22 Switzerland

Overnight centralization in one of the world's most federal countries

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22.1 Introduction

This chapter examines Switzerland's response to the first wave of the COVID-19 pandemic from the perspective of federalism. The analysis covers the period from 28 February to 19 June 2020. Noteworthy aspects addressed in this chapter are the almost overnight centralization of political power not just at the federal level but also within the seven-member executive following the adjournment of the federal parliament; the rapid enactment of a nationwide shutdown in mid-March 2020, just two weeks after the first case had been diagnosed; and the simultaneous dialogs, coordination efforts, and learning processes among the 26 cantons as well as between the cantons and the national and local levels of government.

Two main lessons can be distilled. First, *experimental policy innovation has contributed to leveling inter-regional asymmetries* in administrative and fiscal capacity. The 26 Swiss cantons are both highly autonomous and deeply interconnected. This encourages not only innovation but also communication and mutual learning. Hence, experimentation and willingness to share emerge as key conditions for effective policy responses. Second, a *“deliberative layering” of intergovernmental cooperation has enhanced the crisis management capacity* of existing institutions. Even though the Swiss intergovernmental relations landscape was already crowded when the pandemic erupted, and the legal framework allowed for almost overnight centralization, the cantons remained assertive in demanding differentiated policy responses. Moreover, at the peak of intergovernmental conflict over how best to deal with rising infections, a “crisis summit” with all 26 presidents of cantonal governments was convened by the central government. Designed on the premise of deliberation among equals rather than minimal majorities, a compromise could thus be found. Rather than simple centralization or outright decentralization, the key to successfully tackle the first wave thus rested in finding new ways of intergovernmental coordination—and quickly so.

Ironically, when later in 2020, the second wave hit Switzerland, much of the failure to adequately deal with that stage of the pandemic was also due to the relative success experienced during the first wave. More specifically, it was felt that the federal level had infringed too much on regional autonomy and that the cantons could very well coordinate with each other only. The result of this was that, as most cantonal governments, afraid of electoral sanctions if imposing strict containment measures, were waiting for their neighbors to enact restrictions, few did so in time. Most cantons had also underestimated the complexity of “track and trace,” which, in principle, all had agreed was preferable to a second nationwide shutdown. Nevertheless, a second

Table 22.1 Key Statistics on COVID-19 in Switzerland as of 10 January 2021

<i>Cumulative Cases</i>	<i>Cumulative Cases per 100,000 Population</i>	<i>Cumulative Deaths</i>	<i>Cumulative Deaths per 100,000 Population</i>	<i>Case-Fatality Percentage</i>
475,604	5,495.4	7,545	87.2	1.6

Source: *World Health Organization Weekly epidemiological update* – 12 January 2021. Geneva: WHO, 2021. Available from <https://www.who.int/publications/m/item/weekly-epidemiological-update>

Figure 22.1 Cumulative Number of COVID-19 Cases (left) and Number of COVID-19 Cases Per Capita (right) in Switzerland by Canton as of 19 June 2020.

shutdown was decreed by the federal government in January 2021, albeit with slightly fewer restrictions and more room for cantonal exceptions (e.g., on ski resorts) than a year before (Table 22.1).

22.2 COVID-19 in Switzerland: first wave human and economic damage

In mid-February 2020, the Swiss authorities and citizenry were confident that they would survive the COVID-19 outbreak in distant China without any significant damage (Duttweiler 2020)—just as the country had come through two world wars largely unscathed.¹ But as hospital beds in the Italian region of Lombardy began to fill increasingly quickly, even optimists had to acknowledge that Switzerland too would slip into an unprecedented public health crisis. The proximity to northern Italy, one of the epicenters of the first wave of the pandemic in Europe, presented a particular challenge: some 68,000 cross-border workers (*“frontalieri”*) commute from Italy into mainly canton Ticino on a daily basis (FSO 2020). Inevitably, the coronavirus would thus simply travel northward, and indeed, on 25 February 2020, the first ever Swiss citizen, a traveler returning from Milan (the capital of Lombardy), was confirmed as the first-recorded Swiss case of COVID-19 (FOPH 2020a) (Figure 22.1).

As elsewhere, the disease spread rapidly throughout Switzerland. On 5 March, the country recorded its first deaths from COVID-19 (NCS-TF 2020). Given the exponential increase in the number of daily-confirmed cases (R_e : 2.61–2.1), at this time, Switzerland was “among the countries with the highest number of [...] COVID-19

cases per capita in the world” (Salathé et al. 2020, p. 1; cf. Mueller et al. 2021). Since the capacity to conduct testing in the country was initially relatively low, there were likely many people with an undetected infection (*ibid.*). At the same time, however, the first wave hit Switzerland very unevenly, as shown in Figure 22.1: While the rate of confirmed COVID-19 cases per capita was highest in Geneva, Ticino, Vaud, Valais, and Basel-City, that is, along Switzerland’s border with France and Italy, the small and sparsely populated cantons in Central Switzerland were only marginally affected (NCS-TF 2020, p. 4; cf. FOPH 2020b). To contain the spread of the virus, the federal government imposed a nationwide shutdown in mid-March 2020, stopping short of an all-out lockdown—that is, it was still possible to go outside for walks and see friends, provided official hygiene and distancing guidelines were followed (see below).

The COVID-19 pandemic and the subsequent government measures caused a sharp drop in Swiss economic activity between March and June 2020, when social and economic life in Switzerland virtually ground to a halt (Rathke et al. 2020). According to the scenarios modeled by the *KOF Swiss Economic Institute* at ETH Zurich, the Swiss economy lost between 22 and 35 billion CHF between March and June 2020, corresponding to some 10–17 percent of GDP. The bulk of these high losses can be attributed to the decline of the global economy (44–71 percent). The shutdown measures implemented in Switzerland caused 19–45 percent of the economic losses, while illness-related absence from work and quarantine requirements was estimated to account for the remaining 8–14 percent (*ibid.*).

22.3 COVID-19 and Swiss federalism: centralization versus cantonal voice

Switzerland is widely known to be one of the most decentralized federal countries worldwide. Not only do all of its 26 cantons possess their own constitution, elected authorities, and wide-ranging legislative and fiscal powers but they are also responsible for implementing the majority of federal law.² This affords cantons an exceptionally strong political position, particularly since the electoral districts for all federal elections overlap perfectly with cantonal borders and political parties too are organized in a bottom-up fashion. At the same time, there is a wide variation among the cantons in terms of their size, wealth, official language, majority religion, and the political preferences of their citizens. For instance, the largest canton has 1.5 million inhabitants, the smallest 15,000. The wealthiest canton receives no annual fiscal equalization payments, while these payments comprise some 20 percent of the total income of the poorest canton. What is more, the six westernmost, exclusively or predominantly French-speaking cantons often feel overruled by the German-speaking majority—not least during the pandemic, when they demanded even stricter measures.

In terms of the competences relevant to fight a pandemic, the cantons are mainly responsible for health and also operate their own hospitals. Furthermore, they exclusively run the police, justice, and prison systems and regulate most economic activities (e.g., licensing and opening hours). They also administer unemployment and other social services and grant health care insurance subsidies. Fragmentation into 26 completely different policy spaces is avoided by extensive bilateral and multilateral coordination and cooperation processes across the cantons. The main instruments of such

horizontal federalism are some 800 treaties (Arens 2020) and around 50 conferences, that is, regular meetings of cantonal ministers or entire governments (cf. Mueller et al. 2021; Schnabel 2020; Vatter 2018).

By the time the pandemic hit Switzerland, the country had just fully revised its legal framework to deal with public health crises: the “Epidemics Act” (henceforth EpidA) has been in force since early 2016. It regulates the timely detection, monitoring, prevention, and control of communicable human diseases. The cantons themselves had pushed for the fundamental revision of the earlier framework as the risk of pandemics rose as a consequence of global mobility (e.g., the 2002–2004 SARS outbreak; cf. FOPH 2013; Rüefli and Zenger 2018, pp. 90–92). The EpidA distinguishes between “normal,” “particular,” and “extraordinary situations” (Art. 6–7). Each one divides tasks differently between the federal government and the 26 cantons (Table 22.2).

The “*normal*” *operating mode* (*stage 1*) corresponds to customary levels of rather high decentralization in the health sector (Dardanelli and Mueller 2019; Gerritzen and Kirchgässner 2013, p. 250). The cantons not only have the majority of powers but also pay more than 80 percent of all of the public money invested in the system (*ibid.*; cf. Vatter 2018). Costs add up quickly, as Switzerland has an extensive network of doctors, well-equipped hospitals (both private and public), and clinics. Patients are free to choose their own doctor just as they enjoy unlimited access to specialists. By law, comprehensive medical treatment is guaranteed to all 8.6 million residents; in exchange, there is mandatory contracting with one of the officially licensed private health care insurers. With regard to the detection, monitoring, and control of the spread of communicable human diseases, under “normal” circumstances, the federal government is not permitted to instruct the cantons to implement any kind of (preventive) measures. Its prerogatives are limited to information campaigns, vaccination evaluations, and border controls (Rüefli and Zenger 2018, p. 125; cf. FOPH 2020c).

Once a crisis kicks in, the seven-person Federal Council—that is, “the supreme governing and executive authority of the Confederation” (Art. 174 Cst)—alone decides whether a “particular” or even an “extraordinary” situation exists. How a given public health crisis may be classified as either the one or the other is, legally speaking, “yet unclear; just as it is still to be seen how the cantons should be involved politically” (Rüefli and Zenger 2018, p. III).

Prerequisites for the proclamation of the “*particular situation*” (*stage 2*) are excessive demands on the cantons *and* an increased risk of infection or an increased risk to health or serious consequences for the economy or other areas of life (lit. a). Alternatively, stage 2 may be called if occurrences constitute a public health emergency of international concern according to the WHO (lit. b). In either case, the Federal Council can order various measures, including very far-reaching controls. In doing so, it must first consult the cantons—just as in normal times when the federal level must inform them of its intentions “fully and in good time” (Art. 45 Cst).

The “*extraordinary situation*” (*stage 3*), in turn, is not precisely defined. Nor are the measures that the Federal Council can take described in detail. The law merely states that it is empowered to take the all the “necessary measures” which may apply to either the whole or parts of the country. As such, Art. 7 EpidA hardly differs from the general emergency law under Art. 185 Cst (“*polizeiliche Generalklausel*”), that is, government-sponsored ordinances that must be limited in duration (“sunset clause;” cf. Rüefli and Zenger 2018, p. 9; Uhlmann and Scheifele 2020, pp. 116–117).

Table 22.2 The “Three-Part Model” of the Swiss Epidemics Act (EpidA)

Stage 1: “Normal situation”			Stage 2: “Particular situation” (Art. 6 EpidA)			Stage 3: “Extraordinary situation” (Art. 7 EpidA)		
Until 28 February 2020			28 February to 16 March 2020; 20 June 2020 (ongoing)			16 March to 19 June 2020		
Confederation	Cantons		Confederation	Cantons		Confederation	Cantons	
Legislation	Limited competencies (e.g., information programs, vaccination evaluation, border controls, admission of foreign nationals)	Full range of competencies to (preventively) detect, monitor, and control the spread of communicable human diseases	Stipulating the use of certain measures comprehensively outlined in the EpidA—provided that the cantons are consulted beforehand	Limited range of competencies to detect, monitor, and control the spread of communicable human diseases (e.g., bans on public events and early closing time for bars)	Instructing the use of any “necessary measures” to combat the spread of communicable human diseases (i.e., general emergency law)	None (<i>de jure</i>)		
Implementation	Supervision of the cantonal implementation of the EpidA	Implementation of the EpidA and the EpV	Supervision of cantonal implementation of federal regulations	Implementation of federal regulations; some leverage	Supervision of cantonal implementation	Mere implementation; no leverage (<i>de jure</i>)		

Source: Own collection based on FOPH (2020c), Rüefli and Zenger (2018).

Note: EpidA = “Epidemics Act” (as of 28 September 2012); EpV = Ordinance on the control of communicable human diseases (as of 29 April 2015).

Although “the equilibrium of powers of was modified toward a predominance of the executive” (Sager and Mavrot 2020, p. 301), during the entire first wave of the COVID-19 pandemic, the cantons retained important implementation powers. Even in stage 3, that is, from 16 March 2020 to 19 June 2020, the constituent units had to execute federal policy responses. In theory, implementation should have been a matter of sheer administrative routine (“*Vollzugsauftrag*”). In practice, however, cantonal governments were able to gain leverage by “monitor[ing] compliance with the measures on their territory” (Art. 1b COVID-19 Ordinance 2) in several ways.

First, even the most clearly defined “*Vollzugsauftrag*” brings about context-specific implementation challenges that require cantonal and/or local authorities to take further action. An example is the outright closure of popular public spaces (such as parks or terraces) ordered by the local governments in large cities such as Zurich (Stadt Zürich 2020) or Bern (Stadt Bern 2020), where the nationwide ban of gatherings of more than five people³ and/or social distancing just could not be enforced. Second, subnational implementation of nationwide COVID-19 measures was contingent upon the administrative resources of a given canton or indeed municipality (Loser and Lenz 2020). This resulted in highly divergent “implementation styles” (Howlett 2000)—a defining feature also of normal “Swiss executive federalism” (e.g., Vatter 2018). Hence, even if the coronavirus pandemic temporarily deprived the cantons of their wide-ranging legislative powers in health policy, it could not entirely stop the Swiss federation’s characteristically diverse implementation arrangements from producing divergent outputs either.

As the subnational level(s) succeeded in gaining (limited) *de facto* leverage in the implementation of certain COVID-19 policy responses and the cantons were—even in stage 3—still perceived as recognized partners of the national government, inter-governmental relations (IGR) became crucially important. Already, in normal times, they are the indispensable “oil in the federal machinery” (Poirier and Saunders 2015, p. 2). We can distinguish existing, more or less formalized IGR institutions from *ad hoc* fora created during the pandemic. There are also mechanisms that give voice to many cantons at the same time as well as bilateral fora (cf. Mueller 2019). That IGR, in general, would achieve such prominence is hardly surprising. Indeed, Switzerland is known for its long-established, highly institutionalized, and dense web of IGR institutions especially in the horizontal dimension (Schnabel and Mueller 2017, p. 553), where generalist and policy-specific councils or “conferences” support each other (cf. Arens 2020; Bolleyer 2009). The pandemic further accentuated this.

In the early days of the pandemic, the Federal Council primarily consulted the *Conference of Cantonal Directors for Health* (GDK; established in 1919). Before strict nationwide regulations were deemed necessary (e.g., the ban on major public events issued on 28 February 2020), the 26 cantonal governments submitted their opinions to an internal GDK consultation procedure. The content of their submissions was subsequently aggregated into a representation of the general “will of *the cantons*” (Marjanović 2020). Once such a common front is forged, the presidents of intercantonal conferences then speak on behalf of *the cantons*, for example, during joint, televised press conferences with members of the Federal Council. The GDK also enjoys legally guaranteed permanent representation in the “*Koordinationsorgan Epidemiengesetz*,” the “coordinating body” of the EpidA (Art. 82 lit. g EpV). The same is true for the generalist *Conference of Cantonal Governments* (KdK; founded in 1993), which had a delegate in the Federal Council’s main “crisis unit” (“*Krisenstab*”).

des Bundesrats Corona”) to tackle the coronavirus pandemic side-by-side with top-level federal officials (cf. Federal Chancellery 2020). The different levels of government thus coordinated extensively with each other both vertically and horizontally through *collective* IGR (Hegele and Schnabel 2021).

But individual linkages mattered too. If the long-established, highly institutionalized, and dense network of intercantonal conferences ensured rapid, efficient consultation, minority stances of single (groups of) cantons could—for the sake of an unambiguous crisis response—not be considered accordingly. Just as in “normal times,” formalized IGR councils only “protect[ed] the autonomy of the constituent units *as a whole*” (Schnabel 2020, p. 267; emphasis added). As every region was equally affected by COVID-19, individual cantonal governments’ specific interests diverged. Alongside the collective approach to talking with the center, they continued to pressure the Federal Council at their own discretion, asking either for stricter measures (e.g., the canton of Ticino which demanded the closure of the border with Italy (St. Galler Tagblatt 2020) or more permissive “waivers” (e.g. special permits for the operation of ski businesses in cantons heavily dependent on tourism (Berner Oberländer 2020). Subnational lobbying was so intense and diverse that, at some point, federal officials could not tell anymore “who ‘*the cantons*’ actually were: the KdK, the GDK, or individual cantonal governments?” (Mr. Walter Thurnherr, Federal Chancellor (Aargauer Zeitung 2020). In order to accommodate the constituent units’ collective and individual voice, the coronavirus pandemic thus required additional, *ad hoc* IGR venues to be created—a crucial innovation of Swiss federalism’s first wave response.

Overall, the strong collaborative element that existed pre-COVID-19 helped Swiss federalism to tackle the first wave rather well. Although political decision-making was basically centralized overnight, the cantons continued to be in charge of implementing federal rules and remained in touch both with each other and with “the principal.” A similarly collaborative and decentralized approach was taken in the government’s economic response: to help affected businesses, the federal government coordinated with the Swiss National Bank and commercial banks to provide interest-free loans.

As best illustrated by the government-guaranteed interest-free bridging loans, the fiscal and economic response displayed strong features of the traditional “liberal-corporatist” Swiss model (cf. Katzenstein 1985, pp. 104–105, 129). In “record time” (Economiesuisse 2020), the national government, the Swiss National Bank, and commercial banks rolled out a jointly elaborated emergency relief scheme to provide bridging loans to support SMEs encountering liquidity problems due to the lockdown measures. This “simple, fast, and efficient” (*ibid.*) policy response is typical for Swiss corporatist problem-solving: a “pragmatic approach” was applied, established state-private networks were used, and the action was implemented in a decentralized way.

22.4 Lessons learned

The way Switzerland, in general, and Swiss federalism, in particular, has reacted to the first wave of the pandemic leads us to distil two main lessons learned.

Lesson 1: Leveling asymmetries through experimental policy innovation. Asymmetry has become the “backbone of contemporary federalism” (Palermo 2020) as

many federal systems are faced with expanding heterogeneity in terms of economic, social, and fiscal differences among the constituent units. To ensure stability, such differences require at least some leveling, for example, through fiscal equalization. In a crisis situation, in particular, federal asymmetries tend to increase further: natural disasters (such as Hurricane Katrina) primarily affect a certain region (and, therewith, certain subnational entities), but their effects spill over, often requiring national-level measures (cf. Birkland and Waterland 2008).

In Switzerland, however, such asymmetries also became *a key supporting condition for experimental policy innovation*. Put differently, “policy diffusion” (Gilardi and Wasserfallen 2019) played out the most fruitfully *because* of asymmetries, fueled, in turn, by crises: Not only did case numbers vary substantially across the cantons (Figure 22.1) but also the unequal distribution of COVID-19 infections also paired with highly divergent administrative capacities. In the early days of the pandemic, asymmetric administrative resources were especially visible in public health campaigns. While nationwide leaflets targeted the entire population, children struggled to make sense of abstract guidelines regarding hand hygiene or social distancing. The canton Basel-City therefore decided to design its own public health campaign tailored to kids. As a financially powerful canton with a highly professionalized, well-equipped administration, it had all the necessary resources to mandate an external advertising agency with CHF 400,000 to launch a catchy, iconic public “sermon” entitled “#SoapBoss” (Kanton Basel-Stadt 2020). Once the information campaign distributed through social media “went viral” (persoenlich.ch 2020), cantons with lower administrative capacity such as Solothurn—one of the nineteen recipients in the national fiscal equalization scheme—asked to adopt the “SoapBoss” (Solothurner Zeitung 2020). Basel-City was happy to unconditionally share its pioneering “soft” crisis response to level out administrative asymmetries by letting experimental policy innovation diffuse.

Lesson 2: Enhancing the crisis management capacity of existing IGR institutions by “deliberative layering.” Due to the multifaceted nature of crises, disaster management is usually a “shared responsibility” (Birkland and Waterman 2008, p. 692). IGR become crucially important to ensure a certain coherence between the measures taken by the different levels. Yet, crises can also threaten existing IGR institutions because of “federal dominance” (Schnabel 2020, pp. 61–62), inefficiency due to unanimity requirements (Vatter 2018), or growing polarization (Bowman 2017). The dilemma, then, is this: existing IGR might be ill-suited for the quick policy responses that are so desperately needed, but urgent situations simply do not allow for time-consuming institutional reforms either since such structures are essentially path-dependent and, thus, difficult to change (cf. Broschek et al. 2018). So, disaster management must evolve within existing IGR settings. This is particularly true for federal systems with highly institutionalized IGR institutions such as Switzerland (cf. Bolleyer 2009). Hence, “disruptive unilateralism” (Schnabel 2020, p. 39) is incentivized: Because existing IGR institutions are too slow to react, heavily affected subnational units may rush ahead alone and thereby further obstruct a coordinated response.

Yet, as illustrated by Swiss federalism’s first wave response to the COVID-19 pandemic, the crisis management capacity of existing IGR institutions can be enhanced by “deliberative layering.” Layering is a familiar notion in the policy science assuming that new goals and means are gradually added to—or, more precisely “layered on” existing ones (Béland 2007). Such onion-like *ad hoc* amendments might offer

a “third way” out of the dilemma just described *if new deliberative fora are layered on existing IGR institutions*. The Swiss experience is intriguing: Given the stalemate in intercantonal conferences, individual cantons with particularly high COVID-19 infection rates ordered further measures unilaterally. For example, the canton of Uri imposed an over-65 curfew without consulting the Federal Council (19 March 2020), while the canton of Ticino ordered non-essential industry to temporarily cease production (22 March 2020) (Studer 2020). Both policy responses went further than a previous federal order, bringing them into conflict with the Federal Council. The issue was finally resolved at a “crisis summit” of all 26 presidents of the cantonal governments and the Federal Council. As this forum was designed on the premise of deliberation among equals rather than minimal majorities in collective IGR (i.e., the GDK or KdK), a joint compromise could be achieved (i.e., *ex post* authorization of Ticino’s closure of businesses and construction sites that did not meet rules on social distancing and hygiene; cf. The Federal Council 2020).

Notes

- 1 Cf. Sager and Mavrot (2020) for a detailed account of early policy responses (e.g., toll-free hotline and leaflets at airports).
- 2 Below the level of the cantons, there are some 2,000 local governments, each with their own elected authorities, administrations, and fiscal powers. The extent and nature of local government autonomy varies from canton to canton (e.g., Mueller 2015).
- 3 From 21 March 2020 to 30 May 2020, gatherings of more than five persons in public places were forbidden. Anyone found to be infringing this rule could be fined up to CHF 100 (Sager and Mavrot 2020, p. 296).

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