

Author: Henry Ferguson

## **The Structures of Popular Sovereignty**

*Comparisons by an Exiled Scot, Henry Ferguson*

I'm an exiled Scot who has lived outside his native land since 1967 – 7 years in the Bahamas & US and nearly 50 years in Switzerland & France. I became a Swiss citizen in 1998. During my 48 years in Switzerland, I've become politically aware and have voted in practically all elections. I recognise that my knowledge of Scottish daily life - political and otherwise - is pretty dated but, since IndyRef 2014, I closely follow major developments.

In view of recently increasing interest in the Scottish Constitution and Popular Sovereignty, I've prepared a list 'Swiss sovereignty headlines' that I believe contribute to a successful society, more successful than today's Scotland.

My Swiss sovereignty headlines follow.<sup>1</sup>

### **1. National Governance**

#### ***1.1 The People are Sovereign***

The first major difference between national governance in Switzerland and Scotland is that Switzerland is a Direct Democracy whereas Scotland, within the UK, has a form of Parliamentary democracy (Holyrood and Westminster). The Swiss People, together with the 26 Cantons, form the Swiss Confederation<sup>2</sup> and the two are joint authors of the Constitution.<sup>3</sup>

Direct Democracy means that the Swiss people, not the politicians, hold all the levers of power from A to Z. I believe this is one of the reasons Switzerland comes out near the top in global wellbeing and economic success.

The guiding principles of Swiss Direct Democracy are:

- *The People control the Constitution (Art. 138)*  
100,000 voters may propose a totally new Constitution within 18 months from official publication of their Initiative; a majority popular vote is required to approve the proposal. The Scottish National Congress, currently in formation, would be the equivalent.
- *The People and the Cantons jointly control changes to the Constitution (Art. 139)*  
100,000 voters may propose partial changes to the Constitution within 18 months; a double majority of People and Cantons is required to approve such changes. As yet, there is no Scottish or UK equivalent to a Popular Initiative.
- *Parliament and Government draft legislation and decrees:*  
Parliament and Government draft laws and decrees to implement approved Constitutional changes and other normal business of government. This is a normal parliamentary process except that, because the Swiss Parliament and Government are elected under a system of proportional representation, the legislative process is much more consensual than in either Holyrood or Westminster.
- *The People control Parliament and Government (Art. 141):*  
50,000 voters or any eight cantons may launch a referendum to all proposed legislation or certain government decrees within 100 days from official publication of the enactment; a majority popular vote is required to approve or reject proposals. This is similar to the Scottish Salvo, except that the right to a Swiss referendum operates *at the time of publication of each proposed law or decree* unlike Salvo whereby, "from 1592-1707, the Scottish Parliament acknowledged the sovereignty of the people – the higher authority! – by offering 'salvo' *at the end of every session*: anyone could challenge parliamentary legislation that prejudiced their civil rights or freedoms."<sup>4</sup>

---

<sup>1</sup> Exiled Scot acknowledges, with thanks, the information and English-language texts obtained from (i) the Swiss Confederation, Cantonal & Communal website <https://www.ch.ch/en/> and (ii) the website of Swissinfo.ch (a branch of the Swiss Broadcasting Corporation) at: <https://www.swissinfo.ch/eng/direct-democracy/47697554>

<sup>2</sup> Swiss Federal Constitution Art 1

<sup>3</sup> Swiss Federal Constitution Preamble

<sup>4</sup> Sara Salyers "This is our Claim of Right" published by Salvo©2022

It's important to note that although total or partial amendments to the Constitution by the Swiss People are permitted, popular revisions to or introductions of new federal laws are not in order to preserve legal certainty.

A detailed discussion of these constitutional building blocks follows.

### *Referendums*

The current Constitution, approved by the People in 1999 (prior to that, 1874 and 1848), enshrines the right to launch a popular vote (referendum). A majority of the People and the Cantons under the “double majority,” where constitutional amendments must be accepted by a majority of both the national and cantonal popular votes, may then accept or reject *proposed constitutional amendments, accession to security and supranational entities and certain emergency legislation* under what is called a Mandatory Referendum<sup>5</sup>. If the government proposal is accepted, no further popular action is required. However, if the proposal is rejected, then it is either dropped or an acceptable political compromise is found.

The French, Italian and Romansh-speaking Swiss minorities view the double majority requirement for constitutional amendments as an essential protection against the 70% German-speaking majority. A future independent Scotland could adopt a similar mechanism to protect the interests of the Highlands and Islands and/or Orkney and Shetlands.

Both the People and any eight Cantons may also launch an Optional Referendum<sup>6</sup> attacking *any proposed new law, certain government decrees and certain international treaties*<sup>7</sup>.

The referendum aspect of the People's power is one of rejection and because the issue concerned has already been discussed in Parliament and media, the time required for launching a referendum is short (100 days after approval of the new law) although the launching signature requirement (50,000) is relatively easy to reach. Taking account of Switzerland's higher population (8.7 million compared to Scotland's 5.5), comparable signature thresholds for Scotland would probably be around 40,000 and 80,000 for referendums and initiatives, respectively.

### *Popular initiatives*

Should the population, or any part of it, feel that Parliament is ignoring an important issue, then a Popular Initiative can be launched proposing either partial amendments<sup>8</sup> or even a total revision to the existing Constitution<sup>9</sup>. To allow sufficient public debate, the timing is longer than for a referendum (18 months) and the launching signature threshold is higher (100,000). Initiatives to partially amend the Constitution are subject to the double majority<sup>10</sup> whereas a total revision requires only a majority vote of the People<sup>11</sup>. Successful initiatives are immediately incorporated in the Constitution although implementation may take longer.

The most frequent initiative themes are healthcare, taxes, welfare, drug policy, public transport, immigration, asylum, and education, although there are virtually no limits to topics which can be raised.

### *Direct Democracy in action*

The following current Referendum topics will be voted on by the People at the forthcoming quarterly vote on 18<sup>th</sup> June 2023 (copy of the official voter information brochure attached):

- *Taxation of large multinationals at the OECD & G20 agreed rate of 15%*. This involves constitutional change and is therefore a Mandatory Referendum.
- *Protection against climate change, innovation and energy security* (implementation of the Paris Agreement on climate targets). First introduced through a Popular Initiative launched by the Swiss Association for Climate Protection in 2019 (“The Swiss Glacier Initiative”), Government and Parliament felt the Initiative went too far (100% fossil-free by 2050) and Parliament approved a counter-proposal. One of the political

---

<sup>5</sup> Swiss Federal Constitution Art 140

<sup>6</sup> Swiss Federal Constitution Art 141

<sup>7</sup> Swiss Federal Constitution Art 141

<sup>8</sup> Swiss Federal Constitution Art 139

<sup>9</sup> Swiss Federal Constitution Art 138

<sup>10</sup> Swiss Federal Constitution Arts 139.4 & 139.5

<sup>11</sup> Swiss Federal Constitution Arts 140.2

parties launched an Optional Referendum, the reason for the vote on 18<sup>th</sup> June. If the Parliament's counter-proposal is accepted by the People then the Initiative would be withdrawn; however, if it's defeated, the Committee reserves the right to reactivate the original Initiative, giving the People the last word. Direct Democracy may be a long process, but it ensures that the majority of the People voting has the last word.

- *Government competence in the case of national emergencies* (provoked by Covid 19 and the Cantons' inability to act quickly at the beginning of the emergency). This is an Optional Referendum based on the argument that since Covid 19 is receding, there's no need to renew anti-democratic measures giving Government and its many tentacles exceptional powers. The Referendum Committee argued that "It's time to give power back to the People - Enough's enough!"

Two other topics have completed the preliminaries (signature threshold was met, the Parliament and Government acknowledge the validity of the subject) and are ready for the popular vote before end of 2023:

- *An additional, thirteenth, month of state old age pension* (the majority of employees already benefit from thirteen pay cheques in Switzerland – but not OAPs);
- *Net zero emission target for greenhouse gases and fossil fuel elimination by 2050* (This vote may be withdrawn depending on the result of the climate change referendum above).

Since the origin of the current constitution in 1848<sup>12</sup> there have been 432 Referendums of which 289 (67%) were accepted (the People accepted the Government's proposal) and the rest rejected. There are currently 12 Referendums in the 100-day signature pipeline.

During the same period there have been more than 500 Popular Initiatives of which 229 were voted on and 25 successfully passed the double majority. The most recent successful initiative, in 2022, was in favour of preventing advertising for all tobacco-related products directed at children and adolescents. Other successful initiatives have been in favour of the nursing profession (2021), immigration control (2014), abusive executive compensation (2013), secondary residences in mountain regions (2012), joining the United Nations (2002) and a moratorium on construction of nuclear power stations (1990). There are currently 27 Initiatives in the 18-month signature pipeline.

So the People can and do second-guess the politicians! They not only elect their representatives to both parliamentary assemblies every four years but also, four times a year, vote through the Referendum and Initiative mechanisms, on real-life, important issues. Depending on the cantonal and communal constitutions or legislation, the rights of referendum and / or initiative also exist at these government levels with significantly lower signature thresholds within each jurisdiction.

The process of quarterly votes costs money. But when ordinary citizens are interviewed on Swiss TV or during public current affairs debates, it's impressive to see how well informed they are. The democracy dividend is well worth the effort. Since 1974 there have been only a couple of cases where it's generally accepted that the People got the vote wrong - in 1992 when they rejected the government proposal to join the European Economic Area (being an international treaty, this vote was a Mandatory Referendum).

The People are aware of their collective responsibilities and because of the signature collection process (literally on the street corner), social media, TV programming and live public participation etc., politics are an ongoing reality of daily Swiss life.

So, it's no surprise that ALL Swiss politicians refer to the People as "The Sovereign" - although, in actual fact, the written Constitution doesn't specifically say so....

### **1.2 The Cantons are also Sovereign (Art 3, 43 & 47)**

...because the constitutional text is quite clear:

*The Cantons are sovereign except to the extent that their sovereignty is limited by the Federal Constitution. They exercise all rights that are not vested in the Confederation.*<sup>13</sup>

This gives rise to the second major difference between the governance structures of Scotland and Switzerland. Unlike Scotland, Switzerland is highly decentralised.

---

<sup>12</sup>©Swiss Federal Office of Statistics for period 1848-2022

<sup>13</sup> Swiss Federal Constitution Art 3

The Swiss Constitution refers to the Cantons' duties, tasks and autonomy, confirming that the balance of power lies with this middle level of government:

*The Cantons decide on the duties that they must fulfil within the scope of their powers<sup>14</sup>, and*

*The Confederation only undertakes tasks that the Cantons are unable to perform or which require uniform regulation by the Confederation<sup>15</sup>, and*

*The Confederation shall respect the autonomy of the Cantons<sup>16</sup>.*

The principle underlying the above and enshrined in the Swiss Constitution is called "Subsidiarity,"<sup>17</sup> described by the government website <https://www.ch.ch/en/political-system/operation-and-organisation-of-switzerland/federalism/#principle-of-subsidiarity> as:

*Under the principle of subsidiarity, nothing that can be done at a lower political level should be done at a higher level.*

Together with the main political rights described in more detail later, these principles are the glue that binds the four cultures / language groups of the Swiss Confederation together, as well as acting as a national motivator.

The 26 Swiss Cantons have much more autonomy than the 32 Scottish Councils. Each canton has its own constitution, acts, parliament, government and courts, including direct taxing powers, and each is required to have its own constitution. Geneva completed this four-year process in 2012. (The archives of the Assemblée Constituante (Constitutional Conference) can be found at: <https://www.ge.ch/document/site-assemblee-constituante-2008-2012>)

Because Swiss sovereignty lies with the People, I view it as an 'inverted pyramid' compared with the UK:

- The People
- The Cantons
- The Parliament (two chambers: National Assembly and Council of States (i.e. Cantons))
- The Government

**Any forthcoming Scottish Constitutional Conference should decide whether or not regional Councils are also Sovereign.**

### *1.3 Swiss politics are consensual, not conflictual<sup>18</sup> (Art 174-177)*

Cantonal and national parliaments are elected by popular vote. However, in Switzerland, the third major governmental difference, the relative weight of the respective political parties determines their representation in the seven-member Federal Council, the Government. The seven members of Government are elected by Parliament after each four-year election cycle and the Presidency rotates annually, leaving no room for prima donna Prime/First Ministers as in Westminster or Holyrood! This system condemns the parties to work together and since 1959 has led to a system of tacit, hybrid and stable coalition government.

The annually rotating Presidency ensures cross-cultural and political representation at the highest level, resulting in much less parliamentary confrontation, such as during First Ministers' Questions. In an independent Scotland, this would either lead to the integration of minority parties into Scottish Government or - if such parties won't play the consensual game - to their gradual elimination.

The existence of the optional referendum also has an impact: when drawing up a law, MPs strive to find the best possible compromise in order to avoid a popular vote. When the People reject proposed legislation, it doesn't necessarily mean that a draft text is buried, but rather that parliament and the government may go back to the drawing board and come up with a more acceptable solution.

---

<sup>14</sup> Swiss Federal Constitution Art. 43

<sup>15</sup> Swiss Federal Constitution Art. 43a

<sup>16</sup> Swiss Federal Constitution Art. 47

<sup>17</sup> Swiss Federal Constitution Art. 5a

<sup>18</sup> Swiss Federal Constitution Arts 174-177

### ***1.4 Perfect Identity between taxation and political representation (Art 127-129)***

The fourth structural difference between the two countries relates to the direct correlation between taxation and political representation in Switzerland compared to the distant relationship between the two in the UK. Scottish Councils are essentially spending entities whereas in Switzerland, due to decentralised taxation and borrowing powers, Swiss Cantons and Communes / Municipalities can also raise revenue and borrow money. In the UK, Westminster appropriates as much of the tax revenue as possible whereas in decentralised Switzerland, it's the opposite. Imagine if the Scottish Government or its cash-strapped local authorities had revenue raising powers!

Swiss residents and corporate entities are subject to three legal jurisdictions: federal, cantonal and municipal (around 2,300 cities or communes). Political representatives are elected by the appropriate citizens (Swiss together with, in some Cantons and Communes, non-Swiss) at each level, and the assembly has full direct taxation and spending powers within its own assigned competences. Borrowing is permitted at each level of government and budgets must be balanced. Tax rates are transparent and fixed by the assembly at the relevant government level.

This structure means if the Swiss electorate doesn't like how individual politicians have managed their remit at each of the three levels then the People have enough information to figure out what's not working and to sack the right people at the next election. It also favours tax rate competition between the cantons and communes, benefiting the taxpayer.

It's clear there's a major difference between the proximity of the UK voter to their parliamentary representative(s) compared with their Swiss counterpart.

More than half of Swiss taxes are generated close to the People, at the cantonal and communal levels (CHF 74 billion at the cantonal-communal levels out of a national total of CHF 138 billion (2016 figures)).

**Decentralisation should be accompanied by a major rethink of (i) political and fiscal boundaries, and (ii) the taxation and borrowing powers of Scottish Councils.**

## **2. Political Rights**

Annexed are extracts from the Swiss Federal Constitution describing the two most important elements of Swiss direct democracy - Initiatives and Referendums. Votes for constitutional amendments require a majority of both the People and Cantons (the "Double Majority").<sup>19</sup> The practical aspects of implementation are detailed in the Federal Act on Political Rights, annexed to this article.

Under the Swiss Abroad Act, Swiss citizens living abroad retain, after registration in their country of adoption, full federal voting rights, including the right to sign referendums and initiatives, with no time limit. Certain cantons, although not all, allow the same for cantonal and communal votes (the canton of last residence is the determining factor with respect to political rights of overseas Swiss). For many years, UK citizens living abroad lost their voting rights after 15 years of overseas residence. I lost my UK voting rights in the 1980s. However, an internet search indicates that exiled UK citizens can now vote in parliamentary elections. I'll be seeking to have my UK voting rights reinstated.

---

<sup>19</sup> Swiss Federal Constitution Arts.139 & 140

## **Annex I. Initiatives and Referendums**

### **Popular initiative requesting the total revision of the Federal Constitution (Art. 138)**

*1 Any 100,000 persons eligible to vote may within 18 months of the official publication of their initiative propose a total revision of the Federal Constitution.*

*2 This proposal must be submitted to a vote of the People.*

### **Popular initiative requesting a partial revision of the Federal Constitution in specific terms (Art. 139)**

*1 Any 100,000 persons eligible to vote may within 18 months of the official publication of their initiative request a partial revision of the Federal Constitution.*

*2 A popular initiative for the partial revision of the Federal Constitution may take the form of a general proposal or of a specific draft of the provisions proposed.*

*3 If the initiative fails to comply with the requirements of consistency of form, and of subject matter, or if it infringes mandatory provisions of international law, the Federal Assembly shall declare it to be invalid in whole or in part.*

*4 If the Federal Assembly is in agreement with an initiative in the form of a general proposal, it shall draft the partial revision on the basis of the initiative and submit it to the vote of the People and the Cantons. If the Federal Assembly rejects the initiative, it shall submit it to a vote of the People; the People shall decide whether the initiative should be adopted. If they vote in favour, the Federal Assembly shall draft the corresponding bill.*

*5 An initiative in the form of a specific draft shall be submitted to the vote of the People and the Cantons. The Federal Assembly shall recommend whether the initiative should be adopted or rejected. It may submit a counter-proposal to the initiative.*

### **Procedure applicable to an initiative and counter-proposal (Art. 139b ((Art. 139a revoked))**

*1 The People vote on the initiative and the counter-proposal at the same time.*

*2 The People may vote in favour of both proposals. In response to the third question, they may indicate the proposal that they prefer if both are accepted.*

*3 If in response to the third question one proposal to amend the Constitution receives more votes from the People and the other more votes from the Cantons, the proposal that comes into force is that which achieves the higher sum if the percentage of votes of the People and the percentage of votes of the Cantons in the third question are added together.*

### **Mandatory referendum (Art. 140)**

*1 The following must be put to the vote of the People and the Cantons:*

- a. amendments to the Federal Constitution.*
- b. accession to organisations for collective security or to supranational communities.*
- c. emergency federal acts that are not based on a provision of the Constitution and whose term of validity exceeds one year; such federal acts must be put to the vote within one year of being passed by the Federal Assembly.*

*2 The following are submitted to a vote of the People:*

- a. popular initiatives for a total revision of the Federal Constitution.*
- b. popular initiatives for a partial revision of the Federal Constitution in the form of a general proposal that have been rejected by the Federal Assembly.*
- c. the question of whether a total revision of the Federal Constitution should be carried out, in the event that there is disagreement between the two Councils.*

### **Optional referendum (Art. 141)**

*1 If within 100 days of the official publication of the enactment any 50,000 persons eligible to vote or any eight Cantons request it, the following shall be submitted to a vote of the People:*

- a. federal acts;*

- b. *emergency federal acts whose term of validity exceeds one year;*
- c. *federal decrees, provided the Constitution or an act so requires;*
- d. *international treaties that :*
  - 1. *are of unlimited duration and may not be terminated,*
  - 2. *provide for accession to an international organisation,*
  - 3. *contain important legislative provisions or whose implementation requires the enactment of federal legislation.*