

Governance and Public Management

Series Editors
Robert Fouchet
University Aix-Marseille
France

Juraj Nemec
Masaryk University
Czech Republic



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Governance and Public Management Series

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Andreas Ladner • Nils Soguel
Yves Emery • Sophie Weerts
Stéphane Nahrath
Editors

Swiss Public Administration

Making the State Work Successfully

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Editors

Andreas Ladner
IDHEAP
University of Lausanne
Lausanne, Switzerland

Nils Soguel
IDHEAP
University of Lausanne
Lausanne, Switzerland

Yves Emery
IDHEAP
University of Lausanne
Lausanne, Switzerland

Sophie Weerts
IDHEAP
University of Lausanne
Lausanne, Switzerland

Stéphane Nahrath
IDHEAP
University of Lausanne
Lausanne, Switzerland



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PREFACE

In 2013, the Institut de hautes études en administration publique (IDHEAP) at the University of Lausanne published the first handbook on Swiss public administrations both in German and in French. This handbook became quite a success within the civil service and proved to be very useful for teaching. This completely rewritten and much shorter volume concentrates on the main characteristics of public administrations in Switzerland and makes the content of the handbook accessible to a broader English-speaking public. It responds to an increasing interest in Swiss political and administrative institutions and policy solutions.

The book was written to be presented at the 2018 Conference of the European Group of Public Administration (EGPA) organized at the IDHEAP in Lausanne. One of the goals was to give our colleagues some ideas about the organization and the functioning of Swiss public administration. We hope it gives answers to questions which usually come up while considering another country and provides insights into an administrative system which is quite different and complex but rather successful.

To write such a volume in a relatively short lapse of time was quite a challenge, and we would like to say thank you to all those who contributed to it, especially all the authors for their significant contributions. Our thanks also go to the University of Lausanne, the Faculty of Law, Criminal Justice and Public Administration, and the Graduate School of Public Administration (IDHEAP) for their financial support.

A very special thank-you goes to John Bendix, who not only translated the French and German texts into English, and corrected our attempts to use the language of Shakespeare, but also shared with us his huge

knowledge of the topic and prevented us from being unclear or incorrect. A special thank-you also goes to Merita Buzuku, who brought all the numerous documents in the form requested by the editor.

Lausanne, Switzerland
April 2018

Andreas Ladner
Nils Soguel
Yves Emery
Sophie Weerts
Stéphane Nahrath

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NOTES ON CONTRIBUTORS

Laure Athias is Associate Professor of Public Economics at the Swiss Graduate School of Public Administration (IDHEAP) at the University of Lausanne, Switzerland. Her areas of research contribute to the understanding of the problem of effective public service delivery and draw on political economy as well as on contract theory and incentive theory in economics.

Marion Baud-Lavigne is a research assistant at the Swiss Graduate School of Public Administration (IDHEAP) at the University of Lausanne. She specializes in the evaluation of public policies, political steering, and the institutionalization of evaluation.

Giuliano Bonoli is Professor of Social Policy at the Swiss Graduate School of Public Administration (IDHEAP) at the University of Lausanne. His research has focused on pension reform, active labor market policies, and family policies, both in Switzerland and comparatively.

Jean-Loup Chappelet is Professor of Public Management at the Swiss Graduate School of Public Administration (IDHEAP) at the University of Lausanne. He was Director of the Graduate School from 2003 to 2012. He specializes in the public policy of sports and the governance of sport organizations.

Yves Emery is Professor of Public Management and Human Resource at the Swiss Graduate School of Public Administration (IDHEAP) at the

University of Lausanne. His areas of research include HRM strategies, work identities, and the motivation and competencies of civil servants and public managers.

Manuel Fischer is a senior researcher at the Swiss Federal Institute for Aquatic Research and Technology (Eawag) and at the University of Bern.

Alexandre Flückiger is Professor of Public Law and Vice-Dean of the Faculty of Law of the University of Geneva. His areas of research include constitutional and administrative law, environmental and planning law, data protection law and transparency, as well as better lawmaking.

Christine Guy-Ecabert is an honorary professor at the Law Faculty of the University of Neuchâtel. Her areas of research focus on urban planning and territorial development, alternative dispute resolution, and lawmaking.

Katia Horber-Papazian is a professor at the Swiss Graduate School of Public Administration (IDHEAP) at the University of Lausanne. Her areas of teaching, research, and expertise, in Switzerland and internationally, focus on the steering and evaluation of public policies, the institutionalization of evaluation, multi-level governance, and institutional and territorial reforms.

Karin Ingold is a professor at the Institute of Political Science and the Oeschger Centre for Climate Change Research at the University of Bern, and Head of the Policy Analysis and Environmental Governance cluster at the Swiss Federal Institute for Aquatic Research and Technology (Eawag).

Andreas Ladner is Professor for Political Institutions and Public Administration at the Swiss Graduate School of Public Administration (IDHEAP) at the University of Lausanne. His areas of research include the quality of democracy, political institutions and public administration, local government, political parties, and voting advice applications.

Moudo Macina is a researcher at the Swiss Graduate School of Public Administration (IDHEAP) at the University of Lausanne. His research interests include public service delivery, public health policy, and culture and development economics.

Pascal Mahon is Professor of Swiss and Comparative Constitutional Law at the Faculty of Law of the University of Neuchâtel. He is also President

of the Swiss Judicial Academy and Member of the Board of Directors (in the thematic cluster migration) of the Swiss Center of Expertise for Human Rights. His research interests focus on constitutional law and institutions, judiciary systems, and procedural and human rights.

Tobias Mettler is Associate Professor of Information Management at the Swiss Graduate School of Public Administration (IDHEAP) at the University of Lausanne. His research areas include the study of digital government transformation and innovation as well as the design of methods for technological forecasting and evaluation of digital government initiatives.

Stéphane Nahrath is Professor of Public Policy at the Swiss Graduate School of Public Administration (IDHEAP) at the University of Lausanne. His areas of research include comparative public policy, sustainable resource management, and circular economy.

Martial Pasquier is Professor of Public Management and Marketing at the Swiss Graduate School of Public Administration (IDHEAP) at the University of Lausanne, where he is also Vice-Rector. His research focuses on transparency, public communication, and public agency management.

Amalia Sofia is a researcher at the Swiss Graduate School of Public Administration (IDHEAP) at the University of Lausanne. Her interests focus on the privatization of migration policy.

Nils Soguel is Professor of Public Finance at the Swiss Graduate School of Public Administration (IDHEAP) at the University of Lausanne. His research interests include public sector financial management, fiscal policy, and fiscal federalism.

Philipp Trein is a senior researcher at the Institute of Political, Historical and International Studies at the University of Lausanne. His research interests include comparative public policy and administration, comparative and European politics, and economic voting.

Frédéric Varone is Professor of Public Policy and Head of the Department of Political Science and International Relations at the University of Geneva.

Sophie Weerts is Associate Professor of Public Law at the Swiss Graduate School of Public Administration (IDHEAP) at the University of Lausanne.

Her research interests include constitutional and administrative law, the sources of public law, human rights, language policies, and gender policy.

Pascal Wicht is a research fellow at the Swiss Graduate School of Public Administration (IDHEAP) at the University of Lausanne. His research focuses on the modes of provision of public services, in particular, public–private partnerships.

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INTRODUCTION: SWISS PUBLIC ADMINISTRATION—KEY CHARACTERISTICS AND CHALLENGES

Swiss citizens approve of their government and the way democracy is practiced in the country. They trust their authorities and are satisfied with the range of services Swiss governments provide. This seems to be quite a contrast to many other countries which find it increasingly difficult to form stable governments and witness growing disenchantment with politics among their citizens. This goes hand in hand with complaints about a too rigid and not very effective and efficient bureaucracy, and the political and administrative difficulties in finding solutions for the pending challenges to old-age pension schemes, education, energy supply, health, unemployment, and other public policy issues.

We do not claim throughout this book that Switzerland has solved these problems or that political institutions, politics, and public administration make all the difference. Government certainly matters, but there are other things which also make a country successful. We nevertheless believe that Switzerland is an interesting case to look at from a theoretical as well as from a more practice-oriented perspective. Though confronted with the same problems that exist in other countries, Switzerland occasionally offers different solutions; some of them seem to work particularly well.

We begin with the history and formation of Swiss political institutions and describe the horizontal and vertical organization of the state, the role of the different levels of government, the territorial units, and other actors who provide public services. We also provide information about the number of employees working in the public sector and compare Swiss public administration to public administration in other countries. The second

part is devoted to the legal system, mainly focused on the federal level. It introduces classic legal concepts, as understood in the country, and presents some of the legal mechanisms and institutions. The Swiss legal system, like many others, is confronted with structural transformations and has its debates about the loss of legitimacy and the lack of efficiency of legal instruments in addressing issues of governing. Part 3 looks at managerial aspects of the Swiss administrative system and examines the principles on which it is based as well as its most recent reforms. We also look at aspects related to human resource management and at public employees who are no longer career civil servants. Following this, part 4 takes up the question of public financing. It stresses the distinctive features of the financial process and how taxing power, tax competition, and financial equalization are organized, as well as how they affect the financial situation of the different levels of Swiss government. The final part looks at select public policies such as social security, health, climate, and telecommunication, and highlights interesting findings of how politico-administrative arrangements are designed in these policy domains. It also explains how and why policy evaluation has been institutionalized in Switzerland. The sections which follow summarize key aspects discussed in each of these five parts.

PART I: “BOTTOM-UP STATE ORGANIZATION, DIVERSITY, AND NEW FORMS OF POLICY COORDINATION”

It is helpful to briefly look at the foundation of the modern Swiss state to better understand its political institutions and the genesis of Swiss public administration. That the entire Swiss territory was never part of a strong monarchy but was instead a loose confederation of more or less independent territorial subunits (cantons) led almost inevitably to creating a federalist structure. This seemed the only practicable solution for uniting a religiously and linguistically heterogeneous territory. With residual power in the hands of the cantons, the price for the transfer of competencies to the national government was to introduce direct democratic mechanisms and to integrate the various political forces by having them share in the responsibility for governing. Each transfer of tasks to the national government needs the consent of the majority of the citizens and the majority of the cantons. This bottom-up type of state-building is also why the federal (national) government was long limited in its powers and saw an expan-

sion of these powers relatively late, comparatively speaking. The execution of many tasks still remains in the hands of cantons and municipalities, and widespread cooperation with private and semi-private actors has also contributed to the country having an only modest state sector.

Swiss federalism is based on cooperation between the different levels of government, and competition between them is considered positive. Unity explicitly allows for diversity, and the cantons still fiercely defend their autonomy; the principle of subsidiarity is also upheld. Most civil servants work for cantonal governments, and cantonal expenditures, taken as a whole, are much higher than those at local and national levels. This is not only due to the relatively high number of cantons (26) for such a small country but also of the increasing importance of policymaking in the domains of education and health, both of which are largely cantonal responsibilities. Despite attempts to more strictly follow the principle of fiscal equivalence and to concentrate the regulation, funding, and execution of specific tasks at only one level of government, various forms of cooperation between different levels of government are still the rule. In some areas, they have even increased, and there is extensive cooperation between cantons whose aim is to better coordinate autonomous policymaking—and to increase their collective influence on the higher, national level of government.

The complexity of political arrangements has also increased through a partial outsourcing of activities formerly organized by public authorities. This is very much in line with the international debates about administrative reform in the context of new public management, and is in line with the existing Swiss tendency of intense cooperation between social and economic actors. Switzerland thus has all the characteristics of what is often called multi-level governance. Even with this, there are many attempts to introduce new forms of policy coordination which are less hierarchical, to reach across the different levels of government, and to involve the private sector in fulfilling public tasks.

PART 2: “STRENGTHENING THE LEGITIMACY AND EFFICIENCY OF SWISS LAW”

As in neighboring France or Germany, the Swiss legal system is part of the civil law family that originated in the Roman Empire. There is a written (and frequently amended) constitution, which contains fundamental

rights, separates the legislative, executive, and judicial organs of the federal state, and fixes the distribution of powers between cantons and federal authorities. Its judiciary is federally and hierarchically organized, with a Supreme Court at the top. In terms of the relationship between international and national law, Switzerland follows the ‘monist’ tradition, meaning that international law is part of the Swiss legal order. The Swiss legal system is also unique owing to its many instruments of direct democracy at both federal and cantonal levels.

Yet structural changes have strongly influenced both legal systems and public administrations. Laws are more and more frequently produced in international forums. Executive branches today play an increasingly important role in developing legal norms. New forms of normativity have emerged which employ informal mechanisms and involve private actors, thereby circumventing legal rigor and increasing the flexibility of public action. Within the classic conception of the separation of powers, the judiciary plays an increasing role in expanding constitutional review. All these developments generate questions about the continued legitimacy and efficiency of the law, including in Switzerland.

One issue is that the growing diversity in legal norms seems to be leading to a loss of legitimacy of the existing legal system. The proliferation comes in part through the development of international law, but arises as well from the technicality of enacted laws and the sheer complexity of the legal system. The instruments of direct democracy have the potential both of supporting and of undermining lawmaking processes, so various rules and practices have been developed to help build political consensus. This is done in part by identifying different forms of law and specifying the competent actors but also through a legislative process that is cautiously organized. That process includes a very elaborate consultation procedure that brings together public administrations with political and private actors and covers both domestic and international law. The organization of the judiciary and a (formally) limited degree of constitutional review of federal laws on the part of the Federal Supreme Court support the separation of powers notion.

Another issue, one which also affects legitimacy, is the desire for greater efficiency in politics and administration. The criticisms are well known: the lawmaking process is too slow, legal language is too abstract and technical, there are too many regulations, legislative instruments are inadequate for managing contemporary social issues, and so forth. This section addresses the efforts by lawmakers to address such problems, while also discussing

the openness of the Swiss public law to other forms of normativity. Even if the acts of ‘soft law’ are not part of the sources of law, they are used by the public authorities and circumvent existing formal constraints.

PART 3: “AN OUTCOME-ORIENTED AND OPEN CIVIL SERVICE”

From the perspective of management and human resources, Swiss public administration is a particularly interesting case of what the literature calls ‘post-bureaucracy’. This is a hybrid universe which combines the values and methods employed in traditional management with those of private management. Politicians and public managers in Switzerland have always been open to the private sector, which helps explain the success in introducing ‘new public management’ methods in Switzerland. But rather than privatizing the public sector, these new methods complement more conventional public administration principles which include legality and the equality of treatment. These remain very present and have been joined to more entrepreneurial principles, including cost control, efficiency, attention to the quality of services provided to the population, and evaluating the effectiveness of administrative acts. Similarly, human resource management in public administration today combines private sector practices such as performance-based pay and the facilitated termination of employment with traditional safeguards that include guarantees under public law for such work relationships. This is in the context of often quite favorable working conditions: the levels of remuneration in public sector employment are often higher than those found in the private sector, as the statistics regularly show. Such a marriage of public and private elements is not self-evident and may represent a unique ‘Swiss way’ of management.

PART 4: “A SOUND FISCAL POLICY THANKS TO STRONG FISCAL INSTITUTIONS”

Swiss fiscal institutions have distinctive features. Parliaments, whether at federal or cantonal levels, are not under the thumb of their executive councils. For many years now, the federal constitution and the constitutions of the cantons have set hard budget constraints on spendthrift governments. Switzerland’s instruments for direct democracy—popular referenda and initiatives—also apply to legislation involving tax and expen-

ditures. These elements build systems of checks and balances that have led, particularly in the last two decades, to sound public budgets with relatively low debt levels.

The strongly decentralized and federalist structure of the country has also contributed to this outcome. It enables effective competition between local governments. Tax competition is part of the picture, with direct taxes the main source of financing for the cantons and the municipalities. Local governments have also implemented high-quality financial and management accounting systems; these governments are the main providers of public services which are financed according to a ‘user-pays’ principle. Thanks to these rather technical characteristics, the financial statements prepared by Swiss federal, cantonal, and local governments have high levels of accountability and transparency.

Perhaps surprisingly, the governments’ favorable financial situation is not due to high taxes. Even though Switzerland makes extensive use of direct taxation, the tax burden in Switzerland is lighter than elsewhere for both households and companies. A repeated criticism is that indirect taxation, notably value-added tax (VAT), should be used more. True, VAT engenders fewer fiscal distortions compared to other taxes. However, the fact that income tax dominates compared to VAT makes it one of the drivers of fiscal federalism and tax competition. To reduce its predominance would weaken both of these advantages of Swiss institutions.

The existence of tax competition in a highly decentralized context in which local and cantonal governments are fiscally extremely autonomous raises the specter of a ‘race to the bottom’ which would exacerbate the inequalities between financially strong and weak governments. However, the financial equalization schemes that have been implemented at both national and cantonal levels mitigate this risk. Indirectly, they guarantee that tax competition can continue to exist, just within acceptable and accepted boundaries.

PART 5: “PUBLIC ADMINISTRATION AS POLICY BROKER”

Particular aspects of the Swiss political system—notably (cooperative) federalism, (neo-) liberalism, and subsidiarity—affect the organization and operation of politico-administrative arrangements in the course of policy formulation and implementation. These arrangements are characterized both by great heterogeneity (involvement and responsibility of private actors) and high fragmentation (extent and complexity of policy net-

works), which allows for competition between cantons, between municipalities, and, in some cases, between private and public organizations. Both heterogeneity and fragmentation are magnified by the substantial cantonal and local autonomy in designing politico-administrative arrangements.

Private actors in Switzerland also may be rule-makers and rule-takers. Thus, one often finds professional organizations strongly influencing policy decisions or even issuing guidelines, norms, and standards which can become part of the policy design. In terms of implementation, significant elements of federal laws or cantonal tasks may be delegated, through various contractual instruments, to private actors. Thus, a non-trivial part of public service delivery is provided in Switzerland by professional, non-profit (NGOs, foundations, associations, cooperatives), or even for-profit (companies) organizations.

Policy brokering and coordination also play a crucial role in limiting certain negative outcomes of cooperative federalism. Cantonal autonomy is an efficient way of adapting policy designs to regional specificities, but it can lead to negative side effects such as the unequal treatment of citizens or an uncoordinated implementation. Inter-cantonal associations play an important role in countering this by coordination efforts during the implementation stage (e.g., in health and social security policies), or in limiting (but not entirely removing) the unequal treatments of citizens.

Yet social network analysis also shows that policy brokering on the part of public administration units can help find solutions to conflicts which arise in the policy formulation or implementation phases. Their high 'reputational power' allows them to substantially influence policy formulation (and the choice of policy instruments) in acting as a policy broker or as a member of an advocacy coalition. Still, nowadays public administrations need to share their power with private actors—paradoxically, it appears, by renouncing their previous role as the dominant actor.

PROBLEMS AND CHALLENGES

Political systems and public administration in Switzerland are, of course, far from perfect. Some of the more fundamental questions turn on the territorial organization of the state. Although decentralization and a high degree of autonomy of the lower units are seen as rather positive features, there seem to be by far too many municipalities and cantons for such a small country. Through mergers, the number of municipalities has shrunk

by about one-fourth since the 1990s, but many are still very small and the entire population of certain cantons does not even reach the size of a single larger city. It is even more problematic that the political units no longer coincide with the actual territory people live and work in, which challenges not only a territorially based taxation system but also the way democratic decisions are reached.

A country with both fast-growing and less-dynamic areas raises questions about how competencies and resources can be symmetrically distributed. Metropolitan areas are the drivers of economic growth but have different needs than more remote rural areas, so how far should equalization schemes go and with what aim? The Swiss system allows for diversity, but there are very large differences in individual tax burdens (based on local and cantonal residence) which are difficult to justify.

Cooperation between the different municipalities and between cantons as well as across the different levels of government makes politics much more complicated and—despite the many elements of direct democracy—tends to move political influence away from citizens and even parliaments. Top-level civil servants and executive bodies have gained importance, and technocratic solutions increasingly replace political decisions. One of the challenges is to find efficient and democratically legitimate forms of cooperation in public decision-making.

While the mechanisms of direct democracy help reinforce the legitimacy of legal rules domestically, they create difficulties in the application of international law to Swiss political decisions, and lead to tensions between domestic and international law. This puts Switzerland, in turn, under strong internal and external pressure, as it can make it appear a too mercurial political and economic partner.

The ever-present threat of a popular referendum pushes political actors to cooperate and negotiate already in the pre-parliamentary phase of legislation, but that also has the effect of slowing the process of lawmaking. Moreover, despite very well-organized lawmaking procedures, non-obligatory acts (soft law) have also developed. If some view this as a good sign, it also shows that classic legal acts and processes cannot cover all state activities, and there is a need to imagine alternative procedures and new mechanisms to guarantee classic obligations will also be fulfilled.

With respect to the courts, and especially the Federal Supreme Court, the re-election of justices and the limited constitutional review the Supreme Court can exercise over federal laws underline the importance of

the Federal Assembly. At the same time, such rules mean the judiciary cannot play the role of a countervailing power at the federal level.

The hybrid nature of the Swiss administration, as well as the institutional characteristics described above, makes managing public administration difficult. There is resistance of various kinds, not least because of claims that a kind of ‘reform mania’ is at work—leading to discrediting the reforms initiated as well as wearing out the civil servants. The methods introduced have not always taken the specificities of public administration sufficiently into account and lead to a clash of values between those who support a classical vision of administration, one far removed from the managerial requirements of efficiency and effectiveness, and those who promote a more pragmatic view of an administration that is seen as a provider of (quality) services to the population. There is the suggestion that the enacted reforms have led to an excessive ‘managerialization’ of public administration and thus to having economic objectives overtake political objectives. Some political authorities even had the impression they were losing control of their own administrations, while others skillfully used the new management tools to increase their power. All this was against a backdrop of a Swiss administration perceived, even before the advent of new public management, as having too much power (or expertise) relative to the political institutions.

In terms of public finance, the schemes which guaranteed success in the past may not necessarily be conducive to future successes. Economic crises, international competition over business taxation, migration, and the aging of the population are all factors which cast shadows over public budgets, in Switzerland as elsewhere. Switzerland’s strong institutions will no doubt be able to meet these socio-economic challenges but will probably also need to be adapted. And while the tools of direct democracy have their advantages, they can also be a brake on the rapid reform of institutions and laws. This is particularly the case when changes mean that the current generation of citizens and voters must give something up. This often leads voters to refuse projects which they perceive as having a negative outcome for them personally.

The large difference in tax burdens, while tolerated until now, may not be accepted in the future. The differences themselves can be explained by citizen preferences to receive better or costlier public services. But these differences can also, or even mostly, be explained by a non-uniform distribution of economic activities (and thus of the tax base) over the entire

country. Geography and topography are partly responsible, but so is the tax competition between cantons and municipalities.

One solution here would involve strengthening financial equalization. At the same time, the tyranny of the majority (by jurisdictions benefitting from transfers compared to jurisdictions financing the transfers) has already reached its limit. Another solution would be to unify tax deductions and tax rates, though in the past, Switzerland's federalist instinct pushed voters to refuse this kind of solution. A more extreme solution could be to withdraw all or part of the taxing power cantons and municipalities have thus far enjoyed, but this would undermine a key element of Switzerland's success.

As in other countries, we can also find the typical 'principal-agent dilemma' in Switzerland. It is difficult for the federal government and its administration to control cantonal and local authorities, and there are contradictions between the interests of (private) implementing actors and of those who benefit from various policies. There are also tensions, or even contradictions, between the principles of cantonal autonomy and the equal treatment of citizens. And there is a continuing, and perhaps increasing, need for strengthening inter-policy coordination in a context of an increasing trans-territoriality in public problems.

SWITZERLAND: A MODEL CASE?

In a contextualist understanding, every country is different and has to be treated as a particular case. Quite often, this is used to justify that something which works in one country could never work in other countries. Such a position is often defended when it comes to the Swiss political and administrative system. Direct democracy, or a multiparty federal (or cantonal) government on a voluntary basis whose majorities shift from case to case, a high degree of decentralization and diversity, and a far-reaching fiscal autonomy are possible in Switzerland—but could this work anywhere else?

There are less controversial lessons that can be drawn from the Swiss case. To find good and lasting policy and managerial solutions takes time, especially if the solutions are to be supported by employees, citizens, and a majority of the parties alike. More inclusive policymaking, by the same token, increases the legitimacy of the decisions and helps guarantee compliance. To be close to citizens, owing to strong and effective decentralization, allows for a more direct orientation to the needs, wants, and thoughts

of citizens. Smaller governmental units are also easier to manage, at least in principle, and it brings the public sector closer to the people. In the current political climate, this is also what many people around the globe say they want.

IDHEAP
University of Lausanne
Lausanne, Switzerland

Andreas Ladner
Nils Soguel
Yves Emery
Sophie Weerts
Stéphane Nahrath