

Federal Democracy: the Swiss Experience

Paolo Dardanelli

Centre for Federal Studies
Department of Politics and IR
University of Kent,
Canterbury CT2 7NX, UK
p.dardanelli@kent.ac.uk

Abstract

The paper investigates the relationship between federalism and democracy, in particular whether federalism enhances democracy or hinders it. It draws on the theory of democracy and that of federalism and relates them to the historical experience of Switzerland, a country which is often held as a model of both. It explores how the interaction between federalism and democracy has evolved over time in the Swiss system in relation, among other things, to the expansion of direct democracy, the changing nature of minorities and the representation of cantonal interests at the federal level. The paper argues that despite some tension between the two, by and large there has been a positive relation between federalism and democracy in Switzerland. In particular, federalism interacts with, and reinforces, direct democracy in strengthening the democratic quality of the system. Some key elements of Swiss federalism, however, such as cantonal representation through the upper house of the federal parliament, have not lived up to the democratic expectations of the constitution's framers. Moreover, the whole federal structure itself, given its territorial nature, has lost over time some of its democratic capacity in relation to minority protection. The paper thus argues that the Swiss case study indicates the existence of a positive relationship between federalism and democracy but that the actual design of the federal system is crucial as is the nature of the demos in question. It then concludes by calling for comparative studies to strengthen or call into question the conclusions presented in this paper.

Acknowledgments

I wish to thank the British Academy for the grant OCG-44396 which made possible my attendance at this conference. Special thanks to Alain Gagnon for acting as a referee for my application. I am also grateful to the participants in the international workshop on Federalism and Democracy held at Kent's Centre for Federal Studies in April 2006 for their helpful comments on a previous draft of the paper.

– DRAFT –

Please do not cite or quote

Introduction

Federalism and democracy are among the core concepts in 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 to feature prominently in this workshop. 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 paper 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 XXI century. The paper proceeds as follows. Section 1 outlines the historical evolution of federalism and democracy in Switzerland. The following section describes the key properties of federal democracy in contemporary Switzerland and emphasises 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 last section concludes by calling for some potential avenues for future research.

1 Federalism and Democracy in Swiss History

Although Switzerland is a federal state only since 1848, it has 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 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 16th 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. 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 'directorial' form of the executive, can be traced back to this period.² After the fall of Napoleon, the Swiss

¹ Allied territories, such as Geneva, were invited to the Diet but had no right to vote, while subject territories such as Ticino had no representation.

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: 100). On the Swiss executive being modelled to that of the Directorial regime in France between 1795-8, see Kriesi (1998: 218-9).

communities - now commonly referred to as cantons³- regained their sovereignty and re-established a confederation among themselves under the terms of a 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.⁴ 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 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 to produce the distinctive form of federal democracy now seen in Switzerland.

³ See Germann and Klöti (2004: 318).

⁴ See Aubert (1974: 20). As far as the cantonal level is concerned the modern form of direct democracy dates from this period.

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 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.⁵

2 Federal Democracy in Contemporary Switzerland

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 based on the Madisonian principle that an 'extended republic' would limit the excesses of democracy within each the states and would thus be more likely to prevent tyranny, Swiss federal democracy is primarily concerned with preserving democracy at 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.

⁵ 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.

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, of course, on shared ethnicity or culture as traditionally understood.⁶ 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.⁷ Incidentally, it is worth pointing out that, in spite of its ethnic and cultural diversity, Switzerland is not a multi-national state. For a variety of reasons, both the cantons and the linguistic groups are not mentally constructed as national communities and identification with them is subordinate to identification with Switzerland as a whole.

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.⁸ 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 confederation but all have the same rights under the federal constitution.⁹ 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 taxation power and a 'residual powers' clause. In short, they are more organic and more 'self-conscious' than regional units in other

⁶ 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.

⁷ 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.

⁸ As regards taxation powers, between 50-60 per cent of cantonal revenues are controlled by the cantons themselves, a rather unique situation among European regions. See Jeffery and Heald (2003) for a comparative study of regional finance and Fleiner (2002: esp. 115) on the cantons' status more generally.

⁹ 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.

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 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.¹⁰

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 2,800 'political' communes, slightly fewer than in the recent past as a result of a movement to increase their size through mergers.¹¹ 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

¹⁰ See Kriesi (1998: 14)

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.¹² 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 about to be comprehensively overhauled following the recent approval of a new system of competence allocation and revenue sharing.¹³

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 calculating this cantonal majority, the rules give a remarkable power to the small cantons. As discussed in the next section, this raises important issues from a perspective of democratic theory. A 'softer' veto power is provided by art. 141 of the federal constitution, whereby 8 cantons can mount a referendum challenge to any piece of federal law thus triggering a popular vote in which, though, the cantonal majority rule would not apply. This power was first used in 2004.

Secondly, 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.¹⁴ Furthermore, cantonal representation at the federal level extends to the pre-parliamentary consultations - a crucial phase of federal

¹¹ There are other territorial units also called communes which perform different functions, see Geser (2004) for details.

¹² See Church and Dardanelli (2005: 185) and Schenkel and Serdült (2004: 395-7) for more details.

¹³ See Wälti (2003) on the fiscal system before the reform and some issues related to the latter.

¹⁴ 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

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.¹⁵

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.¹⁶

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 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.¹⁷ Because of the marginalisation of parliaments, and in spite of these democratic safeguards, concordats may be seen as an effective way of

in which the 200 national councillors have, of course, much greater weight than the 46 councillors of state, see Lüthi (2004: 124-5).

¹⁵ See Vatter (2004: 85-6) for a deeper analysis.

¹⁶ See Germann and Klöti (2004: 338) and Geser (2004: 354-8).

¹⁷ 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: 89) for more details.

managing inter-cantonal co-operation but they are also regarded as 'technocratic' in character and with little democratic legitimacy.¹⁸ 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 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.¹⁹ 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.²⁰

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 – eg Germany or the USA – by judicial authorities.

3 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.

¹⁸ See Germann and Klöti (2004: 343-4).

¹⁹ Geser (2004: 384-7).

²⁰ See Schenkel and Serdült (2004: 403-4)

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 large functional regions, each centred on a major urban centre, rekindled debate and aroused fierce passions.²¹ This is the fundamental problem Swiss federalism faces for it goes to the heart of Switzerland's political system.²² 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's party - came out openly in favour in October 2004 and was suspected by some to be planning an initiative.²³ 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.²⁴ 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 federal democracy in Switzerland. There are echoes of Germany, here, where education also featured prominently in the negotiations to reform the federal system under the Schröder government and was ultimately the stumbling block that prevented an agreement from being reached.²⁵

Cantonal vs linguistic identities

Federalism is also under pressure 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

²¹ See Blöchliger (2005).

²² See also Germann and Klöti (2004: 323, 327) on this point.

²³ 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 *Le Temps*, 30 November 2004.

²⁴ See *Le Temps*, 10 June 2005, p. 11

²⁵ See Gress (2006) for details

agglomerations, and by the transformation of the media. The latter phenomenon is two-fold. First, there is an ongoing process of concentration in the printed media with the consequence that newspapers with a strong cantonal identity are either taken over stronger rival 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 linguistic communities do not coincide with cantonal borders and do not possess a political structure of their own, these trends put pressure on the institutional architecture of Swiss federalism and increase the politicisation of the language cleavage. Moreover, the latter has also been exacerbated by the different attitude to Europeanisation 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 inward-looking German- and Italian-speaking areas, hostile to any 'entanglements' with the outside world. Language education has become increasingly controversial due to the decision by some German-speaking cantons to teach English, rather than French, as second language at primary school thus deepening the divide between the language communities and potentially 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 concern²⁶, 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. As seen above, elite and mass resistance to mergers between cantons remain formidable, largely to be attributed to the enduring strength of popular identification with cantonal distinctiveness. Also, the divergence between the linguistic communities in their attitudes towards European integration has declined since the early 1990s and is cross-cut but an equally powerful urban-rural divide. Likewise, the teaching of French at the primary level in the German-

²⁶ Recent calls for the Valais to be split into two linguistically-homogenous 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.

speaking cantons has by no means disappeared and proposals to teach only one 'foreign' language have been rejected in a series of cantonal referendums.

Federation-cantons 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.²⁷ 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.²⁸ 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.²⁹ 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.³⁰ 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.³¹ 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.³² 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 those 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

²⁷ See Vatter (2004: 80).

²⁸ *Idem* (2004: 80-1).

²⁹ See Vatter (2004: 78-9)

³⁰ See Dardanelli (2005: 126-7) for details.

³¹ See Vatter (2004: 78-80) and Schenkel and Serdült (2004: 415) for details.

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.³³ 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.³⁴

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 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 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.³⁵

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.³⁶ Horizontal co-operation between cantons, thirdly, will acquire a much higher profile and may even grow into a 'fourth

³² See Vatter (2005), who writes of a historical shift of emphasis from 'veto points' to 'access points' in Swiss federalism.

³³ Ironically, both could be called 'councillors of state' as cantonal executives, at least in the Latin part, are called Council of State.

³⁴ A growing number of cantons employ professional lobbyists in Berne to defend their interests at the federal level, see *Le Temps*, 16 November 2004.

³⁵ The Socialist party was rumoured to be planning an initiative on fiscal harmonisation, see *Le Temps*, 13 October 2004.

³⁶ The new article 48a of the federal constitution states that, under certain circumstances, cantons be forced to join horizontal co-operation programmes.

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 centralisation can be contained³⁷, 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. 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 is now leading an increasing number of cantons to adopt regressive fiscal systems in an attempt to lure high-rate taxpayers. In the eyes of critics, this alarming trend undermines redistribution within cantons and threatens federal cohesion between them, two pillars of federal democracy in the country.

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

³⁷ See, for instance, Sciarini in *Le Temps*, 16 February 2005.

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.

4 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 somewhat problematic drawing lessons of wide applicability. 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 Swiss experience. Nonetheless, there are a number of important aspects to the general theme of this workshop which can fruitfully be illuminated by exploring the practice of federal democracy in Switzerland. I discuss them briefly below.

First, and most fundamentally, federalism and democracy are closely linked but there is an asymmetrical interdependence between them. Although, as Watts 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.³⁸ Formally federal constitutional structures lose almost all of their meaning in systems in which democracy is suppressed. The historical experience of the Soviet Union and, to a lesser extent, of Yugoslavia illustrate the point. On the other hand, democracy does not require federalism 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 not 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 arise from the role of federalism in preserving historically rooted regional units within a broader political system and the role of these

³⁸ See Watts (2006: 3)

regions as functional units of sub-state government. On the one hand, historical rootedness is often needed to create a sense of political community, 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 roots of many debates around federalism and democracy is that between freedom and equality. The 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 be put on freedom than on 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.³⁹

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 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 mis-match 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 expenditures

³⁹ See Dafflon and Vaillancourt (2003) for a recent discussion.

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.⁴⁰ 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 but 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 inter-dependence between the federal and the regional level of government and, more specifically, by the pressures on the autonomy of the latter brought about by such inter-dependence. 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 economies-of-scale benefits by co-operating among themselves more closely rather seeing competences drift away to the federal level, as is increasingly the case in Switzerland. Thirdly, 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 representative of regional governments.⁴¹ 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 the 'Senate' model of regional representation at the federal level is simply not effective in the circumstances of contemporary political systems and that a degree of executive federalism 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

⁴⁰ See Gagnon (2006) for a discussion of executive federalism in Canada and Watts (2006) for a comparative perspective.

⁴¹ See Watts (2006: 8-9) for a general discussion of federal upper chambers.

involvement and the degree of direct 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 significantly marginalise parliaments in all three countries.⁴²

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 finds naturally difficult to adapt to societies in which identities are increasingly divorced from territory.⁴³ In that respect, increasing mobility across regions and states, leading to ever greater heterogeneity 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 seems to paint a dark horizon for the future of federal democracy, it is also possible that high mobility will make possible 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.⁴⁴

Conclusions

This paper 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 paper has also shown that there are multiple sources of tensions between the

⁴² See Gress (2006: 6) on Germany.

⁴³ See Watts (2006: 7), among others, on giving autonomy to territorially concentrated minorities as one of the fundamental *raisons d’être* of federalism.

⁴⁴ See Tiebout (1956) for the original formulation of the theory.

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. This paper has been written very much in this spirit and I hope it will be a source of some inspiration to the other participants in this workshop.

References

- Aubert, Jean-François. 1974. *Petite histoire constitutionnelle de la Suisse*. Berne: Francke
- Blöchliger, Hansjörg. 2005. *Baustelle Föderalismus*. Zurich: Neue Zürcher Zeitung Verlag
- Church, Clive. 2004. *The Politics and Government of Switzerland*. Basingstoke: Palgrave
- Church, Clive and Paolo Dardanelli. 2005. The Dynamics of Confederalism and Federalism: Comparing Switzerland and the EU. *Regional and Federal Studies* 15/2: 163-85
- Dafflon, Bernard and François Vaillancourt. 2003. Problems of Equalisation in Federal Systems. In Raoul Blindenbacher and Arnold Koller (eds), *Federalism in a Changing World – Learning from Each Other*. Montreal, Qc, Canada: McGill-Queen's University Press
- Dardanelli, Paolo. 2005. The Parliamentary and Executive Elections in Switzerland, 2003. *Electoral Studies* 24/1: 123-9
- Fleiner, Thomas. 2002. Recent Developments of Swiss Federalism. *Publius* 32/2: 97-123
- Gagnon, Alain. 2006. *Executive Federalism and Canadian Democracy*. Paper presented at the International Workshop on Federalism and Democracy at the University of Kent. Canterbury, UK: 2-6 April
- Germann, Raimund and Ulrich Klöti. 2004. The Swiss Cantons: Equality and Difference. In Ulrich Klöti et al. (eds), *Handbook of Swiss Politics*. Zurich: Neue Zürcher Zeitung Publishing
- Geser, Hans. 2004. The Communes in Switzerland. In Ulrich Klöti et al. (eds), *Handbook of Swiss Politics*. Zurich: Neue Zürcher Zeitung Publishing
- Gress, Franz. 2006. *Federalism and Democracy in the Federal Republic of Germany*. Paper presented at the International Workshop on Federalism and Democracy at the University of Kent. Canterbury, UK: 2-6 April
- Jeffery, Charlie and David Heald (eds). 2003. Money Matters: Territorial Finance in Decentralized States. *Regional and Federal Studies* 13/4
- Kobach, Kris. 1994. Switzerland. In David Butler and Austin Ranney (eds), *Referendums Around the World*. Basingstoke: Macmillan
- Kriesi, Hanspeter. 1998. *Le système politique suisse*. Paris: Economica

Lüthi, Ruth. 2004. The Parliament. In Ulrich Klöti et al. (eds), *Handbook of Swiss Politics*. Zurich: Neue Zürcher Zeitung Publishing

Schenkel, Walter and Uwe Serdült. 2004. Intergovernmental Relations. In Ulrich Klöti et al. (eds), *Handbook of Swiss Politics*. Zurich: Neue Zürcher Zeitung Publishing

Tiebout, Charles. 1956. A Pure Theory of Local Expenditures. *Journal of Political Economy* 64/5: 416-24

Vatter, Adrian. 2005. The Transformation of Access and Veto Points in Swiss Federalism. *Regional and Federal Studies* 15/1: 1-17

Vatter, Adrian. 2004. Federalism. In Ulrich Klöti et al. (eds), *Handbook of Swiss Politics*. Zurich: Neue Zürcher Zeitung Publishing

Watts, Ronald. 2006. *Comparative Reflections on Federalism and Democracy*. Paper presented at the International Workshop on Federalism and Democracy at the University of Kent. Canterbury, UK: 2-6 April

Wälti, Sonja. 2003. L'effet des rapports financiers sur la dynamique fédérale: la qualité médiative du fédéralisme suisse. *Revue suisse de science politique* 9/1: 91-108