good health will always fear of losing sometimes their liberty because of the common human fate. Liberty needs a state which provides the necessary conditions to enjoy it. The third dimension is the liberty to the state. This dimension points to the so called collective rights. Communities must be able to require from the state autonomy and to a certain extent the right of self-determination. Without such right, all those belonging to minorities will feel discriminated with regard to their other liberties. The fourth dimension is liberty within the state. This liberty corresponds to the specific Swiss view of democracy. According to the Swiss tradition, democracy is seen as a right granted to the citizens to decide in common to what extent the laws should limit their liberty. Democracy thus gives self-determination to the people, which limit its freedom by democratic legislation. This is seen as freedom within the state. With regard to cultural communities such concept requires delegation to the communities enabling

them at least with regard to cultural issues to decide in common to what extent they agree on the limitation of their freedom in order to promote and finance their common culture and to provide common education.

*Liberty and Peace*

The aim of the Lockean state is, as Hannah Arendt puts it, individual liberty. A state composed of different cultural communities must additionally aim to enhance peace among the different communities. The constitution will have to achieve the difficult balance between individual liberty on one side and peace among the different communities on the other side. For the sake of peace, e.g. individual language rights, for instance, might have to be restricted in order to uphold the right of a minority fearing for the preservation of their culture.

Example:

Article 18 Freedom of Language: The Freedom of language is guaranteed.

Art. 70, par. 2

In order to preserve harmony between linguistic communities, the cantons shall respect the traditional territorial distribution of languages, and shall take indigenous linguistic minorities into account.

***Shared Rule***

*Principle: Participation of minority cultural groups in constitution-making*

In order to establish and limit political power, the basic constitutional principles must be perceived as being legitimate by the all of the different cultural communities concerned, regardless of the question of whether they agree on every single political decision that is taken within the political process. This legitimacy can only be achieved if the different cultural communities have the power to participate on an equal footing in the constitution making process.

Example: Article 45 Participation in Federal Decision Making

1. In the cases specified by the Federal Constitution, the Cantons shall participate in the decision-making process at the federal level, in particular in formulating federal legislation.
2. The Confederation shall inform the Cantons of its plans, fully and in good time; it shall consult them if their interests are likely to be affected.

*Principle: Power Sharing of Cultural Communities*

Democracy based on the principle that the “winner takes all” cannot establish a governmental system which achieves legitimacy with regard to minority cultural communities which will fear ending up as permanent losers. Only by introducing elements of power sharing, and thus softening the rule that 51% equals a 100% majority, will the principle of democracy be acceptable to minority cultural groups which otherwise would permanently be excluded from participation in the political decision-making process.

*Example: Article 53*

1. All alterations to the number of the Cantons, or to their status, are subject to the assent of the relevant electorate and of the Cantons concerned, and also of a double vote of the People and the Cantons.
2. All changes to the territory of a Canton are subject to the approval of the electorate of the Cantons concerned, and to the assent of the Federal Assembly in the form of a federal decree.

*Self-Rule**Principle: Autonomy*

Cultural communities must be given autonomy based on territory or personal group belonging. They must have the opportunity to decide and implement decisions with regard to cultural development of their community based on their cultural heritage. This may include: education, judiciary and administration, including police. Moreover they will have to be empowered to implement the decisions made on the higher level based on the shared rule principle within their proper cultural community.

*Example: Article 3 Cantons*

The Cantons are sovereign insofar as their sovereignty is not limited by the Federal Constitution.

*Principle: Enhancing Diversity*

The legitimacy of a state with cultural diversity can only be achieved if each cultural community considers the state as its own state. This aim is only possible if the cultural community is convinced that its own cultural heritage is best developed within the respective state. Thus the federation must have the enhancement of diversity as its aim. The realization of this aim is realized in practice by allowing the cultural communities a significant level of self-determination, especially on questions relating to culture. Such goal however can only be realized when the cultural communities are convinced that their proper values can better be put into effect on the common

level than within an own cultural state by secession and self-determination. Since ages, the development of polyphonic music has been considered as a sign of the development of culture and civilization. In the area of politics and democracy, however, still many states and peoples prefer monotony to polyphony. Federal states are somehow examples for the development of more complex forms of political order. Analogous to polyphony in music they can be considered as a sign of a more complex form of political order which meets the human reality and does suffocate diversity within monotony but enhances diversity as a value of a “polyphonic” state.

Example:

Article 2 : It (Confederation) shall promote ... the internal cohesion and the cultural diversity of the country

### *Democracy*

*Principle: Self-determination of individuals as a democratic aim*

The primary aim of democracy is not to produce simple majorities, but much more to seek consensus on the crucial issues facing society. Consensus-driven democracy is based on a bottom-up decision-making process that begins with the self-determination of individuals and continues to small municipal, district and regional communities and ends with the level of state or even international communities. Decisions should be taken at the level at which the citizens, as individuals, are able to give the highest possible input in order to enable the highest possible majority of individuals to identify with the decision resulting from their input.

Democracy should not be reduced to a state principle, which has only to serve the “production” of an efficient majority. Democracy has rather to serve liberty and it should enable by the political public discourse legitimacy of procedure and of institutions providing a political consensus-making process. A consensus-oriented democratic process which prepares decisions bottom-up is based on the conviction, that each decision of a polity should provide for the single individual as much self-determination as possible: either by its individual liberty or by its participation in the common decision making. The smaller the community is, in which one has to decide, the less is the individual self-determination limited. Within the small group the single individuals are given the best chances to design the polity and the freedom of the individual within the respective group. The federal division of democracy into the municipality, the canton and the federation which can even be continued on the international level provides for an optimal balance of self- and co-determination. It guarantees that all decisions have to be taken by the best possible consensus in order to guarantee best possible self-determination.

**Example: Preamble**

Resolve to renew their alliance so as to strengthen liberty, democracy, independence and peace in a spirit of solidarity and openness towards the world.

*Principle: Value of Compromise as Alternative to the "Winner Takes All" Democracy*

Most democracies are prepared to give 100% of the state power to 51% of the voters. In a state with cultural diversity such system needs to be adjusted on the bases of compromise as fundamental political value. In such a system 51% must not be considered as 100% but a small majority lacking 49% of support. Thus the tiny majority will have to find the necessary compromise in order to achieve a higher percentage of approval. The political decision-making process and the political institutions have to be guided by the idea that a compromise, which produces larger approval, has a higher value than a small majority. This of course presupposes a political culture, which considers compromise as a value and strength not as weakness because only with the compromise one can reach a higher consensus and thus a more comprehensive majority. In a multicultural democracy therefore the small minority of only 51% is challenged to seek a compromise and better consensus in order to take most of the voters of the losing minorities on board. The decision making procedures and the political institutions will have to be carried by the value of compromise as instrument for conflict management.

**Example: Article 147 Consultation Procedure**

Cantons, political parties and interested circles shall be invited to comment, during preparatory phases, on important legislative bills, on other projects with major implications and also on important international treaties.

*Principle: Conflict Management*

Democratic procedures should not only produce effective and legitimate decisions of the society. They must also be conceived as tools for conflict management among the different conflicting communities. This is only possible if procedures are designed in order to overcome in particular categorical conflicts among cultural communities by democratic procedure by a rational discourse. Moreover, democratic procedure will only become sustainable if they are able to diminish categorical conflicts and to turn those conflicts open for a rational democratic procedure.

**Example:**

Article 175: 4. The various regions and language communities must be equitably represented in the Federal Council.

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