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## Should the Federal Council be elected by the people?

The question of whether the Federal Council should be elected by the people has appeared on the political agenda time and again ever since our federal state was founded. A popular initiative calling for this extension of direct democracy has been tabled. There are sound reasons for the involvement of the people, but some reservations too. By Rolf Ribi

"The people's welfare means the people's vote" was the slogan that appeared on the placards of the Zurich Social Democrats in 1900. It referred to the election of the Federal Council by the Swiss people. What the left was campaigning for in the last century is now being taken up by the right. It was the then National Councillor Christoph Blocher who demanded the election of the national government by the citizens in 1998. The popular initiative of the Swiss People's Party (SVP) is, according to the party president Toni Brunner, currently "in the drawer, ready to be signed".

The situation is as professor of constitutional law, Alfred Kölz, describes it: "The question of introducing direct popular elections for our national government is like a bed of glowing embers, which are fanned from time to time because of changing political winds." A quick look back at Swiss history over the past two centuries shows that this politically explosive issue has repeatedly preoccupied the Swiss.

Our nation's democratic state is based on the ideas of a great French thinker and one of Geneva's most famous citizens, Charles de Montesquieu, who established the concept of a separation of constitutional powers and the modern constitutional state. In 1748 he said: "A fundamental maxim of this form of government is that the people appoint its ministers." Jean-Jacques Rousseau, likewise from Geneva, wanted to involve the people in all areas of politics. The power of the government should be limited. Its members should be accountable to the people at all times.

When the first federal constitution was being drafted in 1848, Ulrich Ochsenbein, as president of the Diet, called for the election

of the Federal Council by the people, "because it serves the unity of the nation". However, his proposal was defeated, but only narrowly by 10 votes to 9. The Diet later came to the same decision by a clear majority. From this time forth the cantons began electing their governments by plebiscite. All cantons introduced direct popular elections for cantonal governments between 1847 (Geneva) and 1921 (Fribourg).

### Popular initiatives of the left

Two popular initiatives of 1900 and 1942 brought the issue of Federal Council elections back onto the Swiss political agenda. The first initiative called for direct popular election of the government, an increase in the number of federal councillors to nine, "at least two of whom had to come from French-speaking Switzerland", and a proportional representation voting system for the National Council.

The proposal's supporters argued that the people were capable of choosing the best candidates. They said popular elections of the government had proven successful in the cantons, the changes would make the Federal Council more independent from Parliament and that elections by the people would form "the cornerstone of the democratic extension of the state". Opponents said the Federal Council would gain too much power over Parliament, the small cantons would lose influence and the division between the various parts of the country would become more pronounced. The left were in fact attempting to gain a share of power in government through popular elections. The Social Demo-

crats' two-fold initiative was rejected with 65% of votes going against it in a high turnout, though seven cantons and two half-cantons did vote in favour.

There was another vote on Federal Council elections in 1942 in the middle of the difficult Second World War period. The social-democratic popular initiative demanded the election by the people of a government of nine members, "at least three of whom would be from the parts of the country where Latin languages are spoken". Any Swiss citizen put forward by at least 30,000 voters would be eligible for election. Proponents of the idea said it would extend democracy and the democratic rights of the people, provide a Federal Council accountable to the people and reduce the influence of big business. The proposal's opponents countered that increasing the standing of the Federal Council vis-à-vis Parliament would distort the balance of power between the institutions. They also argued it would make the representation of minority groups difficult and could result in "irresponsible people" ending up in government. The initiative was defeated by a majority of 68%, with a high turnout, and rejected by all cantons.

### "The people are no less intelligent"

Yet the "burning embers" of popular elections for the Federal Council continued to glow. Motions in Parliament from the right (National Councillor James Schwarzenbach of the Republican Party) and left (National Councillors Leni Robert of the Green Party and Andrea Hämmerle of the Social Democrats) met with defeat. Nevertheless, in 1998, the powerful SVP National Councillor Christoph Blocher launched his proposal for direct Federal Council elections. He said the government should be subject to the direct democratic judgement of the people, "as the people are no less intelligent than Parliament". Two years later, SVP National Councillor Christoph Mörgele put his proposal forward.

The "completion of democracy" and the "stricter separation of constitutional powers"



are its key concepts. As things currently stand, the Federal Council is primarily accountable to Parliament. If the Federal Council were elected by the people, the government would be directly accountable to its voting citizens. In the view of the SVP strategists, the new Article 175 of the federal constitution should provide for a Federal Council made up of seven members who would be elected directly by the people on a majority basis. The whole

of Switzerland would form a single constituency. At least two members of the Federal Council would be elected by voters in the cantons of Fribourg, Ticino, Vaud, Valais, Neuchâtel, Geneva and Jura.

The election of the Federal Council by the people rather than Parliament raises fun-

damental constitutional questions. These concern the standing of the Federal Council and its relationship with Parliament, the protection of minority language groups and the country's political stability.

### The Federal Council and Parliament

"The Federal Council is the federation's highest executive body", according to Article 174 of the federal constitution of 1999. Any Swiss person who can be elected to the National Council can be elected as a member of the national government (i.e. anyone with Swiss citizenship and aged at least 18). The constitution allows for more than one member to be elected from the same canton. Parliament must however take into account the various parts of the country and the areas of Switzerland where different languages are spoken.

The members of the Federal Council are elected for a fixed four-year term and cannot be recalled during this period. The government is elected by the United Federal Assembly. The two hundred members of the National Council and the 26 cantonal representatives of the Council of States elect each member of the government individually in a secret ballot. It is Parliament's constitutional duty to supervise the government. This

gives the legislative a higher standing than the executive, which contradicts the principle of a separation of powers. The fact that the Federal Council is accountable to Parliament undermines its legitimacy with the people.

The political reality is that the Federal Council is a powerful organ of our state. The international integration of Switzerland and the expertise of the federal administration strengthen the government's position. Their decisions are not subject to referenda, unlike those of Parliament. Referenda that are lost or defeats in Parliament seldom result in the resignation of the Federal Councillor concerned. The Federal Council as the national government is popular amongst the people; Federal Council elections arouse huge public interest.

What effect would election of the Federal Council by the people have on the government's standing? Zaccaria Giacometti, doyen of federal constitutional law, believes popular election of the Federal Council would constitute "a further strengthening of the executive". The Federal Council would become "directly accountable to the people politically". Election by the people better represents the democratic ideal and the principle of a separation of powers.

This is the verdict of Ulrich Häfelin and Walter Halter, the authors of the book "Schweizerisches Bundesstaatsrecht" (Swiss Constitutional Law): "Popular elections would give the Federal Council the same democratic legitimacy as the Federal Assembly." The Federal Council and Parliament would obtain "equal status, which would make Parliament even weaker than at present".

Professor of constitutional law, Alfred Kölz, author of "Neue Schweizerische Verfassungsgeschichte" (The New History of the Swiss Constitution), believes the Federal Assembly would be in a "rather weaker position". He also refers to the policing role of

Parliament, which has no professional politicians. Parliament's key responsibility, namely that of legislating, lies mainly with the Federal Council and administration. The Federal Assembly already struggles to supervise the government. "This fundamental responsibility in particular would be made much more difficult if the Federal Council were elected by the people." This task could not be carried out by the people.

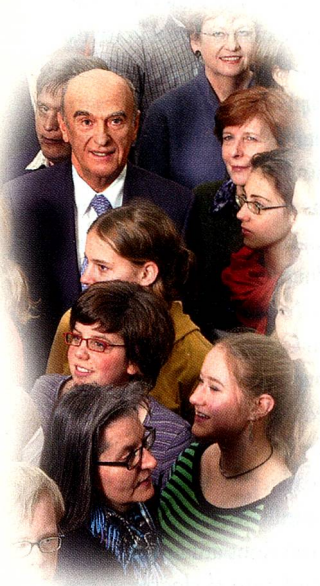
### The cantonal model?

The cantonal system is often put forward as a model for direct popular Federal Council elections. Indeed, election of the government by the people has been taking place in all the cantons for some time now. The people also elect municipal councillors in the political communes without any fuss. The cantons are politically manageable "unitary states". The candidates standing for election to government are well-known in the cantons.

Direct popular Federal Council elections would be different. There would be a single constituency of Switzerland and candidates from all parts of the country would be elected. Despite the modern mass media, a conservative from Appenzell would find it difficult to

elect a liberal from Geneva, whom he hardly knows, to the Federal Council. The "Neue Zürcher Zeitung" provides food for thought: "In our direct democracy we entrust the people to make decisions on the most complex issues, yet take the view that the people are not capable of exercising enough sense to elect the Federal Council and maintain a degree of consociationalism."

Another argument used by the opponents of popular elections is that if Federal Councillors were elected by the people every four years, they would have to organise election campaigns. Election campaigning might prevent them from focusing on their responsibilities, favour populist government proposals, require funding and give influence to



interest groups. "Election campaigning based on personalities and populist pledges would know no bounds", warned Alfred Kölz. And popular election of the Federal Council "would encourage authoritarian tendencies in times of crisis".

### Protecting minority groups

The concept of federalism as a "culture of equilibrium" and the protection of minority groups are deeply engrained in the Swiss people. "Peace in Switzerland depends greatly on how the major languages and regions are represented by the members of the government", wrote former Liberal National Councillor Suzette Sandoz. The Federal Assembly has a legal duty to take into account Switzerland's political and cultural diversity when forming the government. But would minority groups receive protection under election of the Federal Council by the people?

Some cantons have found a constitutional solution to the problem of protecting minority language groups when holding direct government elections. The Canton of Berne guarantees the people of the Jura region representation in the Cantonal Council. The Canton of Valais has developed a sophisticated system which takes into consideration the interests of all parts of the canton. Similar models could be used at federal level. Options might include dividing up the country into several constituencies or setting quotas for minorities. But such regulations are complex and undermine the character of a national election.

### Danger to consociationalism

According to former Federal Councillor Arnold Koller, Switzerland is a "consociational democracy which is deeply rooted in the national consciousness". For him, political consociationalism means "that the major political parties that form the government solve political problems on the basis of a broad consensus achieved through negotiation". The entry of the Social Democratic Party into national government in 1943 marked the beginning of consociational democracy. The high-point of consociationalism came with the magic formula of 1959 (a Federal Council



made up of two FDP councillors, two CVP councillors, two SPS councillors and one SVP councillor). The magic formula came to an end after 44 years in December 2003 with the removal from office of a CVP Federal Councillor and the election of a second SVP representative. In Arnold Koller's view, "not much remains of political consociationalism today".

Our country has enjoyed remarkable political stability because of consociationalism. A key aspect of consociationalism is the will of the government to seek consensus and cooperation. Some commentators believe that the election of the Federal Council by the people might jeopardise this stability. It is of no benefit to democracy if the Federal Councillors constantly have to court favour with the electorate, says René Rhinow, former professor of constitutional law and member of the Council of States. According to former National Councillor Suzanne Sandoz, the sense of joint responsibility for government would be undermined, while Bruno Frick, member of the Council of States, believes posturing to win public opinion would damage cooperation. The long-serving Federal Chancellor, Annemarie Huber-Hotz, hopes "that those advocating the election of the Federal Council by the people are aware that they risk jeopardising the stability of our country".

### Don't we already have election by the people?

Don't the people already elect Federal Councillors in a way – in parliamentary elections? "Make Blocher stronger, vote SVP" was the slogan that appeared on thousands of placards across the country during the last National Council elections. The Christian Democrats' (CVP) poster campaign also called for people to vote CVP in support of

the policies of Federal Councillor Doris Leuthart.

"The misuse of SVP posters to support Blocher was tantamount to an initiative in favour of popular election of the Federal Council", wrote Liberal Suzette Sandoz. The Federal Councillors Blocher, Leuthart and Calmy-Rey are "totem-like figures for their parties", explained media studies expert Roger Blum. Professor of philosophy Georg Kohler also believes that "the Federal Councillors have become the main representatives of their parties".

Parties using their Federal Councillors to fight election campaigns is one thing, but individual Federal Councillors using the parliamentary elections to secure their seats in government through popular support is quite another. Reflecting on last year's election campaign, the "Neue Zürcher Zeitung" said: "The National Council elections were practically stage-managed as an early election of an SVP Federal Councillor by the people." And Roger Blum said: "In a sense we already have the election of the Federal Council by the people."

If parliamentary elections are increasingly turning into Federal Council elections, we cannot be far away from the election of the Federal Council by the people. When the last survey was carried out four years ago, 49% of Swiss people were in favour of electing the Federal Council directly. Change is only likely to happen when a political movement backs this extension of citizens' rights. The major parties will remain silent as long as they continue to hold power in the national government. And the Swiss Parliament is unlikely to

voluntarily give up its constitutional responsibility of electing the Federal Council. The status quo will be maintained for the time being, but the "burning embers" of direct election of the government by the people will refuse to die out.

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