

2 Federalism

Institutional adaptation and symbolic constraints

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Studies of Swiss politics often begin with an analysis of three fundamental features that supposedly define the Swiss political system: neutrality, direct democracy and federalism.¹ If none of them is exclusively Swiss, since they can be found to a greater or lesser extent elsewhere, they have nonetheless an importance in Switzerland which is unmatched anywhere else. Furthermore, it is their combined effect and the interaction between them – not just their presence in isolation – that confers on the Swiss political system its character of originality and uniqueness. Because of their being crucial in defining the fundamental character of the Swiss system, they have also over time acquired “mythical” properties which led them to become part of Swiss identity with an importance well beyond their practical effects.

It is thus inevitable that, in the context of Switzerland’s relationship with the European Union, neutrality, direct democracy and federalism are at the heart of the debate. Of these three elements, federalism is the one with the deepest roots and possibly the one most at the core of what makes Switzerland, Switzerland. Perceived threats to federalism deriving from Europeanization outside or, indeed, inside the European Union thus loom large in Swiss thinking on “Europe”.

Involvement with European integration is not, of course, just a matter of identity and symbolism. In fact, it impacts on the domestic evolution of the federal system in complex ways. Hence, the chapter starts, on the one hand, with a concise overview of the origins and essentials of Swiss federalism and, on the other hand, an examination of the multiple issues it is currently facing. Such issues show how federalism, although still a defining feature of the country, is facing severe challenges which threaten its very existence, at least in the form we have traditionally known it. Some of these challenges are clearly exacerbated by the process of Europeanization the country has been exposed to, despite still being outside the EU. In particular, the cantons’ traditional lack of effective access to foreign policy-making introduced an additional centralizing dynamic in the system. However, the chapter shows that the Swiss polity – and the cantons in particular – have reacted by developing various institutions and mechanisms that enable them to effectively cope with these challenges. Thus a degree of institutional adaption lies concealed beneath the symbolic constraints which federalism is perceived as imposing on Swiss European policy.

Hence the chapter argues that, were Switzerland to enter the EU, membership

would not present a fundamental problem for its federal system and would constitute more of an evolution of the present situation than a revolution. Yet, while federalism will likely have a limited direct impact on Switzerland's future European policy, its indirect influence will continue to be significant, through its connection with direct democracy and national identity. In other words, the ongoing evolution of Swiss federalism is both affected by, and shapes, Switzerland's relationship with the European Union.

Historical evolution

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 subject to the Habsburg empire 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 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.

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 first imposed a unitary state under the name of the Helvetic Republic but later accepted a partial return to a confederal order, while retaining ultimate authority. After the fall of Napoleon, the Swiss communities – now commonly referred to as cantons² – regained their sovereignty and re-established a confederation among themselves under the terms of a Federal Treaty signed in 1815. Though this latter confederation constituted an explicit attempt to re-create the pre-1798 institutional order, it also retained 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.

The confederation lasted until 1847–8 when, following a brief civil war, it 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, that is 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 an 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.

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 first from a looser to a tighter confederation, then from a confederation of states to a federal state and thereafter from a more decentralized to a less decentralized federal state. In other words, a slow but robust trend towards centralization runs throughout Swiss political history, though, in the modern period, centralization has essentially been confined to legislation 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 which has led to the Swiss system moving progressively away from the original model of “dual federalism” towards the “co-operative federalism” model.³

The structures of contemporary Swiss federalism

At heart, Swiss federalism is concerned with giving as much autonomy as possible to local communities and letting differences between them coexist peacefully and harmoniously. This principle is operationalized through three levels of government and a set of mechanisms and patterns of behaviour linking each of them and regulating their interactions. While these 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”.

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 “constitutional patriotism” rather than on shared ethnicity or culture, as traditionally understood.⁴ 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.⁵

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.⁶ Although this freedom has, de facto, progressively been reduced by the already mentioned process of centralization, 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 confederation but all have the same rights under the federal constitution.⁷ 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 cantonal *demos* and citizenship, full tax powers and a “residual powers” clause. In short, they are more organic and more “self-conscious” than regional units 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, with the notable exception of education. 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 homogenization of the country and have reinforced citizen identification with Switzerland as a whole, above specific cantonal identities, and have thus strengthened the identificational underpinnings of the federation.⁸

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 their citizens. There are now around 2,800 “political” communes, slightly fewer than in the recent past 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, significantly, are the agencies granting citizenship. Uniquely among federal states, Swiss citizenship depends on cantonal citizenship which, in turn, depends on obtaining that 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 education, culture and policing are the main areas still under full cantonal control.¹⁰ Under the residual powers clause of Article 3 of the 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 equalization fund. The whole system is about to be comprehensively overhauled following the recent approval of a new system of competence allocation and revenue sharing.¹¹ It also, as Church and others show later in this volume, has European implications.

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 – veto power on any shift of power to the centre. Moreover, since all full cantons have equal weight in calculating this cantonal majority, the rules give a remarkable power to the small cantons. A “softer” veto power is provided by Article 141 of the federal constitution [BV], 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, or Council of States, and the latter’s parity with the lower house, or National Council, in the legislative field.¹² 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.¹³

Lastly, three constitutional provisions subject cantons to a degree of control by the federal level: Article 49 BV 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.¹⁴

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 area with only about 3 per cent of them having a nationwide 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.¹⁵ Because of the marginalization of parliaments, and in spite of these democratic safeguards, concordats may be seen as an effective way of managing inter-cantonal co-operation but they are also regarded as “technocratic” in character and with little democratic legitimacy.¹⁶ Nonetheless, horizontal co-operation is increasingly seen as the only way for cantons to resist the pressures of centralization 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 Conference 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.¹⁷ 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 equalization on similar lines to the system existing at the federal level.¹⁸

Two further points are worth emphasizing about the importance of federalism in Swiss political life. The first is that the federal organization of the country is also reflected in many areas of civil society as, by and large, all Swiss institutions such as parties, trade unions, business associations and voluntary associations are organized in a federal way, bringing together cantonal and other decentralized branches. Second, but more importantly, is the fact that federalism is intimately linked to direct democracy, the other defining feature 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 federal level.

Current issues

Most of the current issues affecting Swiss federalism relate to the cantons' capacity to continue performing their traditional role of pillars of the system. Many indicators suggest their capacities have been increasingly eroded.

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 for 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 by *Avenir Suisse* – a think-tank close to business circles – advocating the creation of six large functional regions, each centred on a major urban centre, rekindled debate and aroused fierce passions.¹⁹ This is *the* fundamental problem Swiss federalism now faces for it goes to the heart of Switzerland's political system.²⁰ 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 are the increasingly frequent suggestions, coming from different quarters, that education should be become a federal

responsibility. 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 openly calling for it. In line with its traditional stance, the Radical party – still the establishment party – came out openly in favour in October 2004 and was suspected by some to be planning an initiative.²¹ These suggestions seem to have popular backing: 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.²² Given that education is arguably the most important policy area still fully in the hands of the cantons, shifting it to the federal level would have revolutionary consequences for the vertical distribution of powers in Swiss federalism.

Cantonal vs linguistic identities

Federalism is also under threat from a degree of weakening of traditional cantonal identities and a concomitant deepening of identification with the linguistic communities. It has been brought about by population movements, especially from rural areas to urban agglomerations, and by the growing concentration of the media. State-owned television, which is organized in three linguistic channels, of course figures prominently in this process. The problem here is that the linguistic communities do not coincide with cantonal borders and do not possess a political structure of their own.²³

Moreover the “thickening” of the linguistic communities’ profile also increases the politicization of the language cleavage, which some see as a potential centrifugal threat, not least because it is also perceived to be exacerbated by the different attitude to Europeanization on the two sides of the so-called *röstigraben*. While there is some justification for such concerns,²⁴ exaggerated fears about the effects of this trend on the federal system, and indeed on the country’s unity, do not seem to be borne out by much hard evidence. As we have already seen, elite and mass resistance to mergers between cantons remain formidable, largely to be attributed to the enduring strength of popular identification with cantonal distinctiveness. Even the degree to which the linguistic communities take radically different views of European integration should be called into question, as discussed below.

The relationship between federation and the cantons

The traditional institutions of Swiss federalism have also increasingly come under pressure in recent decades. None more so than the Council of States itself, perhaps the most important institution devised in 1848 to link the federal level and the cantons. 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.²⁵ 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.²⁶ 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.²⁷ 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.²⁸ 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 ones 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.²⁹ 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.³⁰

Fiscal federalism

A bright spot in this otherwise fairly sombre picture is the successful adoption of a new system of financial equalization 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 (which involves no less than 27 constitutional amendments) was finally endorsed by the people and the cantons in a referendum in November 2004. Implementing legislation went to the parliament in autumn 2005 and it is expected that the new system will be in operation by 2008. Its stated objectives are to stem centralization, clarify the division of competences and reduce disparities while the undeclared intention was also to avoid the spectre of fiscal harmonization supported by the left.³¹

Three key elements characterize 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 institutionalized horizontal co-operation, which could also include elements of compulsion.³² Horizontal co-operation between cantons, third, will acquire a much higher profile and may even grow into a “fourth level” of Swiss federalism. While many welcome the growth of inter-cantonal co-operation as the only practical way in which the relentless tide of centralization can be contained,³³ 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.

Lastly, it is important to underline the tension between the many challenges that Swiss federalism faces and its identificational and mythical dimension which make any debate on reforms very sensitive and any change very difficult. The tension is neatly delineated in the contrast between the apparent willingness of the people to see even more policy areas transferred to the federal level and reluctance to contemplate wide-ranging reforms. Despite some recent decline federalism is still a highly valued feature of the Swiss political system, one of the markers of its national identity, and it remains significant in the context of the country’s involvement in European integration.³⁴

Europeanization without membership

Even though it remains outside the European Union, the country has not escaped a wide-ranging process of Europeanization, as the other chapters in the present volume testify. As in other countries, in Switzerland too this process has affected public policy to a much greater extent than the institutional structure but nonetheless there have been significant changes in the latter. Among them, those affecting federalism were probably the most prominent.

In essence, they saw the cantons mobilize to get a more effective voice at the federal level and a greater say in foreign policy-making, notably in those areas falling within their responsibility under the constitution. The chief vehicle for this has been the creation and the strengthening of the Conference of Cantonal Governments. Set up in 1993, in the wake of the EEA vote, and bringing together representatives of the 26 cantonal executives, this body has gradually acquired a crucial role in Swiss federalism. Notably, it has evolved from what was mainly a framework for horizontal co-operation between the cantons to a mechanism for representing the cantons’ interests to the federal institutions. The transfer of the conference’s secretariat from Solothurn to a location a few hundred metres away from the federal parliament in Berne in 2003 was symbolically eloquent in this respect. Equally powerful at the symbolic level, but even more important in practical terms, was the insertion in the revised 1999 constitu-

tion of Article 55 guaranteeing the cantons the right to be consulted and involved in external policy-making when the matter under discussion touches upon their competences.

A clear example of this has been the negotiation of Switzerland's joining the Schengen and Dublin agreements. While the negotiations were conducted by the federal government, which has exclusive competences over foreign policy, many of the issues at stake related to justice and police matters, mostly under cantonal control, hence the cantons' desire for close involvement in the negotiations. In this context, early information-gathering about EU policies is of paramount importance for the cantons, to avoid the risk of finding themselves dependent on federal sources. To that end, the Conference set up its own delegation in Brussels in 2002 and has had an observer in the federal administration's Integration Office for some years before this.³⁵

Mirroring what happened in other federal systems, the main source of pressures on Swiss federalism brought about by Europeanization have been the tension between the growing exposure of the country to policy-making at the international level and the weakness of cantonal access to that level. On the one hand, foreign policy – including treaty negotiation – is an exclusive competence of the central government which, importantly, also extends to policy areas reserved to the cantons in the domestic division of competences. On the other hand, until 2000, cantons were not formally involved as such in foreign policy-making and had a limited ability to influence the negotiating position of the federal government. Although there is now a constitutional basis for their involvement, in practice the Federal Council often fails to consult cantons adequately.³⁶ As a result, Europeanization has introduced a further element of centralization at a time when the cantons already see their prerogatives under threat domestically.³⁷

The Conference's reaction was to set up a "Europe-Reforms-Cantons" working group in 1998 to define a common cantonal position. The working group prepared a first report in 2001 on the consequences of membership and a second one in October 2003 outlining the cantons' position and identifying the challenges that membership would entail. The 2003 report reviews the state of play of the Switzerland–EU relationship and of the cantons' involvement in it, pointing out the limitations both of the bilateral route and of the cantonal role in European policy-making. Hence it calls for membership to be the long-term objective and for federal–cantonal co-operation to be significantly upgraded as a pre-condition for membership.³⁸ Without cantonal support, the report warns, no federal policy is ever likely to be endorsed by the people and, while it is up to the Federal Council to define Switzerland's European Policy, the cantons want to be fully involved in its definition.

Some observers, notably Jürg Steiner, have gone further and have hypothesized that Europeanization could have its deepest effect – and a potentially dangerous one at that – on the country's internal cohesion and on relations between the language communities. Assuming that the European issue would continue to be polarized along the linguistic cleavage, with French speakers increasingly

keen on integration with the European Union and German speakers increasingly hostile, then Europeanization could lead to the language communities getting closer to their respective “big linguistic brothers” across the border and, in a worst-case scenario, to a break-up of the country.³⁹

Recent trends in public opinion and voting behaviour, however, lend very little support to this thesis. The language cleavage on European policy has become less sharp than it was in 1992 and is overshadowed by a persistent urban–rural divide, which is particularly deep in German-speaking Switzerland, as shown by the popular votes on the “Yes to Europe” initiative in 2001 and on joining the Schengen/Dublin agreement in 2005.⁴⁰ The successful penetration of the *Suisse Romande* at the last federal election by the virulently anti-European Swiss People’s Party (SVP/UDC) points in the same direction.⁴¹ Moreover, though French-speaking Swiss remain deeply influenced by French culture, their enthusiasm does not extend to France’s political system or to many aspects of its economic system. In any case, German and, especially, Italian speakers are even less enthusiastic towards Germany and Italy, respectively, and fears of Germanization, in one case, and of being embroiled in Italy’s political and economic problems, in the other, show no sign of weakening.

The cantons are thus aware that even if the country sticks to the bilateral route, it will not be able to insulate itself from Europeanization and from the pressures on federalism deriving from it. They are ready to fight their corner vis-à-vis the Federal Council and the evidence so far seems to indicate that they have enough bargaining power to resist a major erosion of their status.

The membership scenario

Distant as it is at the time of writing, it is nonetheless worthwhile to assess, first, the role federalism is likely to play in bringing the prospect of membership closer or in pushing it further away and to speculate on what might be the consequences for its federal system were Switzerland ever to join the European Union.

The symbolic and “mythical” status of federalism and its absorption into Swiss national identity is likely to continue playing an influential role in the framing of “Europe” as a threat to the essence of Switzerland’s political system in the Eurosceptical discourse, notably the SVP’s and its flanking organizations. Not least is this because federalism is intimately linked in Switzerland to direct democracy and the latter faces even more severe challenges from Europeanization than federalism itself does, as Trechsel’s chapter shows. Of course, we have noted already, direct democracy has been the main instrument employed by the cantons to retain as much autonomy as possible. Constraining direct democracy thus also means further weakening the cantons’ ability to resist centralization.

More concretely, the combination of federalism and direct democracy in one of the key institutions of the Swiss polity, the cantonal majority in constitutional referendums, is highly likely to continue to constitute a high hurdle to clear for any Swiss rapprochement to the EU. As pointed out by several scholars, 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.⁴² This makes it very difficult for a hypothetical vote on joining the European Union to be able to garner a cantonal majority in favour. The vote on Schengen/Dublin in May 2005 gave a graphic illustration of the problem. Although the result of the popular vote was 55 to 45 per cent in favour, the treaties were rejected by 12 cantons to 11. Had the question not been a referendum challenge but deemed to amount to a constitutional amendment – hence subjected to the cantonal majority rule – the agreements would have been turned down in the referendum. Assuming voting patterns remain broadly stable, rule-of-thumb calculations suggest that a popular majority of at least 60 per cent would be needed in order to clear the cantonal majority requirement in popular votes on “Europe”.

Nonetheless, as seen above, a majority of the cantons support membership as a long-term goal. According to the 2003 report of the Conference of Cantonal Governments, membership should be pursued together with a number of reforms which are necessary to safeguard federalism, something of course of paramount importance for the cantons. These reforms should be carried out before or, at the latest, at the time of joining the EU and be put to the people together with the accession treaty. They should be seen as an opportunity to build a “modern and Euro-compatible” federalism in Switzerland rather than as bowing to external pressures.⁴³

While Switzerland’s federal structure would not be directly threatened by membership,⁴⁴ neither would it be bolstered by entry. Contrary to what superficial assessments might suggest, federal states are not better accommodated than unitary states within the confederal order of the European Union. Indeed, the opposite is true.⁴⁵ This is essentially because the Council of Ministers and the European Council, where only members of state governments sit, are the key decision-making bodies and the overall representation of regions at the Union level is still very weak. With the expansion of the EU policy remit into areas reserved for the regional level in federal states, the regions in those states faced an erosion of their constitutional prerogatives through the European “back door”.

Membership would thus exacerbate the centralist pressures already described. Particularly worrying would be the possibility of the federation encroaching on cantonal competences if some cantons find themselves unable to implement EU law. This could happen either on the ground that a cantonal failure demonstrates that that particular policy would best be run at the federal level and/or that, under EU law, it is the federation which is ultimately responsible for the implementation of EU law, not the cantons.⁴⁶

As pre-conditions to membership, the 2003 report specifically stressed the following as being crucial:

- widening the scope of Article 55, which is currently mainly concerned with the signing of international treaties, to cover the ordinary legislative procedure as well

- the right to formulate a position on any matter touching on cantonal competences; a negative position should have a character of veto which could only be overridden on grounds of vital national interest
- participation in international negotiations through the inclusion of a representative of the cantons in Swiss delegation
- representation in the EU institutions, notably in the working groups of the Commission and the Council and in the Committee of the Regions
- rights of cantonal initiative, expanding the existing one in Article 160.⁴⁷

The report also considers the question of which institution would best allow the cantons to participate in European policy. It even contemplates a reform of the Council of States towards the German Federal Council model but it ultimately rejects it on grounds of complexity and time-frame and supports a strengthening of the Conference as the best option, implicitly confirming the inadequacy of the Council of States as an effective voice of the cantons at the federal level.⁴⁸

In this context, the experience of current EU states with a federal or quasi-federal structure, such as Germany, Belgium and Spain, is instructive for Switzerland. Their experience confirm that the centralist pressures feared by the cantons are indeed real but that regions have learned to fight back and found satisfactory *modus vivendi* in European policy with their respective federal levels. This dynamic has been most in evidence in Germany, the oldest EU federal state, where the regions – or *Länder* – reacted to the erosion of their autonomy, notably in the context of the single market programme, with a two-pronged strategy. On the one hand, they campaigned for effective representation of the regions at the Union level, in the form of a chamber of regional representatives – what would eventually become the Committee of the Regions – and for a clearer delimitation of EU powers. On the other hand, they put pressure on the federal government to give them the right to represent Germany in the Council of Ministers whenever the matter discussed falls within their remit.

If the first element was prominent in the negotiations of the Maastricht Treaty and up to the establishment of the Committee of the Regions in 1994, thereafter the realization that the latter was falling well short of the regionalists' expectations left the second element of the strategy as the only viable one.

The involvement of the regions through the *Bundesrat* or Federal Council – the upper house of the German federal parliament – is enshrined in the amended Article 50 of the German federal constitution. However, the regions keep exercising pressure on the federal government in order to maintain their say in European policy, notably through using the threat not to ratify EU treaties. This tactic was last on display when the regions threatened to block ratification of the Constitutional Treaty in April 2005 and obtained the concession that the Federal Council will in future be involved in the selection of judges for the EU courts.⁴⁹ Similar provisions for the regions' involvement in European policy, and their occasional representation in the Council, have been adopted in Belgium and Spain and even in non-federal systems such as the UK, in relation to the Scottish

executive.⁵⁰ Indeed, in Belgium, the regions are fully involved, almost on an equal footing with the federal government, in the making of European policy.

The German experience and that of the other federal states in the EU confirms that the institutional set-up and the decision-making processes of the EU can be a challenge for the regions but also shows that institutional mechanisms to minimize the erosion of their autonomy have been devised and have proven to be effective. The cantons seem to be aware of both the challenges and the counter-measures and there are grounds for expecting Swiss federalism would be able to successfully adapt to EU membership even though not all of the reforms they demand are carried out. After all, the key institutional mechanisms, such as the Conference of Cantonal Governments and the constitutional guarantees for the cantons' right to be involved in foreign policy-making, are already well established. In sum, EU membership would represent an evolution of the European dimension for the Swiss cantons rather than a potentially destructive revolution.

Conclusions

Federalism is still very much at the heart of the Swiss political system. If the cantons have seen their legislative autonomy progressively eroded over time, they remain crucial actors in the system and continue to command fierce loyalty. If anything, the "mythical" significance of federalism as a key component of Swiss identity is even greater than the cantons' actual policy-making role. It is also far from being a relic of the past. Despite the fact that Switzerland is often criticized for its supposed inability to reform itself, the country has managed to reform its federal system, albeit less ambitiously than some had wanted, while both Germany and Austria failed to do so.

Even outside the EU, Swiss federalism has had to cope with Europeanization and to counter the centralist pressures deriving from it. It has been rather successful at that, with the result that most of the institutions and mechanisms that allow it to master the process and, in the long-term scenario, adapt to membership are in place. The creation of the Conference of Cantonal Governments as a "fall out" of the EEA vote as well as the insertion of Article 55 in the new constitution can be seen to a large extent as products of the country's Europeanization. The experience of the current EU members with a federal structure proves that similar institutions and mechanisms are effective. In particular, the cantons' strategy is to demand access to European policy-making at the federal level in exchange for bolstering support for the policy at the popular level and offering a better implementation of EU law at the cantonal level.

Membership would thus not be a dramatic change of scenario for Swiss federalism and the likelihood is that the cantons would successfully adapt to it. Likewise, federalism itself is unlikely to be a significant stumbling block on the road to further rapprochement with the EU or indeed membership. However, its connections with direct democracy will continue to place a high hurdle to popular endorsement of such a policy and its "mythical" dimension will continue to resonate strongly with those perceiving the EU as a threat to Swissness.

Notes

- 1 See, for instance, W. Linder, *Swiss Democracy*, Basingstoke, Macmillan, 1998 and H.P. Kriesi and A. Trechsel, *The Politics of Switzerland*, Cambridge, Cambridge University Press, 2007.
- 2 See R. Germann and U. Klöti, "The Swiss Cantons: Equality and Difference", in U. Klöti, P. Knoepfel, H. Kriesi, W. Linder and Y. Papadopoulos (eds), *Handbook of Swiss Politics*, Zurich: Neue Zürcher Zeitung Publishing, 2004, p. 318.
- 3 The literature on federalism traditionally distinguishes between dual federalism, where the division of competences is by policy area, and co-operative federalism, where competences are divided by policy function.
- 4 Although, as argued by Church, *The Politics and Government of Switzerland*, Basingstoke, Palgrave, 2003, 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.
- 5 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 Eidgenossenschaft* or Swiss oath fellowship.
- 6 As regards taxation powers, between 50 and 60 per cent of cantonal revenues are controlled by the cantons themselves, a rather unique situation among European regions. See for a comparative study of regional finance C. Jeffery and D. Heald (eds), "Money Matters: Territorial Finance in Decentralized States", Special number of *Regional and Federal Studies* 13/4, 2003; and T. Fleiner, "Recent Developments of Swiss Federalism", *Publius* 32/2, 2002, especially p. 115, on the cantons' status more generally.
- 7 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.
- 8 See H.P. Kriesi, *Le système politique suisse*, Paris, Economica, 1998, p. 14.
- 9 There are other territorial units also called communes which perform different functions; see H. Geser, "The Communes in Switzerland", in U. Klöti, P. Knoepfel, H. Kriesi, W. Linder and Y. Papadopoulos (eds), *Handbook of Swiss Politics*, Zurich, Neue Zürcher Zeitung Publishing, 2004, pp. 350–3.
- 10 See C. Church and P. Dardanelli, "The Dynamics of Confederalism and Federalism: Comparing Switzerland and the EU", *Regional and Federal Studies* 15/2, 2005, 185 and, for more details, see W. Schenkel and U. Serdült, "Intergovernmental Relations", in U. Klöti, P. Knoepfel, H. Kriesi, W. Linder and Y. Papadopoulos (eds), *Handbook of Swiss Politics*, Zurich, Neue Zürcher Zeitung Publishing, 2004, pp. 395–7.
- 11 See S. Wälti, "L'effet des rapports financiers sur la dynamique fédérale: la qualité médiative du fédéralisme suisse", *Revue suisse de science politique* 9/1, 2003, 91–108 on the fiscal system before the reform and some issues related to the latter.
- 12 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 R. Lüthi, "The Parliament", in U. Klöti, P. Knoepfel, H. Kriesi, W. Linder and Y. Papadopoulos (eds), *Handbook of Swiss Politics*, Zurich, Neue Zürcher Zeitung Publishing, 2004, pp. 124–5.
- 13 See A. Vatter, "Federalism", in U. Klöti, P. Knoepfel, H. Kriesi, W. Linder and Y. Papadopoulos (eds), *Handbook of Swiss Politics*, Zurich, Neue Zürcher Zeitung Publishing, 2004, pp. 85–6 for a deeper analysis.
- 14 See Germann and Klöti, op. cit., p. 338 and Geser, op. cit. pp. 354–8.

- 15 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, *op. cit.*, p. 89 for more details.
- 16 See Germann and Klöti, *op. cit.*, pp. 343–4.
- 17 Geser, 2004, pp. 384–7.
- 18 See Schenkel and Serdült, *op. cit.*, pp. 403–4.
- 19 See H. Blöchliger, *Baustelle Föderalismus*, Zurich, Neue Zürcher Zeitung Verlag, 2005.
- 20 See also Germann and Klöti, *op. cit.*, pp. 323 and 327 on this point.
- 21 The Radicals’ support for harmonization 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 *Le Temps*, 30 November 2004.
- 22 See *Le Temps*, 10 June 2005, p. 11.
- 23 Ticino is a partial exception as, save for small Italian-speaking communities in the Grisons, it de facto coincides with Italian-speaking Switzerland.
- 24 Recent calls for the Valais to be split into two linguistically homogeneous half-cantons and the renewed prominence of the Jura question are just two examples; see *Le Temps*, 21–22 January 2005 on the former, and *Le Temps*, 31 August 2005 for the latter.
- 25 See Vatter, *op. cit.*, pp. 78–9.
- 26 See P. Dardanelli, “The Parliamentary and Executive Elections in Switzerland, 2003”, *Electoral Studies* 24/1, 2005, 126–7 for details.
- 27 See Vatter, *loc. cit.* and Schenkel and Serdült, *op. cit.*, p. 415 for details.
- 28 See Vatter, *op. cit.* who speaks of a historical shift of emphasis from “veto points” to “access points” in Swiss federalism.
- 29 Ironically, both could be called “councillors of state” as cantonal executives, at least in the Latin part, are called Councils of State.
- 30 A growing number of cantons employ professional lobbyists in Berne to defend their interests at the federal level; see *Le Temps*, 16 November 2004.
- 31 The Socialist Party was rumoured to be planning an initiative on fiscal harmonization; see *Le Temps*, 13 October 2004.
- 32 The new Article 48a of the federal constitution states that, under certain circumstances, cantons can be forced to join horizontal co-operation programmes.
- 33 See, for instance, Sciarini in *Le Temps*, 16 February 2005.
- 34 See Church, *op. cit.*, pp. 154–62 and Kriesi and Trechsel, *op. cit.*, Table 3.2 for the connections between federalism and national identity.
- 35 See Germann and Klöti, *op. cit.*, p. 343.
- 36 See Groupe de travail EuRéfCa, *Europe, un défi pour le fédéralisme*, pp. 16 and 21.
- 37 See *ibid.*, pp. 16–24.
- 38 See *ibid.*, esp. p. 31. The report was endorsed by a majority of the cantons.
- 39 See J. Steiner, “Continental Integration and Swiss Federalism: a New Openness to Europe?”, in H. Lazar, H. Telford and R.L. Watts (eds), *The Impact of Global and Regional Integration on Federal Systems*, Montreal, McGill-Queen’s University Press, 2003.
- 40 The “Yes to Europe” initiative was rejected by all cantons, with little difference between French-speaking and German-speaking ones. The Schengen vote showed that urban/rural location was a much stronger predictor of the vote than the language spoken, see “Les choix du 5 juin dessinent notre archipel urbain”, *Le Temps*, 8 June 2005.
- 41 See Dardanelli, *op. cit.*, esp. pp. 127–8.
- 42 See Vatter, *op. cit.*, p. 80.
- 43 See *Europe, un défi pour le fédéralisme*, pp. 30–1.
- 44 Eurosceptics often argue that EU membership would mean the end of federalism because the EU requires all member states to have the same institutional structure.

- 45 See Schenkel and Serdült op. cit., p. 409 on the relation between Swiss and European federalism.
- 46 For instance, cantons could not be taken before the European Court of Justice for failure to implement EU law, the Federal Council would, see Fleiner, op. cit., p. 115. In this area as well, there are precedents concerning Germany, including a high-profile case of state aid involving Saxony; see E. Thielemann, *Driving a Wedge between Europe and the Regions? EC State Aid Control Meets German Federalism*, Regional and Industrial Research Papers Series No. 30, Glasgow, European Policy Research Centre, University of Strathclyde, 1998.
- 47 See *Europe, un défi pour le fédéralisme*, esp. p. 41.
- 48 See *Europe, un défi pour le fédéralisme*, esp. p. 39. It is not infrequently that the Council of States and the Conference take different positions on European matters. Thus, for instance, the Conference supported the Federal Council's counter-project to the "Yes to Europe" initiative in 2001 while the upper house rejected it (ibid., p. 19).
- 49 See H. Mahony, "Schröder clears path for EU Constitution", *EUobserver*, 29 April 2005.
- 50 See C. Jeffery, *The Länder Strike Back: Structures and Procedures of European Integration Policy-Making in the German Federal System*, Discussion Papers in Federal Studies No. FS94/4, Leicester, University of Leicester, 1994; and H.R. Hrbek, "The Effects of Global and Continental Integration on Cooperation and Competition in German Federalism", in H. Lazar, H. Telford and R. Watts (eds), *The Impact of Global and Regional Integration on Federal Systems*, Montreal, McGill-Queen's University Press, 2003, pp. 329–71 on Germany; B. Kerremans, "Determining a European Policy in a Multi-Level Setting: the Case of Specialized Co-ordination in Belgium", *Regional and Federal Studies* 10/1, 2000, 36–61 and B. Kerremans and J. Beyers, "The Belgian Sub-National Entities in the European Union: Second or Third Level Players?", *Regional and Federal Studies* 6/2, 1996, 41–55 on Belgium; C. Closa and P. Heywood, *Spain in the European Union*, Basingstoke, Palgrave, 2004, pp. 88–98 and "Les régions espagnoles seront représentées au conseil des ministres de l'UE", *Le Monde*, 13 December 2004 on Spain. And on Scotland see A. Wright, "The Internationalization of Scottish Politics: Who Governs Scotland?", in José Magone (ed.), *Regional Institutions and Governance in the European Union*, Westport, Ct, Praeger, 2003.

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