The concept of federalism is sometimes referred to as an unappreciated topic in the social science. Conceived in an era of free economy, maximum private initiative and local responsibility and concomitantly minimum role of government in the economic and social sphere had has undergone profound environmental changes in the modern times. All federal systems encounter problems and imbalances in the area of inter-governmental relations no matter how detailed and elaborate is the distribution of functions and resources between the two levels. This is essentially because the process of adjustment is a dynamic one. Consequent developments in the twentieth and twenty-first century made necessary to adopt new federal forms of governments to the changing technologies and forms to the growing demands of the social service state and planned socio-economic development. These attempts have brought such transformations in the traditional pattern of union-state relations that some writers describe the new trend as “co-operative federalism” as contrasted with “compartmental” or “competitive” federalism. The distinction between the old and new federations is very well brought out by A.H. Birch: “the older constitutions were based on the principle that the federal and state governments should operate, with minor exceptions, in watertight compartments, their only links being their derivation of powers from the same constitution and the fact that, in the end, they exercise these powers on the same citizens. The new constitutions accept that this is now undesirable, if not impossible
and they provide for interaction between federal and state authorities in a number of ways. Mr. Birch is of the view that if we consider together the developments in the older federations and the new characteristics of the post war federations, federalism has entered a new phase called co-operative federalism. Generally speaking it is the federal government in each country, which has promoted, the social welfare developments of the past two decades, and which is likely to take initiative in the future. The collective impact of these developments on federal state relations is so great as to raise the question whether the governmental systems of these countries still accord with the classical definition of federalism. After reviewing the competitive and co-operative trends in federalism Prof. Venkatarangaiya observes: "the federal system of government has shown its capacity to adjust itself to changing needs and circumstances and this process of adjustments has in all federations been facilitated by the growth of co-operative devices. If these co-operative devices are strengthened federalism will continue to be an ideal system of government for countries like India, United States, Canada and Australia-countries which are vast in size and which consequently develop geographical, economic, social and cultural diversity".

India and Switzerland have also undergone many changes where the trend of Indian federal system has been changed from centralized to co-operative federalism and Swiss federal system from extreme decentralization to centralized. Thus, in this chapter an attempt has been made to evaluate the recent developments in these two countries.
RECENT TRENDS IN INDIAN FEDERAL SYSTEM

The constitution of India envisaged a pattern, which sought to create a central authority powerful enough to maintain and consolidate India's political integrity, to secure rapid and planned economic growth and to give the states an effective and autonomous role in designated fields of governmental activity. All the three objectives were pursued to a reasonable extent in the first two decades. As it has been analyzed earlier, the 1967 general election ushered a new trend in centre-state relations in India, and this new trend has been identified with the demand for decentralization of power, more autonomy and financial independence of the states. This new trend is not unique to the Indian federation but is inevitable even in the constitutionally strongest federations. The centralizing tendencies or forces dominated in every federation in the early periods of nationalism, economic development, nation-building etc. Once these stages are completed, decentralizing tendencies become important as a substitute for participatory democracy, India in now going through this latter phase, giving rise to new trends in federalism.

As it has been pointed out, the constitutional division of power, grants by the centre to the states, the issue of nationalism and nation building. Economic planning and one-party rule are the forces, which have brought out centralization of power at New Delhi and created dissatisfaction and grumbling among the peripheral states. However, the centralizing forces have been balanced by the decentralizing force, which K.C. Wheare calls, "The self-consciousness and self-assertiveness of the regional governments". This force is slowly and perceptibly increasing in India.
The demand for more and fuller power to the states and the need for amending the constitution to the extent necessary is a phenomenon arising out of the change in the political complexion of the country.

The Indian political system is an organic whole. The states are the sub-systems of this political system. The union-state relationship is just like a relationship between the parts and the whole, which should not normally be competitive and antagonistic but co-operative and complementary to each other. True, stresses and strains do arise from time to time; the degree and frequency may differ according to changing environment. The interdependence of union and state governments are compelled to come out of their spheres and to cooperate with each other in the task of promoting common welfare. There is undoubtedly an obvious interaction among the centralization. At the same time the growth of self-consciousness and self-assertiveness of the regional governments had manifested itself through linguistic, caste and communal fanaticism, regional parochialism poses a strong challenge to centralization.5

If the centre is strong the states will not manifestly express their feelings of discontentment. The boundary of union government (system) will expand in an invisible manner and similarly the boundaries of states (sub-system) will diminish. The power of decision making on major issues vests with the centre, when the government at the centre is strong. Generally speaking, as such the authority of the central government is so extensive that the states have ordinarily to obey the orders and directions issued to them. Thus the capacity of
political persuasion and bargaining of the state is less. In such a situation the tendency for a strong centre can mostly be observed in the political behaviour and style of the Indian political system. For ex. pre 1963 tenure of Nehru and post 1971 tenure of Mrs. Gandhi. If we analyze union-state relations in Indian political system from the beginning till date we shall find that this relationship has passed through various phases from its quasi-federal character to a stage of co-operation and competition, then to a stage of extreme decentralization and presently to a moderate decentralization i.e., (co-operative federalism). During the pre-1967 phase, the central government effectively dominated the constituent states and received their full co-operation. This one party dominant rule during the pre-1967 phase highly influenced the whole range of centre-state relations and provided a unique meaning to the concept of federalism in the Indian political system. During this period the Indian federal system did not suffer any major tension through this was achieved at the expense of the states, which were reduced to a status of dependent units of the centre this tendency towards political conversion was the result of overwhelming dominance of the social, political and economic life in the country by the congress. The conflicts that arose between centre and states were of intra-party nature.

The year 1967 general elections turned out to be a watershed in Indian politics. Political relations between the centre and the state were drastically altered and gave a new turn, twist and direction to the centre state relation. The emergence of new political conditions meant the end of the dominance of one party rule in India, and many regions with different political parties came in power other than the congress.
With the emergence of non-congress parties in the states, the conflict between the centre and states was of inter-party. "Conflicts between the centre and states", points out Mr.K.Subba Rao, the former chief justice of India, "arose as a consequence of different parties coming into power at centre and in the states. While the centre, in the hands of the party which had all long ruled in all the states, wanted to treat the states as subordinate bodies as before, the states wanted to have their relations with the centre in the constitutional framework." The Indian federal system was modeled as centralized federalism before 1967 but after that it was characterized by intense centre-state tensions. The regional parties, which had come to the scene, raised their voice against the centre. Akali Dal and DMK demanded radical changes in the centre-state relations and demanded more autonomy for the states. So all this led to structural changes in the Indian federal system.

The centre-state relations saw new leaps and bounds after the mid-term polls in 1971 and the assembly election in 1972, the congress again emerged as a strong force both at the centre and states wiping out the coalition governments, which were functioning in many states. And centre-state relations were again at the mercy of the congress. 1980-89 period has a special mark in the history of Indian federal system. The congress emerged as unquestioned ruler of India under Indira Gandhi and Rajiv Gandhi. It renewed its autocratic rule. This period saw intense centre-state conflicts. Though the congress followed a high-handed policy, the emergence of regional parties in several states like Tamil Nadu, Andhra Pradesh, Karnataka, Assam, Punjab and Kashmir, gave a new twist to centre-state tensions and
the states started demanding more and greater state autonomy, more and greater allocations of funds and so on. All these compulsions led Indira Gandhi to appoint the Sarkaria Commission to suggest restructuring of centre-state relations. The commission made several suggestions but the government failed to implement them. Since 1989, the Indian political system is experimenting the coalition culture and this has become a major factor in the Indian federal set up. The trend from Unitarian model has changed to co-operative federalism. So, an attempt is been made in this chapter to analyze the recent trends, which has changed the structure of federal system in India.

**Demand for Greater State Autonomy:**

The demand for more state autonomy has always been one of the most controversial issues of the Indian federalism, although federalism is an important feature of the constitutional structure of Indian democracy. When India attained independence, it adopted a federal form of government and the constitution of India made a provision for a strong centre with wide powers. The past experiences viz., partition of India, integration of princely states etc. made our constitution makers aware of the possibilities of the fissiparous tendencies raising there ugly heads in future so they made a deliberate attempt to create a strong central government from the point view of national unity and integrity.

When India was under the one party dominance there was co-ordination between the centre and states. But after the general elections of 1967, when non-congress governments were formed in
many states, the demand for greater autonomy became insistent. The governments of West Bengal, Tamil Nadu, Kerala and Punjab demanded more power in administrative, financial and legislative sphere. Whereas other states demanded greater financial autonomy and greater financial resources and restricted centralized control. The first expression of this can be seen when DMK government appointed the Rajamannar Committee in Tamil Nadu. The Committee recommended greater state autonomy and limited the centre to only defence, foreign policy, communication and currency. The West Bengal Memorandum adopted by the West Bengal government and the Anandpur Sahib Resolution adopted by the Akali Dal, reiterated the same view, since there is a prolonged debate over the issue of greater state autonomy and even till today there is no amicable solution.

Demand for greater state autonomy witnessed a new dimension, when the Jammu and Kashmir government started demanding greater state autonomy, the Jammu and Kashmir government also set up a committee to probe into the feasibility of revoking pre-1953 status to Jammu and Kashmir. The report submitted by the Jammu & Kashmir autonomy committee was placed in the Kashmir assembly for discussion “at the end of a five-day debate the state assembly of Jammu & Kashmir on June 26, 2000 approved a resolution of the National Conference (JKNC) government to implement state autonomy endorsing a report by a state committee. The resolution was opposed by legislators from both the BJP, which dominated the federal government and the opposition Congress (I) party, but the JKNC held some two thirds of the seats in the assembly. The plan proposed that Kashmir revert to the special status it held between 1947 & 1953
The BJP government rejected the demand for autonomy by Kashmir assembly, because according to BJP the revoking of pre 1953 status to Kashmir is against the federal principles and Kashmir problem is so complex that mere giving autonomy may not solve the problem. Thus the trend towards greater autonomy is on surface and we have to wait and see how far the present coalition government of Congress gives their support for greater autonomy.

But at the age of international competition and in the light of globalization, the national government should have more powers if the country wants to develop. Giving more powers to provinces may hamper national progress. Because the states may sometimes act with a bias for regionalism. So, the federal system should be devised in such a manner that the states do not act as hurdles for cantonal progress. As aptly pointed by Chandra Pal, "the solution to the problem of the centre-state tension lies in co-operative federalism and that calls for a continual consultation between the centre and the states". Whatever is the demand for greater autonomy for states is based on a genuine feeling and a desire on the part of the states to play an effective role in the developmental process of the nation and also to promote national unity and integration.

**Demand for Smaller States:**

The other trend in the Indian federal system is demand for smaller states. As we know India is a multi-lingual and multi religious country. In India sub-nationalism plays a prominent role in socio-
political processes and the society is characterized by regionalism and linguistic chauvinism. These factors led to demand for new states.

The sub-nationalist groups were active in demanding the creation of new states to preserve their individual identity. There has been a persistent demand for constituting at least one more unit in each over sized state by a fresh demarcation of boundaries of aforesaid states. For more than a decade there were no alterations made in the federal map of India. The most important movements for creation of new states were the movements for creation of Chhattisgarh, Uttaranchal, Jharkhand, Telangana Vidharba and North Karnataka. Despite all the political difficulties and constitutional constraints, BJP-led National Democratic Alliance government at the centre endorsed the long pending demand. Among these three, the first state came into existence was Chattisgarh mainly carved out of Madhya Pradesh on 1st November 2000, Secondly, Uttaranchal area of Uttar Pradesh on 9th November 2000, and thirdly, the bifurcation of Bihar gave birth to Jharkhand as 28th state of Indian union on 15th November 2000.

During the last half of the twentieth century number of states have been constantly on the rise and presently the number has gone upto 28 and that of union territories to 7. But this process is by no means over, several sub-regions in various states are still clamouring for separate state for themselves. In this connection a mention may be made of the demand of the movement for a separate state for Telangana, which is still very active and the founder leader Mr. Chandrashekar Rao broke out of Telugu Desam Party and founded TRS (Telangana Rashtra Samithi) and struck a deal with the congress
in 2004 Assembly elections and Lok sabha elections in Andhra Pradesh. When United Progressive Alliance was formed, TRS minister also joined UPA cabinet. But when their demand for separate state was not considered by UPA, then Chandrashekar Rao resigned as a union minister. While neither the Congress nor BJP has ever taken a clear, unequivocal stand on the demand for constituting Telangana as a separate state, the UPA as an alliance remains divided on the issue.

**Use of Article 356:**

Another trend over the use of Article 356 throws a light on the structural change in Indian federal system.

Part XVIII of the Indian Constitution deals with the emergency powers of the President. There are three kinds of emergencies. Article 352 provides for national emergency, Article 356 provides for state emergency i.e., presidential rule, and Article 360 provides for financial emergency. Article 356 makes provisions for the imposition of presidential rule in a state on the basis of the reason that there is a breakdown in the constitutional machinery.

Since the adoption of constitution, Article 356 has become an intensely controversial issue and plaything in the hands of political parties and a manifestation of anarchy at the supreme level. The causes for the imposition of article 356 have been obscure. The Article 356 was used by the ruling party at the centre to suspend or dismiss state government, which were having divergent viewpoint with the centre. Because if the state governments did not belong to the party ruling at the centre, then the central government tended to show a step-motherly treatment towards those states. The Congress
governments fused this article as an instrument for maintaining its monopoly. It tried to dismiss the non-congress governments in several states on the basis of one or the other reasons. The decline of congress dominance in 1967 brought a major change in the political map of India, where the country witnessed for the first time a coalition government in states presidents rule in this phase of coalition government was imposed in as many as 18 instances (1967-72) mostly to get rid of the non-congress governments by the congress led centre. For ex: in Rajasthan when the elections were held in 1967, none of the parties had an absolute majority in the assembly, but the congress party happened to be the largest having 88 seats out of 132. The governor invited Mohan Lal Sukhadia, the leader of the Congress party to form the government on March 4, on the ground that he was the leader of the largest party in the assembly that he agreed to do so. The assembly was to meet on March 12, he refused to form the government on the protest that the opposition was bent upon creating law and order problem in the state. However, this was not the real basis for refusing to form the government and it seemed that reality was that between March 4 and March 12, he could not secure sufficient defections from the opposition and if he was to assume office on March 12, his government would have fallen on March 14 when the assembly was to meet. Therefore, it seems that before taking office, he wanted more time to win over defections. Ordinarily when Mohan Lal Sukhadia refused to form the government, the opposition should have been given a chance particularly when it was keen to do so as was done by the governor of Punjab in 1967 itself. But the governor, instead of adopting this course of action
recommended the imposition of the president's rule along with the dissolution of the Assembly. On his recommendation the president's rule was imposed but the assembly instead of being dissolved was put in a state of suspended animation which gave Mohan Lal Sukhadia sufficient time for securing defections and he ultimately succeeded in his game.

Similarly, in Orissa in 1971, when the elections were held, none of the parties had an absolute majority but like Rajasthan in 1967, the congress happened to be the largest having 51 seats out of 140. Dr H.K.Mehtab, the then leader of the Congress party was keen to form the government and to prove his majority in the assembly, but the Governor did not invite him to do so because he was not satisfied about majority support in the assembly hence he recommended the extension of the president's rule along with the suspension of the assembly and on his recommendation the assembly was suspended.

Similarly in 2005 the elections held to the Bihar Legislative Assembly produced a result in which the NDA was the largest single pre-poll combination. As, no party had got an absolute majority the legislative assembly was put under article 356. The NDA through its leader Shri Nitish Kumar made efforts for government formation in Bihar. Almost all the 70 NDA MLAs announced support to Nitish kumar. 21 out of 29 MLAs merged their party with JD (U). This exercise was to be completed on 23rd May 2005. All other small parties also supported NDA government. In order to prevent the NDA from forming the, the government, the governor of Bihar gave a report to the central government for the dissolution of Legislative Assembly on
21 May 2005, which was based on irrelevant and inadequate considerations. Thus there was a breakdown of constitutional machinery in Bihar, which was not borne out of the facts since Nitish Kumar enjoyed the support of almost 135 MLAs.

As a matter of fact the Congress party used or rather misused article 356 the maximum (90 out of 106 times) till now for partisan reasons.

But, a structural change has occurred in the use of Art 356 by the central government. In the 1990's we do not find government, misusing article 356 merely to dismiss the state governments run by the different parties. Because, now we are living in the age of coalition politics. The one-party dominant system has paved way for a multi-party coalition government wherein the regional parties play a dominant role in the central government. As the centre has to manage with the support of regional governments who also have the regions of power in the states, the centre will not dare to dismiss any state government by the use of article 356, because there lies the question of one's own survival. So, centre-state relations are managed on a bargaining spirit that is, give and take, that is why we find a gradual decline in the imposition of presidential rule since 1990's. The process of imposing Article 356 has also become very difficult. Because a greater awareness has arisen among regional parties and the general public. For ex: Bihar crises wherein the BJP had to face stiff opposition for imposing Art 356. The government after witnessing the declining financial condition and deteriorating law and order situation decided to impose Presidents rule in Bihar, which was strongly supported by Bihar governor. But the president returned back the
cabinet recommendation on the ground that Rabri Devi Government commanded absolute majority in the assembly. The Bihar experience of 1998 shows that in the 1990's, the Indian federal system is marked by greater awareness and greater co-ordination between centre and states.

**Appointment of Governor:**

The post of Governor occupies a prominent position in Indian federal system. He is regarded as a federal officer, who plays a key role in managing centre-state relations. He acts as a channel of communication. But over the last three decades, tensions in centre-state relations have more often than not, been in some way or the other linked to the office of the governor. But when India with one party dominant system was subverted to a multi-party system with the non-congress governments, coming to power in several states. A serious confrontation started between the centre and states on the issue of selection of governors.

The Indian constitution provides that the governor shall be appointed by the president by warrant under his hand and seal vide article 156, but the estate government, have misinterpreted this article and said that the formal consent of the chief Minister of the state is required to appoint the governor. This was the convention prevailing at the time of Nehru and Shastri, but the later government at the centre have displayed a hegemonic attitude in selection of governor the centre has tended to appoint the party men to the post of governor without keeping in mind the requirements of the states. The centre has also used the post of governor as an agent to blunt the
edge of the authority of state government, especially by the medium of imposition of article 356, that is president’s rule. All these developments have had a serious bearing on the Indian federal system has subverted to be a mere camp follower of the centre.

But the role and position of governor has undergone qualitative changes. Under the one-party dominant system of congress the governor was a mere tool in the hands of the centre. He was a link between the centre and states and over shadowed by the centre’s hegemony, but lately due to the increased participation of the regional parties in central government, the state governments are now commanding greater influence over the governor. The governor now has become more active.

The Issue of Law and Order:

The issue of Law and Order has also proved to be comparatively lesser complex one. As provided in our constitution the centre can use its directive powers to deploy its armed forces including CRP and BSF at its own discretion and the states are constitutionally obliged to obey such central directives. Normally, these forces could be deployed on the request and the consent of the state concerned. The basic problem arises from the role of the centre in period of strife, like strikes, bandhs, gheraos and general lawlessness. In some of the states, like Kerala and West Bengal, the situation assumed alarming dimensions. For ex: on September 17, 1968 the Kerala government turned down the centre’s request that necessary measure, including arrests under prosecutions, should be taken under the provisions of the central ordinance, promulgated as a sequel to the central employees strike.
Even the centre had deployed CRPF in West Bengal, which was opposed by the then chief minister, Jyoti Basu of West Bengal, held the view that this was an unwarranted intervention in the affairs of states. Under such circumstances when the CRP was deployed in the state, it provided focus for centre-state confrontation. In a uni-party political system such stress and strains are conspicuous by their absence but in multi-party system of diverse hues and complexions the stress is much more on tension management due to the inherent conflict, mutual distrust and above all political motivation. So deployment of CRPF has been a serious issue of Centre-state tensions.

But later on we can observe the changed attitude of the centre towards states, which was due to coalition governments at the centre and mainly due to the participation of regional parties in forming the government. In such changed political environment it is not possible for the central government to behave with the state in the old style as we have seen in the confrontation of New Delhi with Kerala and West Bengal. Now the centre has become more tolerant and coordinating. It has adopted a pragmatic outlook for its persistence and systems maintenance while facing strong strains from states. Whatever may be the reason of mutual adjustment and co-ordination, it is a good trend. The maintenance of law and order is bound to be achieved in the country, but owing to disunity, difference of attitudes and lust for power among the leaders of different units of the ruling party it is declining gradually.14

**Trend towards Coalition Governments:**

Since independence India was dominated by congress a single largest party controlling both at the centre and the states. But the
1967 elections changed this situation completely, because since 1967 large-scale experiment with coalition politics occurred when the congress lost power in half of the states. Thus the trend towards coalition politics started first in the states. The coalition experiment in India was confined to the state level on non-congress models. Coalition politics in India is a direct legacy of the period of one party dominance in the country. The end of this one party dominance has resulted in a situation of political change in which political parties are at one and the same time, trying to enter into coalitions with a view to fill vacuum created by the congress (I) eclipse and also to forge a viable independent identity to avail themselves singly of the newly created prospects of alteration of power.

Thus from the period of 1967-71 there have been more than twenty different coalition governments in the Indian states. The single dominant party system was replaced by the multiparty system in which no particular party claimed absolute majority at any level of the political structure with the result of that model of intra party (tacit or implied) coalition was replaced by the inter party (express of formal coalition system). The spirit of nationalism reiterated and regional aspirations started gaining ground during this period, regional groups like Akali dal in Punjab and DMK in Tamil Nadu articulated these respective regional demands and came to exist as contenders for power. During 1967-72 owing to diversity among parties, lack of ideological cohesion, lack of strong leadership and shifting loyalties of different fractions through splits mergers and alignments the coalition government could not survive for long period.
But the first coalition in India can be identified with the Janata party rule (1977-79), which brought, for the first time, a group of non-congress parties to power at the centre. Though it did not last for long period, it became catalysts in the democratization process strengthening the multi-party system, policy making and power sharing process. Thus the trend slowly started towards the coalition governments and we have continuous coalition governments at the centre since 1989, 1991, 1996, 1999, and 2004. Thus coalitions have become inevitable in forming government at the centre.

**Emergence of Multi-Party System:**

Political change from the 1967 to the 1977 elections increased party competition. Particularly the 1967 general elections brought a revolutionary change in the political map of India by throwing off the monopolistic control of twenty years of uninterrupted congress rule in India. The rule of one party system was replaced by multiparty system. Many regional parties emerged and started to compete at national level. Non-congressism brought many regional parties together in the National Front government formed in 1989. These included the TDP, DMK, AGP and Congress(s), apart from the newly formed Janata Dal. Since 1996, regional parties have become indispensable in the formation of the government at the national level. They have been important partners in the coalitions that came to power after 1996. Thus the participation of many regional parties in the National Democratic Alliance and United Progressive Alliance in coalition governments at the centre shows the significant shift of federal set up of India.
Switzerland and federalism are inseparable. Without its federal system, Switzerland would be a different country. The Switzerland we know today was only made possible by the conscious decisions to forego an all-powerful central government and to devolve power and responsibility. Federalism is a radical idea and an incredibly successful one.

In Switzerland, no one has any doubt about the need for federalism and reasons for this unique federation is of different linguistic, religious and cultural communities. Recent and ongoing reforms are understood as an attempt to strengthen and update federalism. Switzerland adopted a new, updated federal constitution on Jan. 1, 2000. Strengthening federalism was a major concern in the reform process. 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. The aim of the founders of the new constitution was to modernize the old constitution without making major changes in the system.

Switzerland faces three important challenges globalization and European integration, privatization and growing public debts on all levels, and migration. Twenty percent of the people living in Switzerland are foreigners. Switzerland has by far the highest percentage of asylum seekers compared to all other European countries. All these challenges will have important effects on Swiss federalism. Now, the major question arises is whether the new
constitution will empower Switzerland to face those challenges with flexible, innovative and federalist policies.

Let us analyze the recent changes that were incorporated in the new constitution of Switzerland.

**Diversity and Federal Principle:**

Upto the end of 19th century, the causes of conflict in Switzerland were much more religious between protestants (55%) and Catholics (44%), 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. Democratic decisions of the people by referendum show, for instance that language groups have very different opinions on foreign policy, European integration, social security and the environment. If in the next few years the gap between the language communities becomes larger and deeper, one can foresee important conflicts between the different communities. 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%), French (19.2%), Italian (7.6%), and Romansh (0.6%) 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 Romans speaking citizens to have their official contact with the federal administration in their own language.17
With regard to the other three official languages they are legally respected with a constitutionally guaranteed equal value. The new constitution provides a compromise on the issue of principle of an individual right to language 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, in order to preserve harmony between linguistic communities. "Respect the traditional distribution of languages and take into account the indigenous linguistic minorities" in a conflict between the individual right for language and the collective right of the community to defend its language territory, the collective right wins, if it is for the sake of harmony and peace.

The Question of Legitimacy in New Constitution:

The state of modern times has derived its legitimacy either as a state created by the nation or from a pre-constitutional ethnically homogeneous people. Although the Swiss constitution of 1874 explicitly state that the people of the different sovereign cantons form the federation, the new constitution does base its legitimacy on both the Swiss nation and on the peoples of the cantons. Question may arise whether the people of Switzerland have unity and what is the basis of this unity? It can well be that the traditional political procedures and institutions, such as direct democracy, federalism, and autonomy of local authorities, have been so strongly internalized that they have turned a culturally diverse population into a politically homogeneous people. It may well be that federalism, which has combined the shared power of the different cultures with the strong
autonomy of cantons and municipalities has been and still is the most important integrative factor in the reality of the Swiss population. It is certainly thanks to these common values that Switzerland up to now has not been split up into separate language and or religious communities.

Thus, 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 people 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 neighbour countries. The unity of the state 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.

It is this reality of the fragmented Swiss society that induced the drafters of the new constitution to provide in the preamble a clear mandate for the confederation to be “determined to live diversity in unity respecting one another”. Article 2 par 2, of the constitution obliges the confederation to foster the cultural diversity of the federation. Such a provision is unique compared with other constitutions.

The constitutional powers of the federal and cantonal authorities are separated and divided according to the federal
constitution (Art 3). In practice, they are redefined in a complex network, which can only function in a spirit of comity and federal-cantonal partnership. Swiss federalism thus is not simply a complementary instrument for an additional separation of powers, in order to limit state powers by vertical checks and balances. The multicultural diversity of Swiss society is the pre-constitutional reality reflected in Swiss federalism. Thus, federalism is the fundamental principle underlying the legitimacy of the constitution.

**Balance between Individual and Collective Rights:**

The primary aim of the modern liberal state is individual liberty that is, the protection and promotion of fundamental rights and values. A multicultural state such as Switzerland, which is confronted with a high potential for internal conflicts, has not only to be concerned about individual liberty but also to safeguard peace and harmony among the different communities. In fact, it has to manage and enhance peace not only between individuals, but also just as much between the different communities. In fact, it has to manage and enhance peace not only between individuals, but also just as much between the different communities. One of the most important aims of Swiss federalism, thus, is to guarantee, apart from individual liberty, the multi-culturalism of its diverse communities.

In order to respond to these necessities, the federal constitution has established political institutions and procedures that facilitate peaceful settlements or management of internal conflict. In this sense, the preamble to the new constitution explicitly resolves to strengthen liberty, democracy independence and peace (not only international) in
solidarity and in openness to the world”, thus not only liberty but also peace among the cultural communities are among the declared aims of the constitution.

**Liberty of Religion and Peace among Religious Communities:**

With regard to the liberty of religion (Art 15), the federal court has not only taken into account individual freedom as a fundamental right, it has also respected religious peace as a main purpose of the federation. Therefore court has based its decisions implicitly on the collective right of religious communities to pursue among the communities within their traditional territories the interest of the majority religion. Today, religion as a potential cause of conflict in Switzerland is fading away. Nonetheless, Art 72, par 2 empowers the federal and cantonal authorities explicitly to take necessary measures to maintain public peace among the different religious communities.20

**Liberty of Language:**

Although the peril of religious conflict no longer looms in Switzerland, religious and language conflicts have risen all over the globe and turned into the most dangerous conflicts threatening world peace. However the tensions among language groups have remained in Switzerland. Such tensions have been increased during recent decades. Consequently, the new constitution (Art 7) confers the explicit burden and responsibility on the federal and cantonal authorities to seek harmony among the different language communities.
Constitutional Procedure for the Solution of Territorial Conflicts:

The constitutions of 1848 and 1874 considered the territories of the cantons as "sacred", and thus did not foresee any territorial change among the cantons on the contrary, for the sake of peace among the cantons, the constitution obliged the federal authorities to protect and to guarantee the territories of the canton. Later, the most important dispute on territory arised concerning the Jura region of the canton of Berne, which could not be settled by such an explicit lack of regulation. The rigorous freezing of cantonal territories could not provide a final solution. The dispute lasted for more than a century.

Finally, without any specific provision in the federal constitution, the canton of Berne decided, empowered by its own residual power, to grant the right of self-determination to the people living in the Jura area. However while this right was provided for the region as a whole, at the same time the right of self-determination was given to every district and, in certain cases even to the municipalities. If the region favoured secession, the smaller districts and, in some instances, even the municipalities could decide whether they would prefer to remain in the canton of Berne or to join the new canton of Jura. This cascade of different referendum votes allowed both cantons to reshape the borderlines not only along the language border but also along the religious division between French-speaking protestants and French speaking catholics living in the Jura region of the canton of Berne.

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This democratic and finally peaceful secession procedure was the model for a new provision in the new constitution regarding
territorial changes. Article 53 provides that any modification of the number of the cantons or of their status is subject to the assent of the population concerned, of the cantons concerned, and of the Swiss people and of the cantons at large. Thus the new constitution regulates the democratic procedure for secession or reunion. The secession or reunion requires the consensus first of the seceding or uniting population and, second, of the entire population of the country and the majority of the cantons. The procedure takes into account both minority interests and majority interest. Para 3 of Article 53 even provides a procedure for changes of territory without modification of the number of the cantons. In such territorial modifications, the proposals are subject to the assent of the population of the cantons concerned and of the federal parliament.

Switzerland of the 19th century was internally very fragile and externally under threat from neighbouring monarchies. This potential instability was the reason the constitution of 1874 prohibited groups of cantons from constituting political alliances, which could endanger the unity of Switzerland. The new constitution renounces any such prohibition because there is no longer any real threat to the unity of the country. This may be a case proving that over time, democratic constitutions can very well provide institutions and procedures that integrate and strengthen the legitimacy of the state.

**Enlarged Shared Power:**

In general terms, the new constitution has enlarged the possibilities for shared power and diminishes the scope of self-rule, that is, the autonomy of the cantons. As international co-operation, in
particular integration into the European union will have a great impact on Swiss federalism, the new constitution contains an increased number of provisions that take into account international co-operation. This co-operation is not limited to the federal government. Article 55 provides that cantons have to participate in all decision-making process with regard to international co-operation.

In addition, Article 45 provides that cantons shall participate in decision making at the federal level and, in particular, in legislation, where it is provided by the constitution. This provision also obliges the federal government to inform cantons of important policies being planned by the federal government.

The new constitution gives cantons important provisions to enlarge the scope of shared power. Historically the founding fathers of the constitution defended the equal sovereign rights of the cantons sharing federal power on the basis of the quality of sovereignty they had conveyed to the federal government by the federal constitution. In quantity, those sovereign rights may be different but they do not differ in quality. Thus, the constitution implemented two principles of representation. Representation of the people based on one person, one vote and one value in the first chamber and representation of the peoples of the cantons based on two representatives for each sovereign canton and one representative for each sovereign half-canton.

The new provisions of the constitution do not limit shared power to the liberal principle of the people's representation in parliament. It enlarged the shared power process to include empowering cantonal governments. Thus, generally, the new constitution opens a new
concept of federalism incorporating the executive branches of government. In the future, cantons will have the right to play a role in the exercise of the shared power based on the principle of representation through their citizens as voters and through the participation of their executive branches of government.

**Democracy of Municipalities:**

Diversity and multiculturalism are not limited or identical with the territories of the cantons but it is with the territories of the cantons but it is with the territories of the municipalities. Multiculturalism with regard to religion and to language is often determined by municipal boundaries. This is the very reason why federalism in Switzerland cannot be reduced to the relationship between cantons and federal government. It has to incorporate also the local democracies of the municipalities. The small democracy in the local municipal area is the fundamental element of Swiss federalism. The municipal democracies are the units at the bottom of the state, which guarantee and foster the diversity of Switzerland. According to the self-rule principle, the structure, organization and autonomy of municipalities are subject to cantonal law. This was the reason why the autonomy of municipalities was not even mentioned in the old constitution. The new constitution (Article 50) provides a special section for the protection of municipalities. It guarantees their autonomy according to cantonal law and obliges the federal government to evaluate all federal measures that might have consequences for the municipalities. Economic development and in particular, the side effects of globalization, the complexity of the
welfare state, and the principle of executive federalism particularly overburden small municipalities. Cantons are, therefore, confronted with the need to facilitate or even to enforce the merger of small municipalities that do not possess the necessary means in terms of their human and financial capital to fulfill their basic obligations. Such mergers of municipalities are regulated by cantonal law, which in most cases requires a referendum of the population concerned. As in any merger, at least one part of the population will lose the name and therefore, the identity with its historic commune. Hence, citizens often prefer to pay a higher price in taxes than to give up their home community and merge with another municipality.

With regard to inequalities of taxes among cantons and municipalities, the new constitution provides only a federal competence to harmonize the cantonal legislative systems of taxes and the procedure of taxing among the different cantons (Art 129 par 2). The amount of taxes that is, the income per year, on the other hand is decided either by a cantonal parliament or by popular cantonal referendum. As a consequence, individuals with the same income have to pay considerably different taxes depending on the municipality and canton in which they have their domicile.

**Cantonal Autonomy:**

Like the old constitution, the new constitution have claimed that the cantons are sovereign in so far as their sovereignty is not limited by the federal constitution (Art 3). The residual power remains with the cantons, which as sovereign units, handed over partial sovereignty to the confederation. According to Article 3 of the
constitution "all the powers of the federal government have to be spelled out in the federal constitution. As the cantons have the residual and original power, their competencies are not comprehensively articulated in the federal constitution. According to several cantonal constitutions, the residual power has even remained at the municipal level. According to the federal constitution of 1874, the federal government could only claim competencies by interpreting the relevant articles of the constitution. This has changed somewhat with the new constitution. According to article 42 par 2, the confederation shall assume tasks that require uniform regulation. This article could be given a very broad interpretation. If this were to be the case, the federal legislature would in effect decide which competencies are needed for necessary uniform regulations. All these articles were originally drafted with the idea that the new constitution would, contrary to the old constitution, provide a constitutional review of all statutes. This "revolutionary" proposal did not get the approval of Parliament, however. Thus it will only be in the jurisdiction of the federal legislature to decide to what extent Article 42, par 2 can be used for federal competences without explicit constitutional provision.23

With regard to the actual distribution of powers between the confederation and the cantons, the new constitution does not contain any important changes. One of the main aims of the new constitution was to give the actual system a modernized wording, but to avoid any significant amendments that would dramatically change the balance of power in Switzerland.
Today, the relationship between the canton and the federal government is characterized by a high degree of co-operation between the subnational units and the federal government. The complexities of modern infrastructure, economic intervention and social policies stimulated the development of co-operative federalism. The new constitution focuses much more on the issues of shared rule then on self-rule. In this sense, Swiss federalism has been more and more influenced by the German tradition. Three major changes in this context are: 1. The right of cantons to participate in the foreign policy decisions of the federal government. 2. The general right to participate in internal federal legislation. 3. The general possibility for cantons to regulate matters of general through international or inter-cantonal treaties has to be mentioned. 24 Partnership is indispensable not only between the cantons but also between the federal branches of government and cantonal branches of government. This partnership is shaped on the principle of solidarity and based on this philosophy, Article 44 of the new constitution, read as follows: 1. The confederation and the cantons shall collaborate, and shall support each other in the fulfillment of their tasks. 2. They owe each other mutual consideration and support. They shall grant each other administrative and judicial assistance. 3. Disputes between cantons, or between cantons and the confederation shall, to the extent possible, be resolved through negotiation or mediation. 25 Although this provision was not part of the old formal tradition, its content was in fact the living reality.

Swiss federalism has followed the tradition of all federal states in Europe by including the “executive federalism” of the European
Union. Where all federal statutes and ordinances are in general, first interpreted and applied by cantonal administrations and controlled by cantonal administrative courts depending on cantonal administrative procedure. This type of federalism has been called "executive federalism". This very principle of executive federalism is for the first time now explicitly provided for in Article 46 of the new constitution. Executive federalism is based on a hierarchical relationship between the cantons and the federal government in all matters of federal competencies.

**Supremacy of Federal Law:**

Not all federal states have clear provisions to guarantee the supremacy of federal law. The Swiss constitution followed the American model of the supremacy clause. In the old constitution the supremacy clause was hidden in the provisions regulating the transition. The new constitution determines it clearly in Article 49: "Federal law takes precedence over contrary cantonal law. The confederation shall ensure that the cantons respect federal law".26

**New Federal Responsibilities of the Confederation:**

Diversity and autonomy have been guaranteed up to now by the clear constitutional restrictions of the federal powers. Direct Democracy, the guarantee of cantonal autonomy in the constitution, and a political climate defending federalism has been the real guarantors of Swiss multiculturalism. These instruments have been developed for the settlement of conflicts and for the defense of minority interest. The new constitution includes specific obligations to care for support and sustain federalism, diversity, solidarity and
comity. The federal government has to foster languages, to care for mutual understanding, to guarantee peace among religious communities; and to support poor regions, big cities, and mountain areas. The confederation has, with regard to its legislation and administration, to take cantonal particularities into account and, at the same time, to provide the largest possible autonomy to the cantons (art 46, par 2). The confederation has to respect cantonal independence and self-rule (art 47), but it also has to decide at which moment some federal regulations need to be issued for the sake of uniformity (Art. 42 par 2).

Thus the federal branches of government have assumed new responsibilities. They need new tools to provide information in order to plan and react according to their obligations. When they plan and decide upon new legislation or administrative measures, they are constitutionally obliged to make an assessment of the impact on federalism. However, they will determine the scope of federalism that is good for Switzerland, a responsibility they did not have to assume under the old constitution.

SUGGESTIONS FOR AN INSTITUTIONAL REFORM IN SWITZERLAND

The 150-year-old institutions of Swiss federalism and the unbalanced resources and sizes of the 26 cantons are at the roots of an inconsistency of policy outcomes a weak centre's capacity for governance, a systematic bias for the status quo and a weak innovation record of Swiss politics. It is therefore not surprising that the call for reforms to Swiss federalism has grown louder in the last
few years. Therefore political scientists have suggested four-reform strategies.

1. **Territorial Reform Strategy**: Means reducing the number of cantons. As many problems of federalism are due to the fact of too many small units, the advantage of merging the cantons of fewer and more homogeneous units seems reasonable. In order to ensure that Swiss politics are democratic, effective and 'Europe-compatible', there is a need for a change i.e., a fundamental change in the basic structures of Swiss federalism, namely the rearranging of the borders of the component units and creating larger functional regions. For example, Rene Frey, proposed the replacement of the 26 cantons by size or seven regions, each with more or less the same population size and economic power. This proposition seems promising from an economic viewpoint in that it would allow for economies of scale, reduce unnecessary redundancy as well as improve the competitive position of the Swiss member states against other European regions. However, this reform of Swiss federalism could disturb the long-standing balance of power among the cantons and between the sub-national units and the central government. Their self-protection as a cultural and regional minority would suffer. Furthermore, there are also economic arguments against the reduction of the number of member states, such as the increased planning costs and a lower competition among cantons, which restrict organizational and political innovation.
2. **Functional Reform**: since territorial reforms are politically difficult and not feasible, theorist and politicians prefer another strategy i.e., functional reform, which is currently sought in two different ways.

a) **Separation of Powers and Responsibilities**: The current networks of fiscal federalism and political cooperation between the cantons and the federal government are complicated, not transparent, have many dated incentives and weaken political responsibilities. These disadvantages of co-operative federalism are not recent. The federation and the cantons therefore sought ways and means to separate powers and responsibilities over the last 20 years. In theory, as clear separation of responsibilities offers considerable advantages. It allows for financial equivalence of public goods, which means a clear definition of identical groups of payer's and users, and minimizes externalities if responsibilities follow the classic principle of subsidiarity. However, in practice, all political reforms for a clear separation of responsibilities have failed. There are several reasons for this. In the small-scale geography of Swiss federalism, spillovers of most cantonal policy programmes are unavoidable. Factual interdependence between federal and cantonal responsibilities cannot be cut off. Finally, every federal system has in-built incentives for shared financing of political programmes. Therefore, the separation of
responsibilities is like the rock of Sisyphus, which, after being pushed up, rolls down the hill, again.

b) **Intensifying Co-operation**: If one accepts the fact that territorial reforms are impossible and the success of the separation of responsibilities is limited, one can try to make the best of handling the interdependencies. This means trying to find better forms of co-operation between the federation and the cantons and among the cantons themselves as well.

3. **Finding a New Balance between Democracy and Federalism**: The growing differences in population size between cantons due to migration from rural to urban cantons has led to the imbalance between federalist and democratic principles. A group of small cantons that represent less than a quarter of the people can block decisions of national importance both in all legislation taken by the council of states or in cases of constitutional amendment, requiring the double majority of the cantons and the people in the popular vote. This double-majority requirement is especially in need of reform. While favouring small rural, more conservative and German-speaking cantons, the language minorities are not protected at all by this federal institution. Moreover, the double-majority requirement prevents important innovations and policy reforms at the federal level and makes the international integration of Switzerland very difficult.

4. **New Actor Strategies instead of Institutional Reforms**: Changing the players rather than the rules of the game. Many
transformations of Swiss federalism in the last 100 years took place without institutional reforms. Sonja Walti points out that the cautious use of federal control over the cantons, and, conversely, the renunciation by the cantons of the use of potentially powerful institutions to exert influence over central decisions are due to the dominant strategies of decision-makers rather than a change of the institutional framework. Therefore she concludes that an institutional reform of the federal configuration in Switzerland does not appear to be very promising. On the contrary, institutional reforms of federalism do not seem necessary nor are they necessarily suitable in order to accomplish better policy outcomes and the desired increase in the centre's governance capacity. In other words, the game can be influenced by changing the players rather than the rules of the game.

Thus these reforms show that improving federal governance can be made from very different approaches and perspectives. Most proposals signify a radical change of federal traditions. The political feasibility of reform projects such as reducing the number of cantons, making a clear separation of responsibilities and power is low. Thus, federal reforms will most probably be limited to less incisive measures. Each approach makes specific contributions to the sensible further development of Swiss federalism and can lead to improved governance in Switzerland. However the possibility of implementing such radical federalist reforms is low. While radical reform projects such as the rearranging of cantonal borders, making a clear separation of responsibilities and powers or making institutional changes, in the
end cannot fail due to strong federal powers, less considerable, such the intensification of co-operation or improved utilization of existing instruments are more uncertain. Ullrich Kloti points out this means pragmatic and punctual adaptations. Unfortunately this also means that Swiss federalism has to live with shortcomings that can easier be identified in theory than in practice.
REFERENCES

2. Ibid, p.305
3. Ibid, p.289-90
6. Ibid, p.2
9. Ibid, p.121
17. Ibid, p.100
18. Ibid.
20. Ibid, p.18
23. Ibid, p.13