

Forum of Federations

Federalizing process in Italy – A comparative perspective

Rome, February 18-19, 2010

***How does Switzerland
live with decentralized
competencies ?***

February 18, 2010

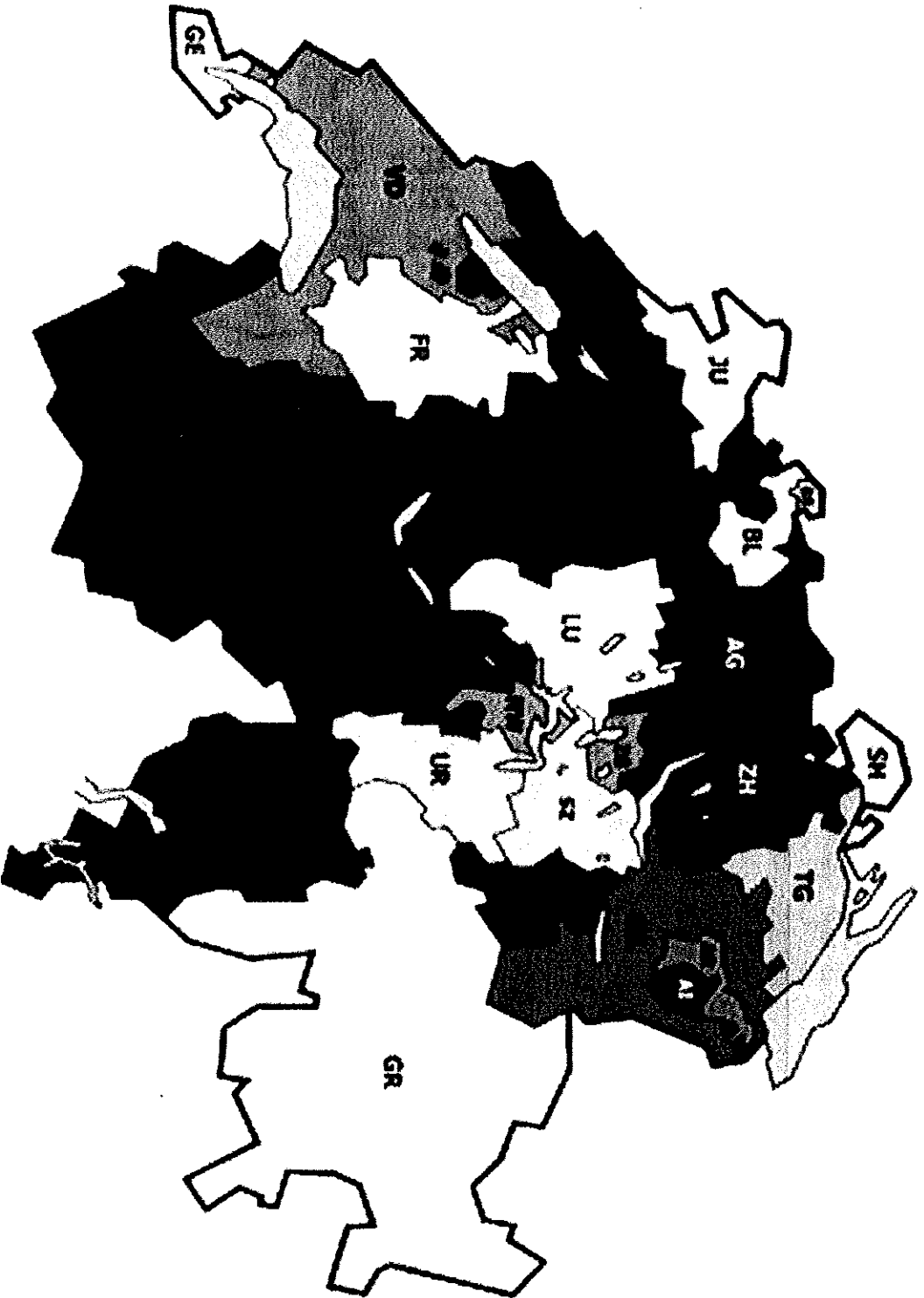
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How does Switzerland live with decentralized competencies ?

- Switzerland as a federal state:
 - Main features
 - Division of powers and its evolution
- Swiss federalism in practice
 - Principles
 - A few examples
- Assessment
- Final word: Swiss federalism tomorrow

Switzerland as a federal state

- Main features:
 - Two political levels : Confederation and cantons (also: municipalities)
 - 26 cantons
 - A federation from the bottom up



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Switzerland as a federal state:

- Allocation of powers
 - Art. 42 Constitution: *“The Confederation shall fulfil the duties that are assigned to it by Federal Constitution”*
 - Art. 3: *“The Cantons are sovereign except to the extent that their sovereignty is limited by the Federal Constitution. They shall exercise all rights that are not vested in the Confederation”.*
- Confederation: enumerated powers
- Cantons: all the rest
- New competence for the Confederation = constitutional amendment

Switzerland as a federal state:

□ Evolution

- ↳ Substantial growth of federal powers through constitutional amendments
 - 1848: 1st Constitution; minimal federal competencies
 - 1874: 2nd Constitution; more federal competencies
 - 1874-1999: partial revisions => significant growth of central competencies
 - 1999: 3^d Constitution => no substantive changes in the allocation of powers

Recent development: 2004-2008

- Reform of financial equalization and task allocation (RET / NFA): A project of renovation for Swiss federalism
 - Constitutional amendments + new laws + changes in the financial flows
 - Financial equalization
 - Disentanglement of tasks and financial flows
 - Principles of subsidiarity and of fiscal equivalence
 - New forms of cooperation between Confederation and cantons
 - Strengthening the inter-cantonal cooperation

Swiss federalism in practice:

Main powers of the cantons

- Education
- Public security (police)
- Health
- Taxes (in particular direct taxes)
- Culture
- Infrastructure (roads, water, construction, planning)
- Assistance to needy persons
- Courts

Swiss federalism in practice: **Working principles**

- Executive federalism => Implementation of federal law by the cantons
- Principle of subsidiarity (art. 5a, 42, 43a Cst.)
- Principle of fiscal equivalence (art. 43a Cst.) => ensures that those who decide have to bear the financial consequences of their decisions

A few examples

- Dangerous dogs
 - Confederation is competent for the protection of animals, not for protection of humans against animals
 - First: Cantonal legislative action
 - Then: Constitutional amendment to create a new federal competence
 - 5 years



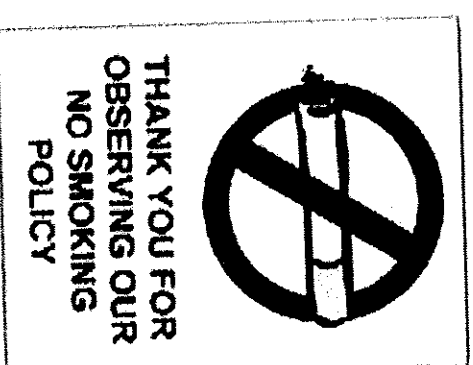
A few examples

- Hooliganism
 - Federal competence doubtful
 - Temporary federal provisions
 - 2 options for a harmonized solution
 - new constitutional provision
 - **inter-cantonal agreement**



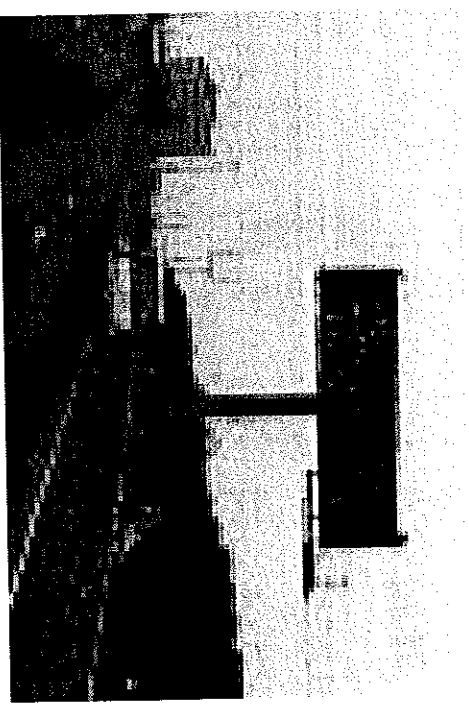
A few examples

- Smoking ban
 - Confederation has a competence
 - First: Cantonal regulations
 - Then: Adoption of a federal law:
minimal solution + authorizes
stricter cantonal regulations



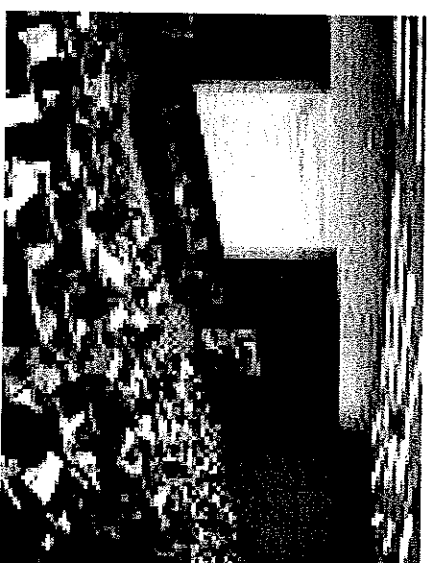
A few examples

- AMBER alert
 - No federal competence
 - ⇒ > Confederation refuses to act
 - Cantonal level slow
 - Political pressure
 - Solution: agreement between cantons and Confederation



A few examples

- Cooperation in the field of higher education
 - Complex mechanism of inter-cantonal coordination and federal intervention
 - Co-existence of 3 instruments:
 - Federal law
 - Inter-cantonal agreement
 - Agreement between cantons and Confederation



Assessment: how does Switzerland live with decentralized competencies ?

- Negative points:
 - Slow & inflexible
 - Complex
 - Inefficient
 - Inequalities
 - Cantonal selfishness and competition
 - Too much federal intervention
- Positive points:
 - Slow
 - Creative
 - Cantons = laboratories
 - Cantonal competition
 - Proximity to the citizens

□ Recent tendencies

- Return some powers to the cantons
- More inter-cantonal cooperation and coordination
- More cooperation between cantons and Confederation
- Mostly through informal instruments

Final word: Swiss federalism tomorrow ?

- No abolition of federalism
- Shift in power in favour of the Confederation will continue
- More cooperation
- 10 cantons instead of 26 ?

Thank you for your attention !

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