"One for all – and all for one" Anchoring the principle of solidarity in legislation

Text by Valerie Zaslawski

Solidarity as an implicit or explicit constitutional principle supports the cohesion of a society and is an integral part of policy both in Switzerland and in neighbouring European countries. The principle of solidarity plays a formative role in the historical development of modern welfare states, although the understanding varies greatly between liberal, conservative and social democratic models. Pressure on individual social welfare systems and the differing interpretations of solidarity are currently making it difficult to adopt a common position at European level.

Solidarity is more than just an interpersonal emotion or religiously justified charity. It also forms the rational basis of social coexistence – whether among individuals or within or between groups with varying levels of attachment. It is a dialectic action that both calls for and engenders a sense of community. Solidarity is a two-way street that involves give and take.

With the rationalisation of the state as described by Max Weber[1], in other words with the objectification of social action and the increase in economic value creation in central Europe between the 18th and 19th centuries, the state began resorting to legal coercion to assure mutually supportive reciprocity rather than merely hoping for it. The more democratic politics became, the harder it was for the political powers that be to ignore social grievances and calls for help from the voting populace without jeopardising their own legitimacy[2].

The enactment of solidarity in positive law can therefore be seen as the origin of modern welfare states, which gradually established statutory social security systems such as health and accident insurance, unemployment insurance, old-age pensions, maternity protection and the benefits system. They are all designed to ensure the social welfare and well-being of citizens and, depending on how inclusive a particular country is, even non-citizens. Citizens are given the responsibility of caring not only for themselves, but also for other members of society. The concept of solidarity that underlies social insurance involves the strong supporting the weak, which is ultimately intended to create social equilibrium So the way social insurance systems are structured in each country is a good indication of the extent to which this understanding of solidarity is put into practice, and the precise nature of this understanding.

However, solidarity doesn't just manifest in the form of social policy. At the individual level, for example, progressive tax systems help in terms of redistribution. Particularly in federal states such as Switzerland and Germany, the equalisation payments between local authorities are also based on the principle of solidarity.

Swiss Federalism: Solidarity and Subsidarity

These days solidarity is a widespread constitutional principle and an integral part of politics. As a constitutional principle it's not just something that's up for political negotiation, but one of the legitimating principles from which the system of law and individual laws are derived. Switzerland also has a tradition of solidarity. In fact it's the foundation on which the Confederation is built. There is a good reason why the motto "Unus pro omnibus, omnes pro uno" (one for all, all for one) is engraved high up in the dome of the Federal Palace of Switzerland

1: Walter M. Sprondel and Constans Seyfarth (1981): Max Weber und die Rationalisierung sozialen Handelns, Ferdinand Enke Verlag Stuttgart
2: Kaufmann, F.-X. (2015): Sozialstaat als Kultur, Wiesbaden. IN: Sven Jochem (2017): Solidarität im deutschen Sozialversicherungsstaat: https://www.polver.uni-konstanz.de/typo3temp/secure_downloads/75634/0/e036541769710103408e83c8d224a7caca80f37c/Jochem__2017__Solidaritaet_im_deutschen_Sozialversicherungsstaat.pdf

above the three Confederates. It has become the unofficial slogan of the Swiss political system. Solidarity can thus be seen as a prerequisite for the cohesion of a voluntary nation made up of 26 autonomous cantons with four different languages and pronounced cultural differences[3]. Direct democracy and its institutions also play an important role by guaranteeing substantial participation rights and thereby strengthening the sense of community.

The principle of solidarity is anchored as one of the fundamental values of Swiss society in the Federal Constitution of 1999[4]. In its preface, Switzerland's national interest is described as solidarity both within and outside its national borders:

"In the name of Almighty God!
The Swiss People and the Cantons,
mindful of their responsibility towards creation,
resolved to renew their alliance so as to strengthen liberty, democracy,
independence and peace in a spirit of solidarity and openness towards the world, determined to live together with mutual consideration and respect for their diversity, conscious of their common achievements and their responsibility towards future generations, and in the knowledge that only those who use their freedom remain free, and that the strength of a people is measured by the well-being of its weakest members, adopt the following Constitution."

In the articles of the Federal Constitution and the federal laws necessary for its implementation, solidarity is mentioned less explicitly, but in a variety of ways. For example, Article 2 states that the Confederation shall "promote the common welfare, sustainable development, internal cohesion and cultural diversity of the country". It should also guarantee assistance when people are in need, as stated in Article 12: "Persons in need and unable to provide for themselves have the right to assistance and care, and to the financial means required for a decent standard of living." Article 15 of the original constitution governs solidarity in the event of a threat: "In the event of a Canton being suddenly threatened from without, its government shall seek the assistance of other Cantons." Article 135 governs regulations on the equitable equalisation of financial resources and burdens between the Confederation and the Cantons as well as among the Cantons.

In the past, the principle of solidarity was concretised in a series of federal laws. From 1900 onwards, various social security laws were introduced at the level of the federal state that led to the creation of a social security system: The first law to enter into force in 1913 was the joint health and accident insurance act (KUVG), which was replaced by the Swiss Federal Health Insurance Act (KVG) in 1996 and the Accident Insurance Act (UVG) in 1984, which has been mandatory for all employees ever since. It covers insureds for occupational and non-occupational accidents. The revised Swiss Federal Health Insurance Act (KVG) introduced a standard premium (with exceptions for children and young adults), thereby strengthening solidarity between insured persons with different risks of illness and different incomes and between the sexes. Health insurers are now obliged to admit people to basic insurance regardless of their age.

3: Klöti, U., P. Knoepfel and H. Kriesi (eds.) (2007): Handbook of Swiss politics. Zurich, NZZ publications. IN: Veronica Federico and Christian Lahusen (2018): Solidarity as a Public Virtue?: Law and Public Policies in the European Union
4: Federal Constitution of 1999: https://www.admin.ch/opc/en/classified-compilation/19995395/201405180000/101.pdf

In 1920, the first unemployment insurance act came into force, but it did not yet cover all employed people. It was not until after the oil crisis in 1984 that it was replaced by compulsory unemployment insurance.

The development of social legislation gained momentum after the second world war: with the implementation of the old-age and survivor's insurance (AHV) in 1948 and the anchoring of the three-pillar principle in the constitution in 1972, a complex system of old-age provision was created – including occupational pensions. The AHV is based on the solidarity of the young (employed) with the elderly (pensioners) and the rich with the poor. In 1960, the Federal Act on Invalidity Insurance (IV) came into force, based on the solidarity of the healthy (gainfully employed) with the disabled (non-gainfully employed). From 1966, supplementary benefits (EL) were added; the totally revised law came into force in 2008.

Maternity insurance was finally implemented in 2005, after it had already been provided for as a constitutional article in 1945. Family allowances were introduced in 2009. Here the solidarity of the childless with families comes into play.

The last 100 years have seen the creation of a state system with insurance benefits available to people who are entitled to live in Switzerland, provided that they have paid a preventive solidarity contribution giving them the right to compensation in case of need.
Finally, there is social assistance, which is used as subsidiary assistance in emergency situations. Unlike social insurance, social assistance is not financed by contributions, but by taxpayers' money; there is therefore no general entitlement to compensation. Social assistance is regulated at cantonal level and the federal government has no influence on it.

The social rights (and obligations) – key achievements of the modern state – were hard-fought. Around 1900, when Switzerland was still very poor, the Catholic cantons and parties in particular rejected the introduction of welfare state institutions[5], not least because the church, which was responsible for people's welfare, feared a loss of power. They preferred the principle of subsidiarity, whereby families or associations (of which the church is one) should guarantee social security, with municipalities, cantons or the federal government being the last resort.

Today, however, few people see subsidiarity as a limitation of state powers and responsibilities. Instead there is a consensus – as the introduction of state social assistance shows – that smaller communities in particular, such as families, can only be expected to shoulder a limited burden. In other words, solidarity and subsidiarity go hand in hand when it comes to shaping society in terms of social justice.

In 1990, Danish political scientist Gøsta Esping-Andersen identified three types of welfare regime – liberal, conservative and social-democratic – and classified Switzerland as liberal. Canada, the USA and Australia are also included in this category, which emphasises the role of the free market and the family. The eligibility requirements are strictly regulated and the benefits, which are predominantly financed by taxes, are set comparatively low. On closer inspection, the Swiss peculiarities quickly come to light. Carlo Knöpfel, lecturer at the School of Social Work FHNW, describes social legislation in Switzerland as a "hybrid construction". Although gainful employment dominates as the primary source of social security here,

5: Reciprocity, Subsidiarity and Solidarity: https://www.historyofsocialsecurity.ch/topics/reciprocity-subsidiarity-and-solidarity/

family also plays an important role as a secondary source. Focusing on the welfare state itself, liberal, conservative and social-democratic elements can also be found here in a complex interplay of social insurances, needs-based benefits and social assistance[6].

The political and territorial complexity of the Swiss state is thus reflected in the social security system. If you look at the history of how the laws have been introduced here, you see that the Swiss welfare state has tended to play catch-up compared to other European countries. This may also be explained by the country's direct-democratic instruments, which have often slowed the development of the Swiss welfare state[7].

Social Insurance Models: Bismarck and Beveridge

By contrast, Germany has played a leading role in terms of social welfare. Otto von Bismarck laid the foundation of today's social insurance system two centuries ago in order to curb the demands of the dissatisfied lower-classes. He implemented laws on accident protection (1884), health insurance (1883) and old-age insurance (1889). Under Esping-Andersen's classification, Bismarck's social insurance model can be assigned to the conservative type of welfare state: it is based on insurance financed by contributions, which is usually linked to gainful employment[8]. It's about preserving status, group differences and traditional family structures. Corporate and private benefits play a less important role. In this type of welfare state the redistributive effect of social benefits is minimal. France, Austria and Italy are also assigned to this group.

In Article 20, paragraph 1 of its Basic Law[9], the Federal Republic of Germany describes itself as a welfare state. As such, solidarity is implicitly anchored in the constitution, but not spelled out as a principle. It is also mentioned implicitly in a number of basic rights, for example, in the protection of marriage and family and children of unmarried parents, or in the right of mothers to the protection and care of the community (Article 6).

The Danish constitution takes a similar stance: It doesn't explicitly mention solidarity either, but sees the principle realised in the fact that Denmark was founded as a welfare state in the 19th century[10]. Denmark's social insurance system was introduced shortly after Germany's (from 1898 onwards) The Scandinavian country's model is different to the Swiss (liberal) and German (conservative) models. Esping-Andersen describes the needs-based nature of Denmark's social system – also known in the field as substantive universal solidarity[11] – as social-democratic.

Like all other Scandinavian countries and the United Kingdom[12], Denmark's system is based on the William Beveridge model. Unlike Bismarck, British economist Beveridge opted in 1942 for a tax-financed minimum or basic social security for all citizens, to be supplemented

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6: Carlo Knöpfel (2014): Sozialstaatliche Rahmenbedingungen in der Schweiz.
7: Between 1848 and 1998, voters took part in a total of 64 referendums, including 27 referendums on socio-political issues, which accounted for 13% of all referendums: https://www.geschichtedersozialensicherheit.ch/themen/direkte-demokratie-und-sozialstaat/
8: The beginnings of state social policy: http://www.bpb.de/politik/innenpolitik/arbeitsmarktpolitik/55072/wohlfahrtsstaatliche-grundmodelle?p=all
9: Basic Law for the Federal Republic of Germany: https://www.gesetze-im-internet.de/gg/art_20.html
10: Grundloven – Basic Law of Denmark: Any person unable to support himself or his family shall, when no other person is responsible for his or their maintenance, be entitled to receive public assistance, provided that he shall comply with the obligations imposed by statute in such respect: https://www.grundloven.dk/
11: Sven Jochem (2017): Solidarität im deutschen Sozialversicherungsstaat: https://www.polver.uni-konstanz.de/typo3temp/secure_downloads/75634/0/e036541769710103408e83c8d224a7caca80f37c/Jochem__2017__Solidaritaet_im_deutschen_Sozialversicherungsstaat.pdf
12: The Federal Agency for Civic Education also refers to Great Britain as a liberal welfare state: http://www.bpb.de/politik/innenpolitik/arbeitsmarktpolitik/55072/wohlfahrtsstaatliche-grundmodelle?p=all

by personal contributions. The model is designed to be financed by community funds, i.e. by tax revenues. The correspondingly high taxes, also seen in Denmark, are paid back in the form of free education, child, unemployment and sickness benefits, maternity and paternity leave (up to a year for both parents), pensions and cultural activities. However, the pronounced equalisation effect brought about by the welfare state in Denmark – a cultural nation with a Protestant tradition – is not meant to abolish class differences. It is actually intended to ensure solidarity between the classes[13]. The focus is on "equality of the highest standards instead of equality of minimal needs"[14].

Review and Outlook

As the country comparison shows, solidarity in Europe wasn't only anchored, implicitly or explicitly, differently in the various constitutions. There are also differences in the way in which Switzerland, Germany and Denmark actually put solidarity into practice. Here in Switzerland, insurance benefits are just as important as tax-financed benefits, while family plays an important role alongside gainful employment. There is also a redistribution effect. In conservative Germany, a classic "social insurance country"[15], the primary focus is on contribution-financed insurances, which are usually coupled with gainful employment. The link between paid work and social entitlements is therefore also strong. Differences in status are preserved. In contrast, Denmark, undoubtedly a social democratic model, opts for tax-funded basic provision for all – with the aim of freeing itself of the market and creating the strongest possible social equilibrium.

As welfare states, both models have come under increasing pressure as a result of the economic crisis in 2008 and the refugee crisis in 2015. There is increasing demand for private rather than state-funded cover for social risks[16], i.e. more individualised approaches to solidarity, which should also only benefit a country's own citizens. This attitude, which could be described as a chauvinistic understanding of solidarity-based social policy, is currently mainly seen among populist right-wing parties[17].

Sociologist Christian Lahusen[18] claims that the EU in particular is currently struggling to develop a common solidarity strategy due to the pronounced fragmentation of its member states: "The meaning of solidarity and what it implies is unclear. The EU needs a common understanding on which it can build."

As a non-EU country, Switzerland is going its own way. But it is also facing challenges, particularly when it comes to the way solidarity is understood. This is reflected, for example, in the current discussion on tax-based social assistance. This model is denounced by the SVP as "unconditional basic income"[19], while the Swiss Conference for Social Welfare (SKOS) is trying to defend itself against "inhuman cuts".

13: Veronica Federico and Christian Lahusen (2018): Solidarity as a Public Virtue?: Law and Public Policies in the European Union
14: The beginnings of state social policy: http://www.bpb.de/politik/innenpolitik/arbeitsmarktpolitik/55072/wohlfahrtsstaatliche-grundmodelle?p=all
15: Beitrags- versus Steuerfinanzierung in «Bismarckschen Sozialsystemen»: http://www.hauptverband.at/cdscontent/load?contentid=10008.564328&version=1391184553
16: Beitrags- versus Steuerfinanzierung in «Bismarckschen Sozialsystemen»: http://www.hauptverband.at/cdscontent/load?contentid=10008.564328&version=1391184553
17: Sven Jochem (2017): Solidarität im deutschen Sozialversicherungsstaat: https://www.polver.uni-konstanz.de/typo3temp/secure_downloads/75634/0/e036541769710103408e83c8d224a7caca80f37c/Jochem__2017__Solidaritaet_im_deutschen_Sozialversicherungsstaat.pdf
18: In addition to a Charter of Fundamental Rights, the European Constitution contains a guarantee of the four basic freedoms and provisions on European solidarity and security: http://www.demokratiezentrum.org/wissen/wissenslexikon/europaeische-verfassung.html
19: SVP press release: https://www.svp.ch/news/artikel/medienmitteilungen/stopp-der-sozialhilfe-luege/

But CVP support for premium reductions is also evidence of increasing social pressure. There is talk of a "sociopolitical time bomb"[20] with reference to constantly increasing health insurance premiums. The Zurich Cantonal Party is currently collecting signatures for a popular cantonal initiative[21] with the slogan "Protect yourself against financial ruin".

And finally, Lisa Mazzone, Green Party representative on the National Council, has submitted a parliamentary initiative calling for the decriminalisation of those who support people in need. The current face of such a "crime of solidarity" is 72-year-old Anni Lanz, who wanted to bring back a mentally ill asylum seeker to Switzerland and who was subsequently sentenced last year in Brig[22].

These examples make it clear what the public sees as solidarity (or a lack of solidarity): support for the weaker members of our society, which still seems to be strongly influenced by the idea of charity. Of course, there is nothing wrong with this understanding. However, as an interpersonal emotion, solidarity is subject to limitations, because particularly in difficult times, charity begins at home. That's why it will be all the more important in future to emphasise the rational side of solidarity, especially when it comes to developing social welfare, which is based on the principle of give and take with regard to both premium payments and taxation. If this idea does not take root, the welfare state is likely to come under increasing pressure here in Switzerland, too.

20: Zurich CVP wants to increase spending for premium reductions by CHF 80 million: https://www.nzz.ch/zuerich/cvp-zuerich-will-mehr-fu-er-praemienverbilligungen-ausgeben-ld.1394152
21: Parliamentary initiative: https://www.parlament.ch/de/ratsbetrieb/suche-curia-vista/geschaeft?AffairId=20180461
22: Es geht um mehr als die Bestrafung von Anni Lanz: https://www.woz.ch/-93b6

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