7 Federal democracy in Switzerland

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Introduction

Federalism and democracy are among the core concepts of political science. The respective ideas have informed institutional design and political practice in a great many countries around the world. Over the last few decades, they have been increasingly debated within and beyond academia. At the same time, institutional reforms inspired by federal ideas have been carried out or are underway in several prominent political systems. The theoretical question of the connections between the two is thus most topical and deserves renewed scholarly investigation of the kind conducted in this volume. That there are many linkages between federalism and democracy is beyond doubt. Indeed, it is often argued that they reinforce each other. Certainly, if democracy can exist without federalism, the latter cannot really flourish without the former, as the historical experience of the communist federations amply demonstrated. The intimate connection between federalism and democracy can probably be observed nowhere better than in Switzerland, a political system in which the two elements have evolved in intimate fusion over a very long period of time. This chapter thus intends to explore the Swiss experience of federal democracy with the aim of drawing some general lessons on the connections between these two elements in the early twenty-first century. It proceeds as follows.

Section 1 outlines the historical evolution of federalism and democracy in Switzerland. The following section 2 describes the key properties of federal democracy in contemporary Switzerland and emphasizes the interlocking effect of institutions and patterns of political culture. Section 3 gazes into the future by identifying some key challenges Swiss federal democracy is currently facing and how they are likely to evolve in the future. The fourth section then draws some lessons from the Swiss experience for the wider debate on the relationship between federalism and democracy, both in terms of dynamics that reinforce each other and of tensions between them. The concluding section argues that despite Switzerland's peculiarities, these lessons help illuminate key aspects of federal democracy in other systems and can thus be widely applied.

Federalism and democracy in Swiss history

Although Switzerland has been a federal state only since 1848, it previously had a long *confederal* history stretching back to the late Middle Ages and can be thus seen as the country that, more than any other, embodies the spirit of the federal idea. The origins of the Swiss political system are usually traced back to 1291 when an *oath* of mutual support and defence between representatives of three mountain communities, nominally subject to the Habsburg empire but de facto largely independent, was sworn at Rütli, on Lake Lucerne. This first alliance later attracted other members, including powerful cities such as Berne and Zurich, and slowly acquired a more permanent character. By the end of the sixteenth century, 'Switzerland' was a network of alliances between so-called *Orte* – or localities – bound together for mutual defence purposes on the basis of a series of treaties and oaths. The following centuries saw 'Switzerland' ravaged by internal conflicts – mostly as a consequence of the Protestant/Catholic divide that emerged in the aftermath of the Reformation – but it was also increasingly seen by outsiders as a distinctive political system. With the treaty of Westphalia, the *Orte*'s independence from the Habsburgs as well as their policy of neutrality received formal recognition. The institutional structure of the system slowly coalesced into a complex form of confederation based on 13 *Orte* – among which the oldest eight had some privileges – nine allied states and some subject territories ruled individually or jointly by the *Orte*. This old confederation was governed by a Diet, meeting to no fixed timetable and location, made up of representatives of each *Ort* as well as their allies.[1] Among the 13 *Orte*, seven had an oligarchic form of government while six could be described as having a form of rudimentary democracy. The oligarchic cantons, of which Berne was the most prominent, were governed by a small executive council and a larger assembly, both of them dominated by wealthy and often aristocratic families who perpetuated their power largely by co-optation. In some of them, notably Zurich and Basle, the social basis of members of the ruling institutions was wider – especially due to the power of guilds – but government was still fundamentally oligarchic. In contrast, the mountain cantons of central and south-eastern Switzerland, notably the three original *Waldstätte* and what is now the Graubünden, were governed through forms of democratic participation by free and equal citizens. Symbolic of that form of democracy was the *Landsgemeinde*, or popular assembly of all citizens, in which key decisions were taken and the main offices filled by election and which in some cases has survived to the present day.

This slow, progressive tightening of the old Swiss confederation was dramatically transformed between 1798 and 1815 when the country was invaded and ruled by revolutionary France, which imposed first a unitary state under the name of the Helvetic Republic and later accepted a partial return to a confederal order while retaining ultimate authority. Although this period is often overlooked in accounts of Swiss political history and generally interpreted as an alien imposition that was immediately rejected by the Swiss, it had a lasting effect on Switzerland's political system. The origins of two peculiar features of Swiss federal

democracy, the constitutional referendum and the collegial form of the executive, can be traced back to this period.[2] After the fall of Napoleon, the Swiss communities – now commonly referred to as cantons (Germann and Klöti 2004, p. 318) – regained their sovereignty and re-established a confederation among themselves under the terms of the Federal Treaty signed in 1815. Though this 'new' confederation constituted an explicit attempt to re-create the pre-1798 institutional order, it did retain a number of principles and features introduced under French hegemony, notably with regard to equality among the cantons. It is from this date too that Switzerland acquired its multi-language and multi-cultural character, as a result of previously subject and allied territories formally joining the confederation as full cantons, among others Geneva, Vaud and Ticino.

It was not long, though, before the rising liberal movement put pressure on the system, in two separate, but linked, ways. On the one hand, the movement – based on its demands for more equality, greater citizen participation and clearer limits on government – led to the so-called 'regeneration' in a number of 'progressive' cantons which adopted new constitutions, submitted to popular approval in a referendum (Aubert 1974, p. 20). On the other hand, these 'regenerated' cantons became increasingly vocal in pushing for more competences to be exercised at the central level and a stronger institutional infrastructure to carry them out. The process of democratisation at the cantonal level went thus hand in hand with the building up of demands for a transition from confederation to a federation. These culminated in the 1847–8 showdown when, following a brief civil war, the last confederation was replaced by the modern federal state based on the 1848 constitution.

Despite full constitutional revisions in 1874 and 1999, the institutional structure set up in 1848 has remained largely unaltered though the distribution of competences, as discussed below, has changed very significantly. The 1848 constitution represented a compromise between the vision of the victorious radical forces in the civil war and the need to keep the defeated conservative cantons on board. It set up a federal state in which the cantons retained ample autonomy in many areas of policy-making under the so-called 'residual powers' principle, i.e. that all areas not explicitly delegated to the federation would remain the responsibility of the cantons. The granting of new policy-making competences to the federal level would only be possible on the basis of a constitutional amendment, and the latter was made dependent on endorsement in a referendum by a majority of the people and of the cantons. As will be seen later, direct democracy thus became intimately linked to federalism to produce the distinctive form of federal democracy now seen in Switzerland.

The historical evolution of the Swiss political system has thus been marked by a slow but progressive deepening and tightening of the bonds between the *Orte*/cantons. This meant a move from a looser to a tighter confederation, then from a confederation of states to a federal state and thereafter from a more decentralised to a less decentralised federal state. In other words, a slow but robust trend towards centralisation runs throughout Swiss political history, though, in the modern period, centralisation has essentially been confined to leg-

islation while implementation has been left to the cantons and the communes. This has also been mirrored in the size of the public sector payroll and in tax raising capacities, both of which still remain more important at the cantonal than the federal level. The side effect of this disjunction between legislation and implementation has been a growing blurring of the division of competences between the three levels of government in the context of a deepening of so-called 'co-operative federalism' – whereby competences are mainly divided by policy function rather than policy area.

Federal democracy in contemporary Switzerland[3]

At heart, Swiss federal democracy is concerned with giving as much autonomy as possible to local communities and letting the differences between them coexist peacefully and harmoniously. This principle is operationalised through three levels of government and a set of mechanisms and patterns of behaviour linking each other and regulating their interactions. While those mechanisms are largely governed by law, the whole institutional set up of Swiss federalism is buttressed by a sympathetic political culture centred on the quintessentially Swiss belief that 'local' is, in principle, always preferable to 'distant'. It is thus clear that the theoretical underpinnings of Swiss federal democracy contrast sharply with those of the US. Whereas the latter is – or was – based on the Madisonian principle that an 'extended republic' would limit the excesses of democracy within each of the states and would thus be more likely to prevent tyranny, Swiss federal democracy is primarily concerned with preserving democracy on the smallest scale possible. Put differently, whereas in the US democracy was seen as potentially a threat to liberty – hence the need for a system of vertical and horizontal separation of powers – in Switzerland democracy was, and still is, seen as the springboard of liberty.[4]

Because of its historical roots, its centrality to both the fabric of the polity and its political culture, federalism has become a key component of Swiss national identity, which is based on a form of 'civic nationalism' rather than, of course, on shared ethnicity or culture as traditionally understood.[5] This 'mythical' role probably also accounts for a certain anachronism in the official terminology applied to Swiss federalism, with the state still officially called a confederation and many cantons still describing themselves as independent, sovereign states.[6] Incidentally, it is worth pointing out that, contrary to what is often asserted and in spite of its linguistic and ethnic diversity, Switzerland is not a multi-national state. For a variety of reasons, both the cantons and the language groups have not developed into national communities and identification with them is subordinate to identification with Switzerland as a whole.[7]

Levels of government

The three levels of government are the federation, or central level, the cantons, or regional level, and the communes, the local level. Although their status has

been significantly eroded over time, the cantons can still be regarded as the main level of government. Not only are they historically the building blocks of the state, they are also the only actors free to determine their own policy-making role and their revenue raising, subject only to limits set by the federal constitution. Although this freedom has, de facto, progressively been reduced by the already mentioned process of centralisation, it remains of far more than symbolic importance. Moreover, because policy implementation is still largely in their hands, the cantons employ over half of all civil servants and are thus the principal 'face' of the political system vis-à-vis the citizens. The 26 cantons and half-cantons vary greatly in size, both geographically and demographically, in their political influence and in the length of time they have been in the Swiss con/federation but all have the same rights under the federal constitution.[8] Although Swiss cantons are now far from being the independent and sovereign states some of them still claim to be, they do retain vestigial elements of statehood including a concept of a cantonal people and citizenship, full taxation power and a 'residual powers' competence. In short, they are more 'organic' and more 'self-conscious' than most regions in other federal systems, save for those perceiving themselves as 'stateless nations' such as Quebec or Catalonia, and this is a crucial element in giving Swiss federalism its 'mythical' and 'identitarian' character.

The federation, or central level, is of course a key level of government. Although it is constrained to a larger extent than central governments in other federal states by the provisions of the federal constitution – direct democracy in particular – and relies on cantons and communes for implementation, its power and influence are very significant. As mentioned above, federal legislative competences have greatly expanded over time and now extend to the bulk of public policy. Its financial capacities as well, though still formally dependent on popular consent, have become crucial to the overall functioning of the Swiss political system and all cantons rely to a greater or lesser extent on federal transfers to make their financial ends meet. Last but not least, the fading of cantonal specificities and population movements have brought about a degree of homogenisation of the country and reinforced citizen identification with Switzerland as a whole above specific cantonal identities and have thus strengthened the identificational underpinnings of the federation (Kriesi 1998, p. 14).

The local, or communal, level of government is often neglected in studies of federal systems. That would be a serious mistake when it comes to Switzerland for communes are very important actors in the system and command fierce loyalty among its citizens. There are now around 2,600 'political' communes, down from over 3,000 20 years ago as a result of a movement to increase their size through mergers.[9] Communes carry out a great deal of policy implementation, directly raise a significant amount of taxation to finance it and, importantly, are the agencies granting citizenship. Uniquely among federal states, Swiss citizenship depends on cantonal citizenship which, in turn, depends on obtaining citizenship of a commune.

The division of responsibilities and resources

As already mentioned, the division of competences and the relationship between the three levels is primarily regulated through constitutional law, both federal and cantonal, meaning that each of the three levels operates within legal constraints and has to respect the autonomy and prerogatives of the other levels and to co-operate with them. In particular, constitutional rules govern the division of legislative competences between the federation and the cantons. Although as a result of the blurring occurring over time, it is difficult to give a clear-cut picture of the resulting division, it could be said that, in most policy areas, legislative powers are held concurrently by the federation and the cantons with the bulk in the hands of the former while culture, education – but see below – and policing are the main areas still under mainly cantonal control (Church and Dardanelli 2005, p. 185; Schenkel and Serdült 2004, pp. 395–7). Under the residual powers clause of art. 3 of the federal constitution, all competences not explicitly conferred to the federation rest with the cantons and the latter, together with the communes, carry out policy implementation.

By and large, this pattern is mirrored in the fiscal sphere. All three levels have revenue-raising powers and, broadly speaking, aim to be self-financing, although there is a considerable degree of revenue sharing. Reflecting the distribution of policy implementation, cantons and communes spend more than the federation but also rely on significant transfers from the federal level to make their financial ends meet. Significant discrepancies in the so-called 'fiscal capacity' of cantons remain despite the presence of an equalisation fund. The whole system is now being comprehensively overhauled following the recent approval of a new system of competence allocation and revenue sharing.[10]

Vertical relations

Three key mechanisms regulate the vertical relationship between cantons and the federation. First and foremost, any amendment to the constitution must be approved in a mandatory referendum by a majority of the people and of the cantons. Cantons thus retain a very important – albeit collective – right of veto on any shift of power to the centre.

Moreover, since all full cantons have equal weight in the calculation of this cantonal majority, the rules give a remarkable power to the small ones. As discussed in the next section, this raises important issues from the perspective of democratic theory. A 'softer' veto power is provided by art. 141 of the federal constitution, whereby eight cantons can mount a referendum challenge to any piece of federal law thus triggering a popular vote in which, however, the cantonal majority rule would not apply. This power was first used in 2004.

Second, cantons enjoy full representation at the federal level through an equal number of seats in the upper house, the Council of States, and the latter's parity with the lower house, the National Council, in the legislative field.[11] Furthermore, cantonal representation at the federal level extends to the

pre-parliamentary consultations – a crucial phase of federal policy-making in Switzerland – where cantons take full part alongside interest groups, professional associations and committees of experts. The role of representation of the cantons is to a certain extent performed by the inter-governmental conferences of cantonal ministers and cantonal presidents, which are the collective voice of the cantons and often meet together with federal representatives. Cantons are thus formally involved in the three key phases of federal law-making: pre-parliamentary, parliamentary and post-parliamentary, though the extent to which they exercise real influence – as discussed below – can be highly variable (Vatter 2004, pp. 124–5).

Lastly, three constitutional provisions subject cantons to a degree of control by the federal level: art. 49 states that federal law 'breaks' cantonal level in case of conflict between the two; cantonal constitutions have to be 'guaranteed' (i.e. vetted) by the Federal Parliament and cantonal law – unlike federal law – is subject to judicial review by the Federal Tribunal.

The vertical relationship between cantons and communes is almost as intimate as that between the federation and the cantons. However, the latter are not themselves 'federal' so do not accord communes the status the federation accords to them, notably in terms of formal representation and involvement in policy-making, and generally speaking maintain a more hierarchical control over communes, though significant differences between cantons exist (Germann and Klöti 2004, p. 338; Geser 2004, pp. 354–8).

Horizontal relations

Though less important than the vertical relationship between cantons and the federation, the horizontal dimension of inter-cantonal co-operation is also very significant and increasingly so. Horizontal co-operation takes two main forms. First, cantons co-operate with each other through inter-cantonal treaties – known as concordats – in a wide range of policy areas within their competences. Most of these treaties are regional in scope, i.e. are signed by neighbouring cantons in a given geographical areas with only about three per cent of them having a state-wide coverage. Concordats are negotiated and signed by cantonal executives but are subject to 'assent' by cantonal parliaments and, in most cantons, to a mandatory or optional referendum.[12] Despite some recent efforts to increase parliamentary scrutiny, concordats do marginalise cantonal legislatures and are widely perceived as 'technocratic' in character and lacking democratic legitimacy (Germann and Klöti 2004, pp. 343–4; Rhinow 2006). Nonetheless, horizontal co-operation is increasingly seen as the only way for cantons to resist the pressures of centralisation and the recent reform of fiscal federalism – see below – puts greater emphasis on it, even providing for mechanisms to make inter-cantonal co-operation compulsory. Second, cantons take part in so-called 'conferences' bringing together members of their executives and providing a collective voice for the cantons. There are sectoral conferences grouping all cantonal ministers of a given sector – say education or finance – and a general Con-

ference of Cantonal Governments which, as discussed at greater length below, has become an important actor in Swiss federalism.

Horizontal co-operation at the communal level is also highly developed, even more so than at the cantonal level (Geser 2004, pp. 384–7). Especially in metropolitan areas, there is intense co-operation between communes in such areas as public transport, waste management and culture. This is usually carried out through a network of functional bodies overlapping each other territorially. Communes are also linked to each other by cantonal systems of financial equalisation on similar lines to the system existing at the federal level (Schenkel and Serdült 2004, pp. 403–4).

The last point worth emphasising is that through federalism, democracy – and especially direct democracy – can flourish at all levels of the Swiss political system. Referendums and initiatives were historically introduced in the cantons before being adopted by the federation and they are still more widely used and more powerful at cantonal and communal level than at the federal level. Thus, the greater part of citizen participation in decision-making in Switzerland – through direct democracy – takes place at the cantonal and communal levels rather than at the federal level. It should also be mentioned that direct democracy – through the constitutional referendum and the constitutional initiative – is the key 'regulatory' instrument of Swiss federalism, replacing the role performed in other systems – e.g. Germany or the USA – by judicial authorities.

Prospects for federal democracy in Switzerland

While federal democracy is, of course, still very much at the heart of the Swiss political system, it nonetheless faces several challenges which could profoundly affect its nature in the near future. The following are those that appear to me to be most prominent.

Size and capacities

Most of the cantons, and especially the half-cantons, are very small by the standards of European regions, and in many cases have irregular borders including numerous exclaves and enclaves. Moreover, cantonal boundaries have lost almost all relevance to the pattern of economic activity so that they are increasingly challenged as 'functional' units of regional administration. Cantonal mergers, however, remain an extremely sensitive matter and several attempts have failed after lengthy negotiations and amid public hostility. A recent report (Blöchliger 2005) by Avenir Suisse – a think-tank close to business circles – advocating the creation of large functional regions, each centred on a major urban centre, rekindled debate and aroused fierce passions. This is the fundamental problem Swiss federalism faces for it goes to the heart of Switzerland's political system.[13] There is a real risk that the centripetal forces pushing for the federation to take over more and more responsibilities threaten to turn the cantons into mere federal implementation agencies. Emblematic of these

difficulties is the changing division of labour in the field of education, among popular pressures for it to become entirely a federal responsibility and predictable cantons' resistance. Though the idea is not new, it found new life in the aftermath of Switzerland's mediocre performance in the PISA study 2001, with education experts widely calling for it. In line with its traditional stance, the Radical party – still the establishment's party – came out openly in favour in October 2004 and was suspected by some to be planning an initiative.[14] A spring 2005 opinion poll found 52 per cent of respondents in favour of transferring responsibility for primary and secondary education to the federal level.[15] In this context, it is not entirely surprising that a constitutional amendment intended to create a unified 'Swiss educational space' managed jointly by the federal and cantonal governments, was approved by a large majority in parliament and subsequently strongly endorsed in a referendum in May 2006 by 86 per cent of the population and all cantons on a 27 per cent turnout. Under the new provisions, although the cantons formally retain legislative competence over education, the federal government acquires the right to impose a degree of harmonisation on some key issues. The size of the referendum majority, the low turnout and the absence of a real debate before the popular vote, all indicate the strength of popular support for more harmonisation and greater federal involvement in education. Ratification of the intercantonal concordat intended to implement these new constitutional provisions – dubbed HarmoS – has however failed in four cantons as of April 2009 and its entry into force is still in doubt. Given that education is arguably the most important policy area still largely in the hands of the cantons, these developments show the contrasting pressures facing Swiss federalism today.

Cantonal vs linguistic identities

Federalism is also under pressure from a degree of weakening of traditional cantonal identities and the resulting emergence of more homogenous language communities. It has been brought about by population movements, especially from rural areas to urban agglomerations, and by the transformation of the media. The latter phenomenon is two-fold. First, there is the ongoing process of concentration in the printed media with the consequence that newspapers with a strong cantonal identity are either taken over by stronger rivals or marginalised by the emergence of new players. The establishment of *Le Temps* as the 'newspaper of record' for the entire *Suisse romande* has been symptomatic in this regard. Second, the position of the printed media as a whole has – like in most other countries – been eroded by television and the new media such as the internet. State-owned television, in particular, is organised in three linguistic channels aimed at the three main language communities. The combined effect has thus been to weaken the role of the cantons and strengthen that of the language communities as spaces for public debate.

As the language communities do not coincide with cantonal borders and do not possess a political structure of their own, these trends exercise pressure on the institutional architecture of Swiss federalism and could potentially lead to

greater politicisation of the language cleavage. The latter was put into sharper relief over the last couple of decades by the different attitude to 'Europe' on the two sides of the so-called *röstigraben* and by heightened conflict in the field of language education. Europeanisation has exposed the divide between an outward-looking *Suisse romande*, with a positive attitude to such issues as European integration and UN membership, and the more inward-looking German- and Italian-speaking areas, hostile to any political 'entanglement' with the outside world. Language education has become more controversial due to the decision by some German-speaking cantons to teach English, rather than French, as a second language at primary school, thus potentially deepening the divide between the language communities and eroding understanding and solidarity between them.

These are all potentially divisive and centrifugal trends for Swiss federalism but their impact should not be exaggerated. While there is some justification for concern, it should be emphasised that the legitimacy of the current institutional architecture of Swiss federalism is still very high, not least when observed from a comparative perspective. Elite and mass resistance to mergers between cantons remain formidable, largely to be attributed to the enduring strength of people's identification with their canton. Also, the divergence between the linguistic communities in their attitudes towards European integration has declined since the early 1990s and is cross-cut by an equally powerful urban-rural divide. Likewise, the teaching of French at the primary level in the German-speaking cantons has by no means disappeared and proposals to teach only one 'foreign' language have been rejected in a series of recent cantonal referendums.

Federation-canton relations

The traditional institutions of Swiss federalism have also increasingly come under pressure in recent decades. The mechanisms of the cantonal majority – exacerbated over time by a growing imbalance in population between cantons – give a veto power to an extraordinarily small minority of the Swiss people, ranging from an average of 20–25 per cent to a theoretical extreme of 9 per cent (Vatter 2004, p. 80). Coupled with the fact that votes requiring a double majority are increasingly frequent and so are instances of a mis-match between popular majorities and cantonal majorities, these features of Swiss federalism sit uneasily with democratic principles (Vatter 2004, pp. 80–1). The Council of States itself, perhaps the most important institution devised in 1848 to link the federal level and the cantons, is also increasingly under pressure. Since the transition to direct election of the councillors of state, partisanship has replaced the representation of cantonal interests as the dominant force in the upper house (Vatter 2004, pp. 78–9). This is further exacerbated by the powerful bias inherent in the characteristics of the electoral system, which produces a significant over-representation of the centrist parties at the expense of the more radical ones (Dardanelli 2005, pp. 126–7). As a result, the Council of States is increasingly unable to perform its traditional role of being the 'voice of the cantons' at the

federal level (Vatter 2004, pp. 78–80; Schenkel and Serdült 2004, p. 415). Moreover, cantonal involvement in the pre-parliamentary consultations has fallen short of expectations since each canton's effective influence as opposed to formal rights is highly asymmetrical and heavily dependent on size and resources.

By and large, powerful cantons such as Zurich or Berne have the resources and the ability to be influential while small and rural cantons have not.[16] This has fuelled the cantons' desire to strengthen collective co-operation, notably through a growing role for the Conference of Cantonal Governments, and has led to a greater assertiveness of the cantons in dealing with the federation, with some spectacular results. In 2004, for the first time in the history of the modern Swiss state, eight cantons made use of a dormant constitutional provision to challenge the federal government on a package of financial reforms that was perceived to be detrimental to their interests and scored a resounding victory in the subsequent referendum. Paradoxically, the most controversial aspects of the reform, and the one that triggered the cantons' fury, had been inserted in the bill at the behest of the Council of States! In essence, this episode threw light on the fundamental conflict existing in the institutional set-up of Swiss federalism between members of the upper house of the federal parliament and members of the cantonal executives as 'true representatives' of cantonal interests. At least on this occasion, the people seemed to have come down in favour of the latter. If, at first sight, this renewed cantonal assertiveness could be seen as a sign of strength, it is probably best interpreted as its opposite for it betrays the growing pressure weighing on the cantons and their feeling unable to make their voice effectively heard at the federal level.[17]

Fiscal federalism

A bright spot in this otherwise fairly sombre picture is the successful adoption of a new system of financial equalisation and division of competences between the federation and the cantons to replace the old scheme in place since 1959. Over the last four decades and a half, legislative powers have further shifted up to the federal level, inter-locking and blurring of responsibilities between the two levels has correspondingly grown at the same time as economic and fiscal disparities have deepened. Under negotiation since 1994, the package involving no less than 27 constitutional amendments was finally endorsed by the people and the cantons in a referendum in November 2004. Implementing legislation was subsequently enacted and the new system has been in operation since 2008. Its stated objectives are to stem centralisation, clarify the division of competences and reduce disparities while the undeclared intention was also to avoid the spectre of fiscal harmonisation supported by the left.

Three key elements characterise the new regime. First, there is more territorial redistribution, albeit mainly financed through horizontal transfers between cantons, with a reduced role for the federation, and a shift away from earmarked grants towards untied transfers. Second, a tidier division of responsibilities is

brought in whereby 11 policy areas will become exclusively cantonal, seven will go entirely up to the federal level and others will be managed by the cantons but on a collective basis in the context of more institutionalised horizontal co-operation, which could also include elements of compulsion.[18] Horizontal co-operation between cantons, third, will acquire a much higher profile and may even grow into a 'fourth level' of Swiss federalism (Rhinow 2006).

While many welcome the growth of inter-cantonal co-operation as the only practical way in which the relentless tide of centralisation can be contained (e.g. Sciarini 2005), it is worth pointing out the downsides to this trend, notably in terms of transparency and accountability of the policy-making process, as they imply a rejection of democratically decided federal laws in favour of 'treaties' between cantonal governments subject to little democratic oversight by cantonal parliaments (Rhinow 2006, pp. 76–8). Coupled with the greater role of the Conference of Cantonal Governments as the 'voice of the cantons in Berne' mentioned above, these trends describe the emergence of 'executive federalism' as an increasingly important feature of Swiss federalism, with some interesting similarities as well as differences with the Canadian experience, as discussed below.

They also outline an acute dilemma facing contemporary Swiss federalism. The people face a choice between shifting an ever greater range of competences to the federal level, thus making the country more centralised but also subjecting it to the federal democratic process, and keeping responsibilities at the cantonal level but subjecting them to the generally less democratic process of inter-cantonal executive co-operation. The latter option seems to be attracting more favour at the moment, but it may indeed be a case of federalism undermining democracy.

Lastly, but importantly, the adoption of the new equalisation system has not prevented a deepening of inter-cantonal fiscal competition, which led some cantons as far as adopting regressive fiscal systems in an attempt to lure high-rate taxpayers. While these were subsequently ruled unconstitutional by the Federal Tribunal, competition is increasingly fierce. In the eyes of critics, this trend undermines redistribution within cantons and threatens federal cohesion between them, two pillars of federal democracy in the country. Moreover, unfettered fiscal competition flies in the face of the renewed emphasis on inter-cantonal co-operation, as embodied by the new equalisation system as well as the unified 'Swiss educational space'.[19] An initiative introducing a minimum tax rate on high incomes, sponsored by the Socialist Party, will likely be put to the vote by the end of 2009.

Internal and external migration

Last, but certainly not least, increasing migration within the country as well as from the outside has already diluted the original ethnic and religious homogeneity of the cantons and is likely to continue doing so in the future. It also means that the populations of the small, rural, Catholic cantons are no longer the only,

let alone the most significant, minorities in the country. Since many features of Swiss federalism, as seen above, were explicitly designed to protect the interests of those cantons, it follows that the institutional framework of Swiss federal democracy is increasingly ill-adapted to the realities of Swiss society. Moreover, given that the new minorities are not geographically concentrated as the old ones were, one could go even further and argue that federalism is not an appropriate institutional mechanism to ensure them effective democratic representation. In other words, the rising heterogeneity of the cantonal populations and the concomitant erosion of differences between cantons pit the institutional design of Swiss federalism increasingly at odds with democratic principles.

What can we learn from the Swiss experience?

Switzerland is clearly a country where federalism and democracy are intertwined most intimately. But it is also a very peculiar and idiosyncratic political system, which makes drawing lessons of wide applicability somewhat problematic. In particular, given the pervasive influence of direct democracy, it is difficult to evaluate the connections between federalism and representative democracy on the basis of the Swiss experience. Nonetheless, there are a number of important aspects which can fruitfully be illuminated by exploring the practice of federal democracy in Switzerland. These are discussed briefly below.

First, and most fundamentally, federalism and democracy are closely linked but there is an asymmetrical interdependence between them. Although, as Watts (Chapter 15 of this volume) argues, it is possible to have an oligarchic federal system provided it is a constitutional one, true federalism does necessitate democracy to stay alive and prosper. Formally federal constitutional structures lose almost all of their meaning in systems in which democracy is suppressed. The historical experiences of the Soviet Union and, to a lesser extent, of Yugoslavia illustrate the point. On the other hand, democracy does not require federalism for it to prosper. The fact that some of the most democratic states in the world, such as the Scandinavian countries, are unitary states is well known. Moreover, as shown by the Swiss case, there are multiple tensions between federalism and democracy and the benign or otherwise nature of the relationship between them depends to a large extent on the specific design of federal institutions. While it is possible to conceive in theory – and to find empirical evidence – that federalism can enhance democracy, this is not always the case and it is equally possible to identify instances in which federalism undermines democracy. Moreover, it is problematic to discuss the connection between federalism and democracy in abstract terms, removed from their links with actual political communities with their societal patterns and political culture. While federalism may enhance democracy in one political system, it may undermine it in another.

Another fundamental source of tension arises from the role of federalism in preserving historically rooted regional units within a broader political system and the role of these as functional units of regional government. On the one hand, historical rootedness is often needed to create a sense of political commun-

ity, hence giving the regional unit meaning and ensuring its preservation. It is a frequent charge made against recently created regional units of government that they are 'artificial' and that citizens do not identify with them. On the other hand, historically rooted regions may lose their capacity to be effective functional units of regional government over time, with the consequence of eroding the so-called 'output legitimacy' of the system and, in the long run, even undermine public support for the country's federal order itself.

A related trade-off which is at the root of many debates around federalism and democracy is that between freedom and equality. These two principles are at the heart of democratic theory and the balance or trade-off between them is particularly exposed in federal systems. More equality between citizens across the federation almost necessarily implies less freedom – notably fiscal freedom – for the component units, while a high degree of regional freedom almost inevitably generates and perpetuates inequalities. Different systems strike a different balance between the two elements but, generally speaking, vibrant federalism by its very nature requires more emphasis to be put on regional autonomy, i.e. freedom, than on state-wide uniformity, i.e. equality. This means that in communities whose political culture attaches great value to equality, federalism would be seen as undermining democracy. Even without going that far, it is probably true that while too much equality emasculates federalism, too much inequality between citizens of different federated units threatens the federal bond between them. For these reasons, among others, most federal systems, Switzerland included, have an equalisation system or some other form of fiscal solidarity between regions (Dafflon and Vaillancourt 2003).

Remaining within the fiscal field, Switzerland provides a good empirical test for one core tenet of the theory of fiscal federalism. This argues that taxing income at the regional level creates perverse incentives for the regions to engage in 'race-to-the-bottom' fiscal competition to attract high earners with negative externalities for the revenue-raising capacities of the system as a whole. Hence, income taxes should be assigned to the federal level. As discussed above, Switzerland seems to provide empirical evidence to support such theoretical predictions. If this is indeed the case, then it is arguably another source of tension between federalism and democracy. Why would that be so? Because the mismatch created by 'big-ticket' policy areas – such as education, health and policing – being run by the regions while the largest source of income is controlled by the federal government generates accountability problems with regard to the principle that those responsible for expenditure should also be responsible for taxation. In this sense, it could thus be argued that one aspect which is often deemed essential to vibrant federalism – fiscal autonomy for the regions – undermines a fundamental aspect of democracy: the degree to which elected decision-makers can be held accountable for their decisions.

Also linked to the fiscal field and the interdependence between levels of government is the emergence of so-called 'executive federalism'. Here the similarities and the differences between the Swiss experience and that of other systems – chiefly Canada and Germany – are fascinating.[20] Four points in particular are

worth emphasising. First, executive federalism is not a product of an elitist political culture, as some Canadian observers seem to think. There is hardly a less elitist political culture in the world than that of the Swiss yet a degree of executive federalism has emerged notwithstanding. This shows that the hypothesised causal connection between elitist political culture and executive federalism is a spurious one. An elitist political culture may support and reinforce executive federalism but does not cause it. On the contrary, second, executive federalism emerges out of the interdependence between the federal and the regional level of government and, more specifically, of the pressures on the autonomy of the latter brought about by such interdependence. As a reaction, regional units of government engage in executive federalism both to make their voice effectively heard at the federal level, Canada being the prime example here, and achieve co-ordination and economy-of-scale benefits by co-operating among themselves more closely rather than seeing competences drift away to the federal level, as is increasingly the case in Switzerland.

Third, the presence of an upper house supposedly representing the regional units does not make much of a difference, unless it is made up, as in Germany's Federal Council, by representatives of the regional governments.[21] The contrast between the Canadian Senate and the Swiss Council of States could not be greater and yet executive federalism is increasingly prominent in Switzerland despite, as seen above, the centrality of the Council of States in the system. In other words, it seems increasingly clear that this model of regional representation at the federal level is simply not effective in the circumstances of contemporary political systems and that executive federalism to some extent is probably inevitable. One could go even further and say that in the context of interdependence between the federal and the regional level of government – brought about either by a legislation/implementation split, as in Switzerland, or a resources/competences split, as in Canada – there is no real alternative to a degree of executive federalism and the only variables are, arguably, the degree of parliamentary scrutiny, the degree of judicial involvement and the degree of citizen involvement through direct democracy.

Fourth, though the form of executive federalism is clearly determined by the institutional design of the system and, in particular, by the nature of the relation between the executive and the legislature – at both the federal and the regional level – the degree to which the latter are affected does not appear to vary dramatically across states. In spite of the significant differences between the 'Westminster' system in operation in Canada, the more consensual parliamentary one employed in Germany and the 'semi-presidential' and 'presidential' to be found – at the federal and cantonal level, respectively – in Switzerland, executive federalism does indeed marginalise parliaments in all three countries.

Lastly, Swiss experience shows how federalism can be challenged by the changing social make-up of contemporary societies. As a constitutional order based on the notion of territoriality, it naturally finds it difficult to adapt to societies in which identities are increasingly divorced from territory.[22] In that respect, increasing mobility across regions and states, leading to ever greater heterogene-

ity of populations, may be seen as undermining the *raison d'être* of federalism as a device to allow minorities autonomy and representation within the democratic process. If this view seems to paint a dark horizon for the future of federal democracy, it is also conceivable that high mobility will make possible in future a federal system centred on the Tiebout effect, i.e. in which citizens 'sort' themselves into different regions, each providing a distinctive package of public policies. In that scenario, the federal order would be justified on the basis of different preferences for public policy rather than distinctive regional identities.[23]

Conclusions

This chapter has analysed Switzerland's experience of federalism and democracy throughout the evolution of the Swiss political system and into its foreseeable future. The analysis has shown that both federalism and democracy have very deep roots in Switzerland and are intimately linked to each other in the country's federal democracy. Indeed, Switzerland's *raison d'être* as a *Willensnation* – or nation by will – is entirely based on its political institutions and political culture, centred on the peculiarly Swiss forms of federalism and democracy. It is thus probably fair to say that the country can only exist as a federal democracy and that federalism and democracy have reinforced each other in Switzerland. However, the chapter has also shown that there are multiple sources of tensions between the two elements in Switzerland and significant challenges on the horizon. Some of these tensions and challenges touch upon core issues of federal democracy and have therefore significance much beyond Switzerland's borders. In spite of the peculiarities and the idiosyncrasies of Switzerland's political system, then, the Swiss experience of federal democracy is worth scholarly investigation as many important lessons can be drawn from it. I hope this chapter will provide some inspiration for further comparative analysis.

Notes

1 Some allied territories, such as St Gallen, had right of representation in the Diet while others, such as Geneva, had not. Subject territories such as Ticino were also not represented.
2 The first country-wide constitutional referendum took place in 1802 in the context of the adoption of the second constitution of the Helvetic Republic, see Kobach (1994, p. 100). On the Swiss executive being modelled to that of the Directorial regime in France between 1795–8, see Kriesi (1998, pp. 218–19).
3 This section draws heavily on Church and Dardanelli (2005, pp. 171–4).
4 For a 'deconstruction' of Madison's constitutional thought and the relationship between federalism and the separation of powers in particular, see, among others, Kernell (2003).
5 Although, as pointed out by Church (2004), it could be argued that such belief in the political values of Switzerland and pride in its institutions constitute a cultural element shared by all Swiss.
6 It should be pointed out, however, that Swiss or Helvetic Confederation is the official

name of the country in Latin, French, Italian and Romansch but not in German, in which it is called the *Schweizerische Eidgenossenchaft* or 'Swiss oath fellowship'.

7 See Dardanelli (forthcoming) for a more extensive discussion.

8 So called half-cantons, the result of splits of whole cantons at critical historical junctures, are almost de facto full cantons and have the same rights save for having just one seat in the Council of States and half the weight in calculating the cantonal majority in constitutional referendums.

9 There are other territorial units also called communes which perform different functions, see Geser (2004) for details.

10 See Frey *et al.* (2006) on the new system and Wälti (2003) on the old one.

11 The only real imbalance between the two chambers is created in occasion of the elections for the executive, the Federal Council. Federal councillors are elected by a special joint session of parliament in which the 200 national councillors have, of course, much greater weight than the 46 councillors of state, see Lüthi (2004, pp. 124–5).

12 I use the term 'assent' in deliberate reference to the EU procedure of the same name, i.e. cantonal parliaments can only accept or reject concordats, not amend them; see Vatter (2004, p. 89) for more details.

13 See also Germann and Klöti (2004, pp. 323, 327) on this point.

14 The Radicals' support for harmonisation of education goes back to the 1870s but proposals to that effect were massively rejected by the people in a referendum in November 1882, see Meuwly (2004).

15 See *Le Temps*, 10 June 2005.

16 See Vatter (2005), who writes of a historical shift of emphasis from 'veto points' to 'access points' in Swiss federalism.

17 A growing number of cantons employ professional lobbyists in Berne to defend their interests at the federal level, see *Le Temps*, 16 November 2004.

18 The new article 48a of the federal constitution states that, under certain circumstances, cantons can be forced to join horizontal co-operation programmes.

19 See for example *Le Temps* of 11 May 2006 for a discussion of these tensions and contradictions.

20 See Gagnon (Chapter 11 of this volume) for a discussion of executive federalism in Canada and Watts (Chapter 15 of this volume) for a comparative perspective.

21 See Watts (Chapter 15 of this volume) for a general discussion of federal upper chambers.

22 While there are examples, both historical and contemporary, of forms of non-territorial 'federalism' – see, for instance, Burgess (2006, pp. 115–17; 141–2) – it would be difficult to deny that the notion of territory is at the very heart of federalism.

23 See Tiebout (1956) for the original formulation of the theory.

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