Swiss Confederation

FRANCE

GERMANY

AUSTRIA

Appenzell
Outer-Rhodes

Appenzell
Inner Rhodes

LIECHTENSTEIN

Schaffhausen

Thurgovia

Saint Gall

Basle-Town

Basle-Country

Zurich

Glarus

Argovia

Zug

Schwyz

Graubunden

Jura

Lucerne

Nidwalden

Uri

Solothurn

Bern

Obwalden

Neucbatel

Bern

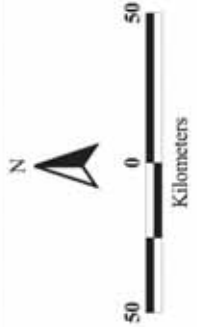Ticino

Vaud

Fribourg

Valais

ITALY

Geneva

Swiss Confederation

Capital: Bern
Population: 7.2 Million
(2002 est.)

Boundaries and place names are representative
only and do not imply any official endorsement.

Sources: ESRI Ltd.; CIA World Factbook

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Kilometers

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Switzerland
(*Swiss Confederation*)

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AND URS THALMANN-TORRES

1 HISTORY AND DEVELOPMENT OF FEDERALISM

Switzerland is a country of 7.2 million inhabitants in the middle of Europe. Its neighbours are Germany, Austria, Liechtenstein, Italy and France. It has been a federation since 1848, and its federal institutions have meant that the country has been able to accommodate diversity politically. Historically, the 26 cantons and the approximately 3,000 communes were able to develop their own traditions and cultures so that Switzerland had and still has cultural, cantonal and communal diversity. Switzerland as a country did not attempt to homogenize its population nor did it split according to linguistic, religious, or cultural lines, although some cantons did.

The official starting point of Swiss history is 1291. In 1291 three cantons (at this time called *Orte*) concluded a treaty and created a defence union combined with a system of arbitration for conflict management among the cantons. The union was intended to prevent outside dominance and guarantee a power balance among the member-cantons. Other cantons joined by concluding further treaties so that a confederation based on a treaty system developed. The confederation was to facilitate as much cooperation as necessary to defend the independence of Switzerland while safeguarding the sovereignty of the cantons.

At the end of the eighteenth century modernization in neighbouring countries, combined with the ideas of the French Revolution, triggered demands for some centralization and modernization in Switzerland. In

1798 French forces led by Napoleon invaded and created a centralized state in accordance with the French example. The cantons were transformed into equal but purely administrative units. Switzerland, however, quickly proved to be ungovernable as a centralized state, and Napoleon renewed the cantonal system and introduced a federal system in Switzerland.

After Napoleon's defeat, Switzerland opted again for a loose confederation. In the Vienna Congress (1815) the borders and the neutrality of Switzerland were recognized. While many of the Protestant cantons adopted progressive republican governments, in other predominantly Catholic cantons the old influential families re-introduced conservative power structures. The progressive cantons pressed for democratization and centralization of the union. In order to limit the pressure of the progressive (mostly Protestant) cantons, the conservative (predominantly Catholic) cantons formed a secret union (*Sonderbund*). This violated the treaty of confederation. When the union was revealed and the Catholic cantons refused to dissolve it, the Protestant cantons dissolved it by force. The year 1847 entered Swiss history as the year of civil war, which ended with the defeat of the Catholic cantons.

In 1848 the people and the cantons of Switzerland adopted a federal constitution. This constitution was a pragmatic compromise between the winners and losers of the civil war. It introduced some centralization but it also guaranteed, through the institutional set-up and the limitation of competencies of the central government, respect for cantonal diversity. A sign of the pragmatism of the constitution is the official name of Switzerland, which was kept in the Latin version "Confoederatio Helvetica" (CH) so as not to open a debate over the name. The result of this has been that Switzerland is frequently called a confederation even though it is a federation.

With the 1848 constitution, Switzerland took an important step towards modernity. It became a federal country based on constitutionally-guaranteed shared rule and self-rule. The modernization did not aim at homogenization of the population but tried to create a Swiss nation by preserving the pre-existing diversity. The combination of shared rule and self-rule enabled the country to maintain diversity in unity.

While over the years the institutions and political processes have developed further, and there have been two total revisions of the constitution (1874, 1999), the over-all design has stayed the same. The federal constitution has provided the basis for the peaceful cohabitation of different cultural, linguistic and religious groups.

2   CONSTITUTIONAL PROVISIONS
RELATING TO FEDERALISM

Switzerland is a federation composed of 26 cantons (Article 1), of which six are so-called "half cantons," arising out of the historic division of three cantons taking place before the foundation of the federation in 1848. These half cantons have almost the same status as the other 20 cantons (Article 3), but they have only half the representation when the formal tools of shared rule are concerned. This means that they have only one representative in the Council of States instead of two (Article 150), and only half of a cantonal vote when the majority of cantons is required for a referendum on a federal level (Article 142).

According to the Swiss Federal Constitution of 1999, as well as earlier constitutions, cantons are "sovereign" as long and insofar as their sovereignty is not limited by the constitution (Article 3). Sovereign in this case means that they have the right to self-rule within their territory. The central government is obliged to respect the sovereignty of the cantons. This sovereignty is not absolute, however. The constitution places limitations on the sovereignty of the cantons in several different ways. For example, it guarantees fundamental rights to all people living in Switzerland (Articles 7–36) and provides constitutional review by the Swiss Federal Court, which watches over the observance of fundamental rights by cantonal authorities. Even more clearly, the limitations to the sovereignty of the cantons come out of the legislative and executive competencies of the Confederation.[1]

The division of competencies between the Confederation and the cantons is organized according to the system of enumerated federal powers. Federal competencies must be mentioned in the federal constitution. There are no issue-areas that are in the domain neither of the Confederation nor of the cantons. Each new issue that is not mentioned in the constitution automatically falls within cantonal power (Article 3). So, theoretically speaking, there can never be lacunae in the division of powers. A further observation concerns the power to distribute the competencies. As the revision of the constitution is a federal matter (Articles 192–195), and the distribution of competencies arises exclusively from the constitution, the revision of powers is a federal competence. However, this power is limited by the cantonal right to shared rule.

Since the revision of 1999, the constitution states explicitly that the Confederation will only assume the tasks that require uniform regulation

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1 In most instances in this article the word "Confederation" refers to the central or federal government.

(Article 42(2)). This rule binds the Confederation to the principle of subsidiarity in terms of the division of powers between the cantons and the central government. In this sense, the Confederation only has jurisdiction if a uniform regulation is necessary. Although some new federal competencies have been introduced through the revision of the federal constitution, a substantial number of matters remain within cantonal jurisdiction. Listed below are some examples of major importance to cantonal self-rule:

- *State constitutions.* The drafting of state constitutions is cantonal. The cantons define their own political system.
- *Municipalities.* Each canton grants different powers to its municipalities, but once these powers are laid down in the law, they are guaranteed and protected by the Swiss Federal Court in much the same way as it protects the fundamental rights of individuals.
- *Education.* Education is traditionally a cantonal matter. Cantons define to a large extent the curriculum, and appoint, employ or elect the teaching staff, etc.
- *Public order.* In peace-time, public order is traditionally a cantonal matter.
- *Culture.* With a few exceptions, support for cultural activities and the protection of cultural goods is cantonal.
- *Infrastructure.* The construction of streets, and the supply of water and electricity are mostly cantonal matters.
- *Direct taxes.* Cantons raise their own taxes and define the tax rate and the tax brackets for cantonal income taxes.

The principle of subsidiarity also applies to the application of law. The Confederation does not itself implement much federal law enacted within its constitutional competencies; it is the cantons which are in charge of carrying out most federal law. This gives the cantons a great deal of room to manoeuvre and to take particular cantonal characteristics into account. According to the principle of subsidiarity, the Confederation is required to leave the application of its law to the cantons as far as possible, regulating only those questions in which uniformity is necessary.

Several institutions and practices give the cantons an important influence in decision making at the federal level. First, the federal law-drafting authorities are obliged to inform the cantons directly about their intentions and in most cases the law gives the cantons the right to be consulted. Thus, the cantons have influence on the process even before a proposition comes to the federal Parliament (Articles 45, 55). This is important as at this stage cantons can still have an important in-

fluence on the formulation of legislation, whereas afterwards their influence would be limited to saying "yes" or "no."

Second, the federal Parliament, the Federal Assembly, is divided into two chambers, the National Council representing the people, and the Council of States representing the cantons. In the Council of States each canton has the same number of votes. Each chamber has exactly the same powers, and no federal statute can be enacted without the agreement of both of the chambers (Articles 148, 156, 163). The influence of the cantons through the Council of States is limited, however, due to the fact that cantons are not allowed to give legally binding instructions to their representatives (Article 161). The cantons have an indirect but nonetheless important influence on the members the National Council through the electoral system. The only external influence on Members of Parliament is their need to be re-elected. In elections to the National Council, the cantons form the constituencies (Article 149) and the cantonal sections of the parties select the candidates. In Switzerland political parties are strongest at the cantonal level, and therefore the deputies of both chambers try to adapt their political actions to the interests of the cantonal section of their respective party. This situation provides a significant counter-weight to centralizing forces in the country.

Third, statutes and constitutional amendments are always subject to a popular referendum (Articles 140–142). Two different types of referendum must be distinguished. For ordinary legislation – a federal statute, for example – the referendum is optional and will only take place when 50,000 citizens or eight cantons have requested it. A proposition is approved if a majority of voters in the country as a whole agree. For the more important decisions – such as revisions of the constitution and the entry into international organizations for collective security, or organizations with supranational powers – a referendum is mandatory, and no collection of signatures has to take place. In this case, a double majority is required that includes the approval of the *majority of cantons* in addition to a *majority of voters.* This means that a majority of the voters within the whole territory of Switzerland must approve, as well as the majority of voters in more than half of the cantons. Considering the large difference in terms of population between large cantons and small cantons, a proposal to revise the constitution can theoretically be rejected although approximately 90 per cent of the population approved it, when the rejecting 10 per cent is evenly distributed in the smallest cantons. In other words, when it comes to the requirement of receiving approval in a majority of cantons, a voter of the smallest full canton of Uri outweighs approximately 35 citizens of the canton of Zurich.

Apart from the formal institutions of shared rule, the cantons have other means that allow them to influence federal policy. The most important factor lies in the system of consensus-driven democracy. This means basically that almost every important policy decision is a compromise that takes into consideration the opinions of all important parties, interest groups, cantons and regions. The basis for this particular way of policy-making lies in the institutions of direct democracy, particularly in the popular referendum. A federal policy with which a strong organized group does not agree is almost impossible to implement as a strong opposition may relatively easily block it by means of direct democracy.

The executive branch of the federal government, the Federal Council (Articles 174–179), provides a good example of consensus-driven democracy. It is composed of seven Federal Councillors, elected by both chambers of the federal Parliament, each of whom is head of a ministry, and together they are the federal executive. For government decisions, all members of the Federal Council have equal votes, which means that the federal President is only *primus inter pares.* As a consequence of consensus-driven democracy, as much as possible, all major groups are given representation in the Council. This means essentially that the important political parties are represented as well as the language groups, the cantons and both genders. This representation is not the result of a legal provision and is not even mentioned in the federal constitution. Nevertheless a German-speaking parliamentarian of the Radical Party would vote for a French-speaking candidate of the Social Democrats when it is the latter's turn to replace one of the Council representatives. The relationship of this to consensus-driven democracy is that a legislative proposal drafted by the federal executive would have little chance of being accepted by the people if one (or more) major group – for example, a party or some cantons – did not support it. Since a strong opposition would be able to block most legislative activity, it is in the interest of every party to have the other groups involved for all important proposals and therefore represented in the federal executive.

The judicial branch is a domain which lies to a great extent in cantonal hands. With very few exceptions, every legal action starts at a cantonal court, regardless if it concerns cantonal or federal law, and most decisions on appeals are cantonal. The Federal Court is the only federal judicial authority. The most important tasks of the Federal Court are to review decisions of the highest cantonal courts upon appeal and to act as a constitutional court. Only for very exceptional cases is the Federal Court the first and only court. However, in terms of Swiss fed-

eralism, the Federal Court does not have the power to control the observance of the constitutional division of competencies by the Confederation, unlike in other federations. The Federal Court is "the highest federal judicial authority" (Article 188), but it is bound to the federal legislation that is democratically legitimized through the popular referendum. The usual explanation of this unique feature is both historical mistrust of the population towards the power of judges, and an extremely strong belief in democracy. This can be understood only when taking into account that every federal law is based on a quasi-consensus between all major political forces. This led the writers of the constitution to the decision that judges should not be able to abolish what has been decided democratically. In practice, the trust that has been placed in the democratic institutions has mostly been justified. With very few exceptions, legislators have obeyed the rules to which they are bound.

The federal and referendum-based system – especially the requirement for majority cantonal approval in important decisions – is sometimes criticized for its tendency to slow down the political process in Switzerland. Progressive politicians in particular see major problems, notably because most of the small cantons are conservative in their voting behaviour and can, due to their power in referenda and their strong representation in the Council of State, block many progressive propositions. This is one of the reasons why Swiss politics are slower than politics in other comparable countries. But on the other hand, this system forces policy-makers to think their ideas over and has probably prevented Switzerland from many rash decisions. In this sense, the system might be one of the factors that has helped maintain the political stability that has lasted since the foundation of the federation in 1848.

3   RECENT POLITICAL DYNAMICS

On 1 January 2000 a new federal constitution came into force replacing the constitution of 1874. This marked not the end of but a decisive step in a process initiated by the federal Parliament in 1965. The general feeling at that time was that the Swiss political system was not fit to cope with the far-reaching changes occurring in the post–World War II era. While not changing the meaning of the existing constitutional norms, the new constitution formulates them using modern language and re-structures their order. Some new content was introduced as well, especially with respect to cooperative federalism. In addition to the revisions to the constitution, major institutional reforms of the

judicial system and direct democracy were undertaken in the past few years, as discussed below.

Perhaps the most symbolically important development in the last few years was Switzerland joining the United Nations on 10 September 2002, after a constitutional referendum in which there was a yes majority of almost 55 per cent in the popular vote and of 11 full and 2 half cantons in the cantonal vote. Since then, this once heated topic of debate has almost completely faded from public preoccupation.

Apart from this, the recent political dynamics continue to be driven by the increasing integration of Switzerland, both globally and in Europe. Yet at the same time as Swiss integration increases, there are some contrasting trends at work in the country. Thus, for example, the idea of transforming the territorial structure of Switzerland has lost considerable appeal since the merger of the cantons of Geneva and Vaud was rejected by popular vote. And, the populist and isolationist Swiss People's Party (SPP) has further expanded and consolidated its position, especially in the French-speaking cantons, and can now claim to be a truly national party. With over 27 per cent of the national vote in the legislative elections of October 2003 it has become the strongest party with 55 out of 200 seats in the National Council (lower house). As a result, a major transformation of the coalition government in place since 1959 was inevitable in order to maintain the political equilibrium of Switzerland's semi-direct democracy; the SPP received a second seat in the Federal Council (government) at the expense of the Christian Democratic Group, which had lost votes.

With this strengthening of isolationist forces, joining the European Union (EU) seems further away than ever. Accordingly, the conclusion of bilateral treaties with the EU has become crucial for the integration of Switzerland into Europe. A first batch of treaties came into force in June 2002 covering research, public procurement, technical barriers to trade, agriculture, civil aviation, overland transport and free movements of persons. A second batch has been negotiated covering, among other matters, services, the environment and education. Negotiations continue even for thorny issues like withholding tax and measures to prevent fraud, and participation in the common security space, and solution appear to be forthcoming. Should Switzerland succeed in signing these treaties, it will be able to participate in many of the common policies of the EU without having to integrate politically.

The cantons are participating in these negotiations based on the 1999 constitution, which enshrines the right of the cantons to participate in the making of foreign policy decisions in general, and in international negotiations pertaining to their exclusive powers in particular. This de-

velopment is part of a general trend to offset the gradual loss of cantonal self-rule, due to increased international cooperation, with new forms of shared rule in these matters.

As mentioned above, there were two major institutional reforms undertaken in the past few years. First, a reform of popular rights was voted on 9 February 2003, and was adopted. This reform provides for a general popular initiative (until now only constitutional initiatives were possible) and permits referenda for international treaties comprising important legal norms, if appropriate, together with the implementing legislation. Second, while important, from a federal perspective, the reform of the justice system (accepted by constitutional referendum in March 2000) is more important, as it provides the basis for unifying both criminal and civil procedure by replacing respectively 29 and 27 different regimes with a single federal code each. As a result, the cantons will have to give up an important part of their self-rule in the administration of justice. The prosecution of organized crime, the financing of terrorism and economic crimes are now within federal competence, provided the offence has been committed mainly abroad or in more than one canton. To this end, both the federal police and the office of the federal prosecutors have been organized. With reform of the judicial system and reform of popular rights, the constitutional reform of 1999 has been brought to a close.

Finally, after a lot of bickering, the reform of fiscal equalization has at last been approved by Parliament. As reported in the first edition of this handbook, the Swiss fiscal system is marked by comparatively strong decentralization both of expenditures and revenues. Formal fiscal equalization at the federal level was introduced only in 1959, when the federal government was constitutionally given the mission to provide for fiscal equalization among the cantons, to provide all cantons with the means necessary to carry out their functions, and to ensure to all citizens a basic (but not equal) level of services. The main instrument to attain these objectives was the disbursement of federal grants and cantonal contributions to the funding of federal tasks according to a formula based on an index of financial capacities. Unfortunately, this system involves little actual equalization and has a lack of transparency regarding financial flows and decision making.

The final package as voted by Parliament in September 2003 follows the basic set-up of the proposal of the joint federal cantonal working group. Specifically, the reform: (a) disentangles the respective responsibilities; (b) invigorates cooperation among the cantons with an institutionalized system of burden-sharing; (c) creates new ways of cooperating in the areas of joint responsibility; and (d) creates a new system of direct

fiscal equalization. This system will provide every canton with a minimal endowment through unconditional horizontal transfers between the cantons, complemented by federal transfers where necessary. It also includes horizontal compensations for spill-overs and vertical support for extraordinary burdens (geographic, topographic or socio-demographic). The changes assure Parliament a stronger position and the possibility of a referendum with respect to the enforcement of intercantonal treaties on non-party cantons, limit the contribution of "rich" cantons to the horizontal equalization, and provide for a long-term phasing out of transition payments.

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Table I
Political and Geographic Indicators

Capital city	Bern
Number and type of constituent units	26 *Cantons* (6 are half-cantons): Aargau, Appenzell Ausser-Rhoden, Appenzell Inner-Rhoden, Basel-Landschaft, Basel-Stadt, Bern, Fribourg, Geneve, Glarus, Graubunden, Jura, Luzern, Neuchatel, Nidwalden, Obwalden, Sankt Gallen, Schaffhausen, Schwyz, Solothurn, Thurgau, Ticino, Uri, Valais, Vaud, Zug, Zurich (note: see alternative spelling on map)
Official language(s)	German, French, Italian, Romansh
Area	41 300 km²
Area – largest constituent unit	Graübunden – 7 105 km²
Area – smallest constituent unit	Basel Stadt – 37.2 km²
Total population	7 228 000 (2002)
Population by constituent unit (% of total population)	Zurich 16.9%, Bern 13.0%, Vaud 8.6%, Aargau 7.6%, St. Gallen 6.2%, Geneve 5.7%, Ticino 4.3%, Luzern 4.8%, Valais 3.8%, Basel-Landschaft 3.6%, Solothurn 3.4%, Fribourg 3.3%, Neuchatel 3.3%, Thurgau 3.1%, Graubunden 2.6%, Basel-Stadt 2.3%, Schwyz 1.8%, Berne 1.7%, Zug 1.4%, Schaffhausen 1%, Jura 1%, Appenzell Ausser-Rhoden 0.7%, Glarus 0.5%, Nidwalden 0.5%, Obwalden 0.5%, Uri 0.4%, Appenzell Inner-Rhoden 0.2%
Political system – federal	Federal Republic
Head of state – federal	President, a ceremonial office rotating annually among the members of the Federal Council. The President (Chair) is appointed to serve a 1-year term and chairs the Cabinet or Federal Council which is comprised of 7 representatives serving 4-year terms. Both the President and the Council are elected by the Federal Assembly.
Head of government – federal	President Joseph Deiss (since 1 January 2004). The power and duties of the head of government are shared among the 7 members of the Federal Council. (Note: The President acts as a "primus inter pares," but does not have the wide-ranging power commonly assigned to a President.)
Government structure – federal	Bicameral: Swiss Federal Assembly *Second Chamber:* Council of States (Ständerat), 46 seats. Members serve 4-year terms. *First Chamber:* National Council (Nationalrat), 200 seats. Members are directly elected for 4-year terms, in proportion to the population of each canton (each of which must have at least 1 representative).

Table I (continued)

Number of representatives in lower house of federal government of most populated constituent unit	Zürich – 34
Number of representatives in lower house of federal government for least populated constituent unit	Appenzell Ausser-Rhoden, Appenzell Inner-Rhoden, Glarus, Nidwalden, Obwalden, Uri: 1 seat each.
Distribution of representation in upper house of federal government	Each of the 20 full cantons has two seats, and each of the 6 half-cantons has one seat. Electoral procedure is determined by cantonal law and can vary from canton to canton.
Distribution of powers	The federal government has the exclusive power to legislate over international affairs, defence and citizenship, trade and commerce, currency, banking, railways, telecommunication services, agriculture and nuclear energy. Cantons have fiscal autonomy and the right to manage internal cantonal affairs. They have jurisdiction over matters such as municipalities, education, culture, public order, infrastructure. Concurrent powers include immigration, public and internal security. The federal government and the cantons both have the power to levy taxes.
Residual powers	Residual powers belong to the cantons.
Constitutional court (highest court dealing with constitutional matters)	Federal Court. This is the highest court but it does not have the power of judicial review.
Political system of constituent units	Unicameral: Parliament or State Council (Kantonsrat, Grosser Rat or Grand Conseil). Members are directly elected. In the cases of the cantons of Appenzell Inner-Rhoden and Glarus, there is also a *Landsgemeinde*, or an "open-air assembly" of all voters (this does not replace the Parliament, it supplements it). State Councils are composed by 5 to 9 members. Note: The political systems of the cantons vary greatly.
Head of government – constituent units	President or Chair of the Executive Council. Appointed by the canton Parliament. The presidency changes every year (rotating presidency).

Table II
Economic and Social Indicators

GDP	US$205 billion at PPP (2002)
GDP per capita	US$28 357 at PPP (2002)
National debt (external)	US$684.8 billion (September 2003)
Sub-national debt	US$78.6 billion (2002 partially estimated)
National unemployment rate	2.5 % (2002)
Constituent unit with highest unemployment rate	Geneve – 5.4 % (2003)
Constituent unit with lowest unemployment rate	Appenzell Inner-Rhoden – 0.9 % (2003)
Adult literacy rate	More than 95%
National expenditures on education as % of GDP	5.5
Life expectancy in years	79.0 (2001)
Federal government revenues – from taxes and related sources	US$27.5 billion (partly estimated – 2002)
Constituent unit revenues collectively – from taxes and related sources	US$34.6 billion (partly estimated – 2002)[1]
Federal transfers to constituent units	US$5.7 billion (2001)
Equalization mechanisms	Formula-based federal revenue sharing according to the financial capacity of cantons.

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Note

1 Includes Cantons and Communes.