



## Swiss Confederation

Capital: Bern

Population: 7.6 Million  
(2008 est.)

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Source: ESRI Ltd.; CIA World Factbook



# Swiss Confederation

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Like the United States, the Swiss federation was created from the bottom up, based on a covenant (*foedus*) uniting formerly independent states. However, while the framers of the United States Constitution chose federalism mainly to strengthen local democracy and limit government powers with a view to protecting individual liberty, Swiss federalism was designed primarily to accommodate communal diversity and to provide for peaceful management of deeply rooted conflicts among adherents of different religious, cultural, and political traditions.

Federalism implies the existence of at least two orders of government and some autonomy of the constituent units. Given that the constituent units (called cantons) in Switzerland are themselves internally diverse and fragmented, they, too, had to develop strategies of conflict management based on substantial powers of their municipalities. Thus, the Swiss federal polity is composed of three orders of government.

## INTRODUCTORY OVERVIEW

With a surface area of 41,290 square kilometres and a population of 7.3 million, Switzerland is a small European country whose neighbours are France, Germany, Italy, Austria, and Lichtenstein. It is composed of twenty-six cantons<sup>1</sup> varying greatly in size, population, history, language, and culture. There are four national languages – German (spoken by 64 percent of the population), French (20 percent), Italian (6.5 percent), and Romansh (0.5 percent) – and two major religions (42 percent Roman Catholics and 33 percent Protestants), not to mention the tiny minority of Jewish and Old Catholic inhabitants. Amounting to a fifth of the population, foreign nationals further enhance the country's diversity. In contrast to the regional concentrations of Switzerland's traditional linguistic communities, immigrants are spread throughout the Swiss territory. Switzerland is a prosperous country

with an estimated per capita GDP of US\$39,800 in 2008.<sup>2</sup> The rural and mountain areas, however, tend to be economically weaker than the metropolitan regions.

When the Swiss federal state (named “Swiss Confederation”) was founded in 1848,<sup>3</sup> the cantons had already developed their own national identities, which nowadays counterbalance linguistic, religious, and economic diversity. The federal structure was a compromise reached after a religiously motivated civil war (the *Sonderbund* war) that opposed the Protestant cantons – which, influenced by French liberalism, favoured a centralized liberal state – against the conservative Catholic cantons, which advocated a confederal arrangement. Originally, the cantons were sovereign states co-operating within a loose confederation<sup>4</sup> that arose from an alliance between three cantons dating back to 1291. From 1798 to 1803, the French occupation forces imposed a centralized state structure on Switzerland, which turned out to be unworkable. This brief experience with centralism contributed to the deeply engrained belief that Switzerland can only exist as a federal, heavily decentralized state. Although the tendency has been to increase centralization since the creation of the federal state, the cantons still enjoy a substantial degree of legislative, organizational, and financial autonomy that is matched by few other federal states.

Considering its historic origins, the federation is not conceived as a pact among various ethnic communities but as a covenant integrating within a new nation pre-existing cantons with their own identities. The Swiss concept of nationhood is often described as a *Willensnation*, a polity based on people’s shared will to live within one state upholding common values. The Swiss nation-state is conceived of as neither a unitary, indivisible entity based on a civic identity (a French concept) nor a homogeneous ethnocultural unit (a German concept). It is conceptualized as a composed nation. Every Swiss national simultaneously holds a federal, cantonal, and municipal citizenship, each of which reflects one of three complementary identities. Moreover, the Swiss Constitution<sup>5</sup> recognizes diversity as a foundational value that is to be fostered within the federation.<sup>6</sup> It considers religious and cultural differences as integral parts of an overarching Swiss political identity.

So far, the constitutional order has successfully achieved a subtle balance between unity and diversity. Both the political system – marked by consensus, power-sharing, and direct popular participation via instruments of direct democracy – and the federal structure are remarkably stable.<sup>7</sup> Since the founding of the federal state, only one new canton, the Jura, was created in 1979 in order to satisfy the secessionist demands of a local minority within a canton. Apart from the federal state structure, strong participatory and consociational elements have contributed to stability and diversity accommodation. International neutrality has had the same effect. Due to the linguistic and cultural affinities between the French-, German-, and Italian-speaking parts

of Switzerland with one of Switzerland's neighbouring countries, respectively France, Germany, Austria, and Italy, the politics of not taking sides has throughout Swiss history prevented the federal government from alienating religious and/or linguistic regions and creating conflicts between the various communities.

#### SOCIO-ECONOMIC, DEMOGRAPHIC, AND SPATIAL DIVERSITY

##### *Demographic, Spatial, and Social Diversity*

The territorial division of Switzerland into cantons and municipalities dates back to the Middle Ages. In the sixteenth century, the restoration of peace following a war between Protestants and Catholics (known as the two *Kappeler Landfrieden*) was based on the freedom of each municipality to decide its own religion. For this reason, in many cantons, differences between municipalities exist not only with regard to the official language but also to religion. Consequently, enclaves are common in Switzerland, but they are generally not a source of conflict.

Further disparities are those between the sizes of both the linguistic communities and the cantons. Amounting to more than 60 percent of the population, the German-speakers are three times more in number than the French-speakers, the second biggest traditional linguistic community, almost ten times more than the Italian-speakers, and approximately 130 times more than the Romansh-speakers. The territory of Grisons, the largest canton, covers about one-sixth of the whole Swiss territory and is, with 7,105 square kilometres, 190 times bigger than the smallest canton, Basle-Town (thirty-seven square kilometres). The disparities between the least and the most populous cantons are almost as impressive. With a population of nearly 1.3 million, the canton of Zurich exceeds the population of the least populous canton, Appenzell Innerrhoden (population of 15,300) by a factor of eighty-four. Moreover, Switzerland is geographically fragmented by mountains and valleys, a contributing factor to economic and financial disparities.

In addition to geographic fragmentation, the country is socially and politically diverse due to the different historical experiences of the various cantons and municipalities. Although Switzerland has changed into a modern society based on equal rights, its diverse historical traditions still have some impact. For instance, the old Celtic and the old Alemannic communities had different concepts of rural settlements that are still reflected in diverging conceptions of municipal autonomy. Due to the Celtic heritage, traditional municipalities tend to be smaller in size in the French- and Italian-speaking parts of Switzerland and are granted less autonomy than

the larger traditional municipalities in the German-speaking areas, which have been influenced by the Alemannic concept of settlement. The legal cultures of the cantons also differ because they were influenced by the legal systems of their respective neighbouring countries – France, Germany, Austria, and Italy. Furthermore, different views on the function and conceptions of the local judiciary, for instance, reflect either an aristocratic tradition or the revolutionary tradition shaped by Jean-Jacques Rousseau. Cantons falling into the latter category, like Basle-Town, for example, tend to let peace judges settle small cases, while cantons with an aristocratic heritage, like Berne, assign such cases to the president of the district court.

### *Economic Development and Divergence*

Economic data show the importance of the cantonal and municipal governments. In 2006, the public expenditures of the twenty-six cantons were much higher than that of the federal government. Federal expenditures reached some \$53 billion, while cantonal expenditures increased to \$115 billion (including municipal expenditures of \$45 billion).

Economic differences among the cantons are reflected in the rates of wages, which are 20 percent<sup>8</sup> higher in the canton of Zurich than in the lowest ranking canton, the Italian-speaking Tessin. In 2007, the unemployment rate in Zurich was 2.4 percent; the French-speaking canton of Geneva (433,000 inhabitants) had a 6.0 percent rate. More generally, unemployment in the French-speaking region is significantly higher than in the German-speaking cantons. Regional growth, however, is spread among the different language regions. With regard to other economic factors, such as public income, services, and economic development, important differences exist based not on language or religion but on urban and rural location. The latter cleavage has been an important source of conflict since very early times. It has intensified with modern economic development. Today, Zurich and Geneva, and to a lesser extent Lugano, are Switzerland's main financial centres while Basle is a centre for big pharmaceutical corporations. These Swiss regions are linked closely to the dynamic economic centres of their neighbouring countries, including Baden-Württemberg in Germany, Lyon in France, and Milan in Italy. While Zurich has evolved into the premier economic metropolitan area of Switzerland, Berne is the seat of the federal Parliament and executive. In order to achieve a balance among the country's regions and linguistic communities, Lausanne (French-speaking) was chosen as the seat of the highest Swiss court, the Federal Tribunal, while the Federal Criminal Court has its seat in Bellinzona (Italian-speaking), and the Federal Administrative Court is in St Gallen (German-speaking eastern Switzerland). In the economic centres, internal migration and the immigration of foreigners have led to strong population increases compared to the rural areas.

The federal government's planning, transport, and agricultural policies as well as fiscal equalization and decentralization enabling the cantons to pursue their own economic and fiscal policies have helped to counteract socio-economic and demographic divergence. Compared with other multinational countries where economic differences are an important source of inter-communal conflicts, the politicization of socio-economic diversities is low in Switzerland despite the fact, for instance, that tax rates vary greatly between cantons and even municipalities.

### *New Diversity*

The main challenge Switzerland faces today with regard to diversity accommodation is to integrate a steadily increasing number of foreign nationals. The number of foreigners increased from 120,000 in 1950 (6 percent of Switzerland's population) to 1.7 million (22.1 percent) in 2007. Foreigners make up 25 percent of the labour force. Immigration is a net positive for population growth. In 2007, for instance, the number of foreigners immigrating to Switzerland exceeded the number of Swiss citizens leaving the country by 83,200. The Swiss labour shortage, high wages, low taxes, good infrastructure, and both social and political stability explain this trend.

Of the foreign population, 69 percent come from the member-states of the European Union (EU), 5.2 percent from Asia, and 4.8 percent from Africa. Some 2.4 percent of foreign residents are asylum seekers, which amounts to 0.6 percent of the Swiss population. The high percentage of immigrants from EU countries is due mainly to the strong economic and legal interdependence between Switzerland and the EU. More specifically, a bilateral treaty concluded in 1999 guarantees the free movement of persons on the territory of both Switzerland and the EU. By contrast with immigration from abroad, internal migration is low despite the country's strongly differing cantonal and municipal tax rates. In 2006, only 115,000 people or 1.5 percent of the population changed domicile from one municipality to another.

As regards the integration and acceptance of foreigners, differences exist between immigrants from traditional western EU countries and the majority of immigrants from outside the western EU. The economic level of the first group is similar to that of the Swiss population, while important economic, social, language, and education differences exist with regard to the second group. These immigrants often belong to the working poor, are unskilled, and face the highest risks of unemployment within Switzerland. Moreover, language barriers make integration more difficult. By contrast, many immigrants from the western EU come from Switzerland's neighbouring countries and have the option to settle in a Swiss region having a language similar to their own (e.g., German, French, or Italian).

Nowadays, there is a strong social and political tendency to exclude and discriminate against foreigners who do not originate from western EU countries. Many Swiss parents believe, for instance, that their children are disadvantaged in schools when they are among the few pupils who are native-speakers. So far, immigration has not produced clear residential segregation of Swiss from foreigners. This may be one reason why foreign immigration has not yet deeply affected the cultural identity of the constituent units.

#### CULTURAL-IDENTITY DIVERSITY

The cantonal identities cut across the two other elements of cultural diversity, religion and language, which is conducive to stability. Because the various identities overlap, it is difficult to clearly identify minorities and majorities. Depending on the criteria (language or religion) and the territorial unit (federation, canton, or municipality) under consideration, almost every Swiss person belongs at the same time to a majority (e.g., language) and a minority (e.g., religion). From a historical perspective, religion used to be the most divisive cleavage. Its importance, however, has decreased.

##### *Religion*

The first Swiss Constitution of 1848 faced the challenge of integrating a society strongly divided along religious lines. This task was particularly difficult because the Constitution did not gain the support of the peoples of all the cantons. While it was approved in all the Protestant cantons, eight of the eleven Catholic cantons rejected the text, some by very large majorities.<sup>9</sup> From the point of view of the Catholic cantons, which had lost the *Sonderbund* war, the legitimacy of the Constitution was questionable. A further difficulty consisted in the politicized nature of the religious divide. Protestants mainly supported the liberal Free Democratic Party, which was the dominant political force in the first six decades after the founding of the federation. The Catholic cantons were the stronghold of conservative political forces, which were united as of 1912 under the umbrella of the Swiss Conservative People's Party, later renamed the Christian Democratic People's Party.

A slow process leading to the gradual integration of the conservatives into the political institutions began near the end of the nineteenth century. Two constitutional amendments favoured this development. First, in 1874, the statutory referendum was introduced on the federal level; this enabled the Catholic citizens to oppose policies adopted by the liberal parliamentary majority. Second, following a change of the electoral system from majority to proportional representation in the National Council (the

Parliament's lower house), which became effective in 1919, the conservatives gained considerable political impact in the federal Parliament and held two seats in the federal government (i.e., executive branch). Moreover, the rise of the Socialist Party in the twentieth century motivated a rapprochement between most liberals and conservatives.

The integration of the Christian Democratic People's Party into Switzerland's political institutions and the secularization of Swiss society have reduced the political salience of religion. Another contributing factor has been internal migration and immigration from other countries, which have blurred the boundaries between traditional Catholic and Protestant areas. Despite the trend toward secularization, traditional religions continue to play an important role in Swiss society. The new Constitution of 1999, for instance, still opens its preamble with an invocation of God. Proposals to abolish the invocation of divinity had to be abandoned due to popular resistance, which jeopardized the adoption of the Constitution.

### *Language*

Compared with religion, cleavages based on language are more visible.<sup>10</sup> The cleavage between the French-speaking western part of the country (known as 'Romandie') and the German-speaking eastern part captures the popular stereotypical perception of the cultural divide between the refined, warm-hearted, spontaneous French-speakers and the rustic, efficiency-minded, reserved German-speakers.

French-speakers are generally more reluctant to move to the Swiss German areas than their German counterparts are willing to move to French areas. Moreover, French-speakers are discouraged from studying German because standard German, which is taught in school, is only the written, not the spoken, language in the German-speaking part of Switzerland. Due to the country's geographic fragmentation, every area has developed its dialect (known as 'Swiss German'). The dialects form an important part of Swiss German identity because they help the Swiss to differentiate themselves from their neighbours in Germany. Traditionally, the communication between both linguistic groups relied on the Swiss Germans speaking French. However, for the last decades, English has slowly been gaining ground and may well become Switzerland's new lingua franca. Some Swiss German cantons have reinforced this trend by changing the first foreign language taught in primary school from French to English, which has caused resentment in Romandie.

## POLITICAL DIVERSITY

Each Swiss canton has its own political history and culture. While some town cantons (such as Berne) had a long period of aristocratic government, others,

like the town of Zurich, have a democratic tradition rooted in the fourteenth century. Rural areas were either controlled by the freemen of the canton or by the church. This diverse historical heritage has been influential in shaping the political and legal culture of each canton, as well as the relationship between church and state. Furthermore, the culture of the cantons and, beyond their borders, of the linguistic regions has evolved in close interaction with their respective neighbouring countries. The federal Constitution, like the federal legislation on civil and criminal law, established a synthesis of the main cantonal cultures. In many instances, it borrowed from cantonal experiments and innovations. Direct democracy, for instance, was first adopted by the cantons and only later by the federation.

Some differences regarding political preferences exist between the two major language communities. The French-speaking cantons tend to be more favourable to international co-operation in general and to European integration in particular and to express stronger support for state intervention, mainly in the field of social policy, than their Germanic counterparts. In the German-speaking cantons, protection of the environment and a strong army rank as more important concerns than in Romandie. In addition to a cleavage between the German- and the French-speaking regions, election outcomes frequently show a divide between rural and urban areas.

Switzerland's political diversity is also reflected in the party systems, which vary significantly between cantons in terms of fragmentation, volatility, overall political orientation, and polarization. A recent study classified the party systems of the cantons into four groups. The first consists of the urban cantons Geneva and Basle-Town that have volatile multi-party systems with a strong left. The second is formed by non-Catholic cantons that have multi-party systems that lean toward the left and experience average volatility. The third group consists of the French-speaking cantons, with the exception of Geneva, which are characterized by centre-left multi-party systems with low volatility. In the fourth group of cantons, encompassing mainly the rural Catholic cantons in the centre of Switzerland, fragmentation and volatility are low, and there is a clear preponderance of the right.<sup>11</sup>

#### *Identification with the Various Orders of Government*

It is difficult to measure the degree of positive identification with the federation, the canton, and the municipality. While cantonal and local identities are generally strong in rural cantons, people in some urban areas may identify instead with a region or with the whole country. Data concerning public trust in political institutions support the claim that identification with the local and cantonal governments is strong. In a survey examining the period from 1989 to 1998, the local school system, which is run by the municipalities in most cantons, scored eight-two points, the highest. Communal authorities scored

seventy-three; cantonal authorities, seventy; and the judiciary, sixty-eight points. The federal government achieved sixty-five (tendency decreasing), the Parliament, fifty-six; and the churches, forty-seven points (tendency decreasing). Political parties scored only twenty-three points. Overall, the Federal Council has generally been the most progressive and innovative institution, followed by the Parliament, with the people and the cantons being the most conservative actors throughout the history of the federal state.

Despite people's greater trust in local and cantonal institutions, the confidence in the major federal institutions, including the governmental system with strong federalism and direct democracy, is high compared with other countries. At the end of the twentieth century, Switzerland ranked as a top OECD country, behind Norway (sixty-one points), but on the same level as Ireland (fifty-six points) and ahead of the United States (fifty) and neighbouring countries France (forty-nine), Germany (forty-five), and Italy (forty-three), data for Austria not being available.<sup>12</sup>

### *Political Parties and Interest Groups*

Historically, the main parties developed out of the controversy for or against the foundation of the federal state. With the only exception of the Christian Democratic People's Party, which used to represent a conservative and mostly Catholic electorate, Swiss political parties have not been linked to religious or linguistic communities. Parties are mainly organized in the cantons (except the Social Democratic Party). Within the cantons, they are further subdivided into district and municipal branches. The predominantly cantonal organization of the parties is partly because the cantons form the electoral constituencies for both chambers of the federal Parliament. Cantonal issues often dominate even national elections and influence party alliances within the regions. Currently, the populist, conservative, right-wing Union of Democratic Citizens is, with 29 percent of the national vote, the strongest political party in Switzerland.

Party loyalty in the federal Parliament is relatively weak. Due to the proportional system governing the elections to the National Council, which enables citizens to choose among various personalities rather than between representatives of major political parties, the cantonal parties are induced to include candidates on their lists who benefit from the support of the public at large. Popularity within the party is of less concern.

The heavy reliance on direct democracy enhances the impact of organizations that have the power and the means to run and finance campaigns. Business groups, labour unions, and other interest groups exert considerable political influence not so much by actually triggering a statutory referendum<sup>13</sup> but mainly by threatening to launch one. Those stakeholders, and particularly economic interests, are often organized on a national basis.

With regard to the political impact of economic power, the role of Zurich needs to be stressed. Many banks and international insurance companies have their seat in this region. Their impact, together with the influence of the Zurich stock exchange, is not confined to economics but reaches more or less directly to most of the main policies of the country.

Switzerland is probably the country that has the most diverse NGOs in all three orders of government. As Swiss identity is not based on common history, language, and culture but on shared political values – including direct democracy, federalism, neutrality, and the strong collective autonomy of corporate bodies, especially the municipalities – NGOs have played an important role in uniting different intellectual elites across party and cantonal lines and in fostering a common Swiss ideological identity.

The most important and prestigious organizations, such as the International Committee of the Red Cross, are composed of members who are appointed on the basis of co-optation. In general, the system of co-optation and patronage has been very influential in Switzerland. In a country where everybody knows everybody, such a system is checked only by the fact that influential associations seek some kind of proportional composition taking into account the existing cultural and political diversity of the country. Most of the social networks are primarily organized along regional lines. Only a few organizations are created on the federal level and have a national impact. However, none of those organizations, except NGOs supporting the protection of the environment, exert considerable political influence. In these civic organizations, the German-speakers tend to dominate. This leaves the French-speaking and to even larger extent the Italian- and Romansh-speaking minorities feeling marginalized and in a role of silent opposition instead of co-operation and participation.

## DIVERSITY OF INSTITUTIONAL ARRANGEMENTS

### *The Federation and Federal Institutions*

The Swiss Constitution sets up a collegial political system, the distinguishing features of which are the composition of the federal government (called the Federal Council) and the relationship between the executive and the legislative power. By contrast with governments in other parliamentary systems, the Federal Council is a collegial executive body composed of seven members with equal power. They are individually elected for a fixed term of office by the Federal Assembly (via a joint sitting of both parliamentary chambers). This implies that each member of the federal government needs to find his or her own support within the federal Parliament. In contrast to parliamentary systems, the Federal Assembly lacks the power to force the government to resign, and Parliament cannot be dissolved by the Federal Council.

The Federal Assembly is composed of two chambers. The upper house, called the Council of States, is composed of 46 deputies representing the cantons; the lower house, called the National Council, consists of 200 deputies representing the Swiss people. The members of both chambers are elected, and they vote without constituent instructions. Unlike in Germany, the upper house thus represents the cantonal peoples, not the cantonal governments. As in the U.S. Senate, each constituent unit holds two seats in the federal chamber, independent of its size. The Council of States thus increases the impact of the small cantons. This was particularly important during the time when religious cleavages were dominant. Although the religious divide is less strong nowadays, the composition of the second chamber still tends to differ from that of the National Council. Due to the right-wing parties' tendency to co-operate and to the majoritarian electoral system adopted by most cantons (as opposed to the proportional representation in the National Council), the left is under-represented in the upper house.<sup>14</sup> Similar to the federal chamber, the amendment rules of the federal Constitution enhance the voice of the small cantons. Constitutional amendments need approval by a majority of the Swiss people as well as a majority of the peoples in a majority of the cantons (so-called mandatory referendum).

From the legal point of view, Swiss federalism is symmetrical. The Constitution provides, however, for redistribution mechanisms with a view to addressing economic disparities between cantons and between regions.<sup>15</sup> It also takes into account the specific needs of cities, urban agglomerations, and mountain regions.<sup>16</sup>

The Constitution provides for mechanisms not only to accommodate diversity but also to secure cohesion and some uniformity. The highest Swiss Court, the Federal Tribunal, plays an important role in this respect. Its members are elected by the Federal Assembly for a six-year term, which is renewable. The Constitution provides for representation of the country's official languages on the court.<sup>17</sup>

The Tribunal's main function is to ensure the uniform application of federal law by acting as a court of appeal against judgments of the cantonal courts. By contrast with the United States, federal laws are applied by cantonal and not by federal authorities. The cantonal courts have jurisdiction to implement federal law. The constituent units enjoy a large amount of autonomy as regards judicial organization.

In addition to its appellate function, the Federal Tribunal decides conflicts between cantons and acts as a constitutional court. However, it lacks the power to strike down federal statutes believed to be unconstitutional. Despite this limitation, the Tribunal's main contribution to diversity accommodation lies in the field of its human rights jurisprudence, which is under the final control of the European Court of Human Rights.

A comprehensive and systematic bill of rights was only introduced into the federal Constitution in 1999. Before then, the Federal Tribunal protected many fundamental rights as unwritten principles or through extensive interpretation of existing constitutional provisions. Because the federal powers were defined narrowly when the Swiss federal state was founded, the idea prevailed at the time that the cantonal constitutions were sufficient to protect fundamental rights. The first federal Constitution of 1848 thus only enshrined rights that were considered insufficiently protected by the cantons. The freedom of movement and establishment (e.g., the right of all Swiss citizens to freely choose their place of residence anywhere on the Swiss territory, as opposed to being confined to the canton of one's origin), the cantonal obligation not to discriminate against citizens from other cantons, and the freedom to pursue an economic activity on the whole territory of the federation, introduced in 1874, were crucial to enhance mobility and to create a single Swiss market.

To secure political integration of a country with deep religious cleavages, the Constitution also laid down guarantees pertaining to freedom of religion and the confessional neutrality of the state in schools. In interpreting these provisions, the Federal Tribunal stressed their pacification function and limited the exercise of religious freedom when it was deemed necessary to prevent conflict among religious groups.<sup>18</sup>

The Federal Tribunal took a similar approach to language. Although the court had recognized the freedom to use one's language as being an unwritten fundamental right in 1965,<sup>19</sup> it subordinated this individual right to the territoriality principle, which grants the cantons rights to define their official language(s). There is, however, a trend in recent case law to adopt a more nuanced approach and to give greater weight to the individual's language rights.<sup>20</sup> The territoriality principle is now enshrined in article 70 of the Constitution. Pursuant to the same provision, the cantons are to preserve harmony among linguistic communities. To this effect, they shall respect the traditional territorial distribution of the languages and refrain from oppressing the local linguistic minorities. Apart from article 70, the Constitution contains no specific provisions on minority protection. The institutional safeguards linked to federalism and the protections flowing from general fundamental rights provisions are deemed sufficient guarantees.

The Federal Tribunal's case law protects not only traditional religious and linguistic communities but also other groups. A well-known case concerned female suffrage. In 1990, the federal judges held in the *Theresa Rohner* case that the constitution of Appenzell Innerrhoden, which was the last cantonal founding document that limited the right to vote to men, infringed on the principle of equality of the sexes.<sup>21</sup> More recently, the Tribunal handed down a judgment that, like the *Rohner* decision, was perceived by its opponents as an excessive encroachment on cantonal autonomy. The court

declared that a system of degressive taxation adopted by Obwald with a view to attracting wealthy taxpayers was unconstitutional because it violated the principle of individual equality.<sup>22</sup>

### *Consociational Arrangements*

A political culture based on compromise and power-sharing is an important distinguishing feature of the Swiss federation.<sup>23</sup> The Swiss approach favours proportional representation of the various political, linguistic, and religious communities in all federal institutions. The Federal Assembly, for instance, has to aim, pursuant to article 175, paragraph 4 of the Constitution, at adequate representation of regions and languages in the Federal Council. Traditionally, French- and Italian-speakers hold at least two and often three government seats. In the last election of a new member of the Federal Council, which took place in September 2009 to fill the vacancy of a French-speaking councillor, the candidacy of a bilingual politician belonging to the German-speaking minority of the predominantly French-speaking canton of Fribourg sparked a dispute over the meaning of article 175, paragraph 4 of the Constitution. While the German text provides for the adequate representation of “linguistic *regions*” (a requirement fulfilled by the controversial candidate), the French version refers to “linguistic *communities*.” As the latter wording is based not on a territorial but on a personal criterion, it was argued that this constitutional provision prohibited the election of a bilingual candidate of German-speaking origin. The Federal Assembly implicitly endorsed the French version of the Constitution by rejecting the bilingual candidate and electing a candidate of French-speaking origin from the canton of Neuchâtel.

Since 1984, one or two women have always served on the Federal Council. Lastly, since 1959, the composition of the Federal Council has mirrored the representation of the four major political parties in the federal Parliament, none of which holds a majority. Consequently, Switzerland lacks a clear political opposition. The practice of power-sharing is also encouraged by the annually rotating presidency of the Federal Council and the fact that the federal councillor who holds the presidency has mainly a representative role. He or she does not have significantly more powers than the other members of the Federal Council. Decisions within the Federal Council are generally based on consensus, not on majority votes. Decisions must be defended and implemented by each councillor in the name of the common body.

Power-sharing and the representation of minorities have been achieved without the imposition of quotas and without granting minorities veto rights. Direct democracy has greatly favoured the emergence of these consociational arrangements. As regards the Federal Council, for instance, direct democracy

constrains the Federal Assembly to elect individuals who are able to reach compromises. Although direct democracy seems to be majority oriented, it requires political elites to seek consensus, and it favours minorities that can mobilize supporters among those who typically do not vote (50 per cent of voting age Swiss).

Instruments of direct democracy are an essential part of Swiss identity and reflect the deeply rooted conviction that the citizens need to have a say in important matters. These instruments are pervasive in all three orders of government. In the federal arena, the main instruments are the popular initiative and the referendum. The initiative enables 100,000 citizens to trigger the constitutional amendment procedure, which leads to a popular vote on a concrete amendment proposition. The mandatory referendum implies that constitutional amendments and international treaties of particular significance need to be approved by votes of the majority of the voters of Switzerland and of a majority of the voters in a majority of the cantons. The optional referendum brings into force a federal statute or international treaty if either eight cantons or 50,000 citizens request it and the proposition is then approved by a majority of Swiss voters.

Both instruments of direct democracy favour popular participation and enable minorities to make their voices heard. They may also result in the mobilization of various political groups, which favours shifting coalitions and avoids polarization along religious or linguistic lines. Although referenda are rarely launched, and the success rate of popular initiatives is relatively low, they have an enormous impact on the political system. It was, for instance, a popular initiative that mandated the change in the electoral system from the majority rule to proportional representation in the National Council in 1918. The proportional system has been conducive to a wide representation of all political parties. In addition to the electoral system, the potential of obstruction linked to the referendum has favoured, as mentioned above, the integration of conservatives and, more generally, power-sharing in the Federal Council.

As regards the optional referendum, the risk of a statute being voted down has an important preventive effect. To avoid the sanction of a negative popular vote, legislative proposals debated in the federal Parliament generally reflect a negotiated compromise. Before submitting proposed statutes to Parliament, the federal government subjects drafts to a consultative procedure that allows major interest groups, political parties, and the cantons to present their comments.

It needs to be mentioned that direct democracy does not favour the accommodation of all the social groups that make up Switzerland's diversity. While the mandatory referendum, requiring a majority of both the federal people and the peoples of the cantons, for instance, has enhanced the voice of the small, conservative, rural cantons, it also has hindered the realization

of gender equality. The strong impact of the conservative cantons, coupled with the fact that the political base (e.g., the citizens) generally tends to be more conservative than the members of Parliament, helps to explain why women were granted the right to vote in federal elections in 1971, significantly later than in many European countries.

The legal status of another minority without a clear territorial base – that of homosexuals – shows that direct democracy is not necessarily an obstacle to accommodation. In 2005, the Swiss electorate approved a federal statute providing for registered same-sex partnerships, which had already been introduced in the cantons of Zurich, Geneva, and Neuchâtel.<sup>24</sup> Although the federal act does not permit homosexuals to marry or adopt children, it significantly improves the status of gays and lesbians.

Moreover, the Constitution recognizes the specific needs of non-territorial minorities other than homosexuals, who are protected by the principle of non-discrimination enshrined in article 8, paragraph 2. Article 8, paragraph 4 of the Constitution requires the legislature to take measures to protect disabled people; article 11 provides for special protection of children as well as young people; and article 12 enshrines a social right that guarantees a minimum level of government assistance to people in distress who are unable to provide for their basic needs.

### *The Cantons*

The cantons are not perceived as mere territorial subdivisions but as quasi-states. Article 3 of the Constitution still describes them as sovereign entities. Each canton has its own flag, constitution, parliament, government, and courts. In addition, the official name of some cantons, such as Geneva, Neuchâtel, and Jura, still incorporates the term “republic.” The rules on citizenship further exemplify the importance of the cantonal and also municipal orders of governance. Each Swiss national is a citizen of his or her municipality, canton, and Switzerland. The three levels of citizenship have an important symbolic function. They exemplify the composed nature of the Swiss *Willensnation*, based on three complementary identities and loyalties.

Although the Constitution leaves the cantons substantial organizational autonomy, all the constituent units have opted for a collegial political system.<sup>25</sup> Unlike the federal Parliament, most cantons have a unicameral parliament whose members are elected, like those of the National Council, through a proportional system. As a result of different democratic traditions, some cantons subject all acts of the cantonal parliament to a mandatory referendum, while others have restricted direct democracy to an optional referendum. In a few cantons, the people can revoke (i.e., recall) the executive; in the others, the executive is only accountable to the people after the end of the legislative term (usually four or five years).

Two small, traditional cantons, Appenzell Innerrhoden and Glaris, retain the so-called *Landsgemeinde* (provincial assembly), which is the highest legislative authority in the canton. It is composed of all the citizens who deliberate and vote assembled in public. Although the compatibility of this system with international human rights standards has been questioned, Switzerland invoked a reservation to the right to a secret ballot enshrined in article 25 no. 2 of the UN Covenant on Civil and Political Rights in order to accommodate this long-standing tradition.

As cantonal identities are not defined in ethno-national terms, boundaries between the cantons have proven to be stable. The separatist movement in the Jura resulting in the creation of a new canton in 1979 has so far been the exception that confirms the rule. The Constitution of 1999 drew on the Jura experience in laying down procedural rules for redrawing internal boundaries. Article 53 requires the consent of the local population and the cantons involved, as well as the approval of the federal Parliament (in case of changes in territory)<sup>26</sup> or the approval of the people and the cantons at large (in the case of a change in the number of federal units).<sup>27</sup> While the Constitution allows the redrawing of internal boundaries, it does not grant the cantons a unilateral right to secede from Switzerland. In the absence of any secession claims, a constitutional right to secession has so far never been vindicated.

Generally, conflict between the cantons is low and co-operation is well developed. In case of conflicts among the cantons or between cantons and the federal government, the Constitution requires settlement by negotiation or by mediation (article 44, paragraph 4). The Constitution (article 48) enables the cantons to co-operate by concluding treaties between each other. Based on a constitutional amendment adopted in 2004, the federation, upon request of the interested cantons, has the power to declare inter-cantonal agreements binding upon all cantons so as to enhance the effectiveness of cantonal collaboration in certain fields, such as education, health care, and transport (article 48a). Moreover, the cantons founded the Conference of the Cantonal Governments (*Konferenz der Kantonsregierungen* (κκκ)) in 1993. The κκκ offers an institutional platform for collaboration and is an important actor also vis-à-vis the federation in policy-making.

#### POLICIES FOR MANAGING DIVERSITY

Switzerland's main strategy to accommodate diversity is to grant the cantons far-reaching autonomy. The cantons have opted for the same approach by conferring substantial powers on their municipalities. The autonomy of the municipalities is explicitly protected in the federal Constitution.<sup>28</sup> The emphasis put on territorial autonomy is rooted in the conviction that decisions need to be taken as closely to the citizens as possible so

as to enhance their collective preference satisfaction. Federalism is thus viewed not as a competing but as a complementary principle to democracy.

Federal policies mainly consist of fostering diversity and measures integrating diversity. Although various laws and practices provide for fair representation of the various language groups in federal institutions, affirmative-action policies, including quotas, have never been adopted by the federal government.

### *Fiscal Policies*

The Constitution's preamble explicitly mentions solidarity as the basis for democracy, and it goes on to say that "the strength of a people is measured by the welfare of the weakest of its members." Article 135 spells out the implications of financial solidarity by providing clear guidelines for fiscal equalization,<sup>29</sup> which is aimed at reducing diversities among the cantons with regard to their financial capacities. It guarantees a minimum level of financial resources for each canton and alleviates excessive financial burdens. For the latter purpose, the federation is also obliged to promote inter-cantonal co-operation. Both the federation and the cantons with the highest resources provide the financial means for equalization.

Article 135, adopted in 2004 as part of a fundamental reform of fiscal federalism, has been in force only since January 2008. Although it is too early to assess the impact of the new redistribution policies, it is interesting to note that article 135 was even approved by voters in some rich cantons, a sign of solidarity with the less-prosperous parts of Switzerland.

In addition to the federal system of equalization, redistribution policies exist in each canton for municipalities. Currently, 447 different cantonal statutes and ordinances provide for fiscal equalization within the cantons.<sup>30</sup>

Cantonal autonomy in the field of taxation is an important feature of Swiss federalism. Among other things, it enables the cantons to promote their economic development. The federal Constitution limits the federal legislature's power to tax to little more than 10 percent of each individual's income. The rest of the income tax is cantonal and municipal. Tax rates vary significantly between cantons and municipalities. The example of a single person with a high taxable income (e.g., CHF 500,000 per annum) moving from the city of Geneva to the city of Zoug helps to illustrate this point: the change of domicile would reduce the person's total tax burden by more than 40 percent. More generally, important differences exist among the fiscal policies of the cantons. Catholic cantons, for instance, tend to provide for higher family deductions; liberal cantons may foster more individual liberty.

With regard to borrowing, the cantons are not constrained by any federal rules. However, there are cantonal constitutional provisions that limit

the power of the Parliament to cover cantonal expenditures with additional debt.

### *Linguistic Policies*

Article 70 is the Constitution's key linguistic provision. As regards official languages, it distinguishes between the federation and the cantons. German, French, and Italian are official languages of the federation. Romansh is a semi-official language. This entails the right of Romansh-speaking citizens to communicate with federal authorities in their language. Federal employees are expected to understand at least two of the official languages. Moreover, the Constitution requires a fair representation of the various linguistic groups within the federal administration. In the federal Parliament, simultaneous translation of plenary discussions is provided for in the National Council but not in the Council of States. Consequently, speakers of a minority language are disadvantaged in the upper house because they need to express themselves in German if they want the majority of deputies to understand their message.

The cantons have the power to define their own official language(s). Twenty-two cantons are officially unilingual (seventeen German, four French, and one Italian); three cantons – Berne, Valais, and Fribourg – are bilingual (the official languages being French and German); and one canton, Grisons, is trilingual (German, Romansh, and Italian being the official languages). Of the plurilingual cantons, Berne is the only one to grant its linguistic minority a special autonomy status; a cantonal statute enacted in 2004 responds to the demands of the French-speaking Jura region by establishing the first regional parliament within a canton.<sup>31</sup>

The federation has the power to help the multilingual cantons to fulfil their tasks and to take further measures to preserve Romansh and Italian, whose status is precarious. Together with the cantons, it is supposed to encourage understanding and exchange among the linguistic communities. In 2007, the federal Parliament enacted a statute to this effect.<sup>32</sup> Vivid controversies about the legitimate extent of federal involvement in linguistic policy preceded the adoption of the act. The vision that prevailed was one emphasizing cantonal autonomy rather than active intervention by the federal government.<sup>33</sup>

Cantonal autonomy is also the basis of linguistic policies in education, a policy field of particular importance, since 95 percent of all children are educated in public schools, which are financed by the cantons and/or the municipalities. The main competence in matters of education, including the definition of the teaching language in schools, lies with the cantons. In multilingual cantons, the municipalities often determine the teaching language. It is education that has experienced the most conflicts between the

territoriality principle and the freedom of language guaranteed in article 18 of the Constitution.<sup>34</sup> The Federal Tribunal tries to solve such conflicts by balancing the interest of the cantons in protecting the existing linguistic border and linguistic homogeneity of their territory, as well as the municipality's interest in administering its education system, against the local minorities' rights to be educated in their mother tongue. If the population size of a local minority is not substantial,<sup>35</sup> its children have no right to be taught in their mother tongue. In municipalities situated along a linguistic border, parents can, in principle, send their children to a public school in a neighbouring municipality, provided they cover the corresponding costs.<sup>36</sup> The balancing approach adopted in the more recent case law contrasts with an older judgment handed down in 1965, in which the federal court subordinated freedom of language to the territorial principle by upholding a statute of a German-speaking canton that limited even private education in the French language to only two years.<sup>37</sup>

Like education, the judiciary falls to a large extent into the competence of the cantons. The territoriality principle thus also governs the language of court proceedings. Multilingual cantons tend to define the official court language at the level of the districts. Reliance on the territorial principle implies that there is no right to court proceedings being conducted in one's mother tongue.<sup>38</sup> However, various guarantees of fair procedure enshrined in the Constitution and in international human rights treaties provide for the right to adequate translation to safeguard the right to be heard and the right to defend oneself effectively in criminal proceedings.<sup>39</sup> As regards the language of proceedings before federal courts, each party can submit claims in one of the four national languages. The Federal Tribunal, for instance, renders judgments in German, French, Italian, or Romansh.

The linguistic borders are strongly reflected in the media. Most newspapers are embedded within a local democracy. Among the few newspapers that enjoy wider circulation, none has managed to transcend linguistic borders. To prevent excessive concentration and uniformity, the federation supports diversity by subsidies. As for radio and television, the Swiss Public Broadcasting Organization still holds an important share in the market, amounting to approximately 30 percent for TV and between 60 percent to 80 percent for radio, depending on the region.<sup>40</sup> While fulfilling its task, the Swiss Radio and Broadcasting Corporation, which is a part of the Swiss Public Broadcasting Organization, is required to contribute to better understanding between the various linguistic groups and to promote both diversity and national cohesion. It has to provide radio and television programs in the three official languages and to broadcast at least one radio program in Romansh. The Federal Council assesses the further needs of the Romansh language.<sup>41</sup> Financial equalization within the Radio and Broadcasting Corporation ensures that an adequate number of broadcasts are produced in the minority languages.

*Religion Policies*

With a view to guaranteeing equal access of all children to public schools, irrespective of their religion, the federal Constitution of 1874 explicitly guaranteed the principle of confessional neutrality of public schools and prohibited discrimination based on religion in public education. These principles played an important role in securing peace between religious communities. For a long time, the jurisdiction to implement these principles was given not to the Federal Tribunal but to the Federal Council, which was expected to apply them with political flexibility. As religion gradually ceased to be an important threat to Swiss peace and cohesion, the authors of the Constitution of 1999 abolished the explicit provision guaranteeing the confessional neutrality of public schools because this guarantee is implied in article 15's general protection of religious freedom. Religious freedom and the principle of confessional neutrality leave the cantons considerable autonomy to define the role of religion in education, and the church-state relationship more generally, in accordance with their own historic tradition as either a predominantly Protestant or Catholic polity or a polity with a balanced proportion of Protestants and Catholics. In addition to historical heritage, neighbouring countries also influence the cantonal regimes in the field of religion. The French-speaking cantons of Geneva and Neuchâtel, for instance, follow the French example and establish a strict separation between state and church. By contrast, most other cantons recognize the traditional Protestant and Catholic churches as public corporations and grant them special privileges, such as subsidies and tax exemptions as well as the power to raise taxes from their members. Some cantons grant the same status to the Old Catholic confession and more recently to their Jewish community. The question of whether Muslim communities (whose members amount to more than 4 percent of the population) should enjoy the same privilege is being debated currently.

Some cantons still provide in their legislation that public-school instruction be based on Christian values and that those values be included in the curricula. Other cantons support religion by allowing confessional communities to provide religious instruction in public schools during the official school schedule. Religious freedom grants religious minorities and non-believers the right to be excused from religious instruction, which is considered a sufficient guarantee of confessional neutrality. Despite the privileged position of recognized churches, public education has tended to evolve toward greater pluralism to accommodate the needs of immigrants and their faiths. In this vein, the Federal Tribunal overruled a decision of the Federal Council in 1990 by holding that a municipality in the predominantly Catholic canton of Tessin was proscribed from affixing Christian crucifixes in the classrooms of a primary school.<sup>42</sup>

It also held in 2007 that examinations held on a Saturday infringed the religious freedom of Jewish students.<sup>43</sup>

Among the Federal Tribunal's most publicized cases are those concerning Muslims, particularly the controversial issues of religious clothing and dispensations from swimming classes. For example, asserting the principle of confessional neutrality within schools, the court upheld a decision of the canton of Geneva prohibiting a Muslim teacher from wearing a headscarf in school.<sup>44</sup> With respect to swimming, the Federal Tribunal overruled in 2008 an earlier controversial judgment that had held that school authorities' refusal to excuse Muslim students from coeducational swimming lessons had infringed the students' religious freedom.<sup>45</sup> The 2008 decision stressed the increasing number of foreigners living in Switzerland and the importance of integration as a prerequisite of peaceful coexistence and full participation in the political and social life of the host country.

The headscarf and swimming cases highlight tensions in the religious sphere. A popular constitutional initiative approved unexpectedly in November 2009 by 57.5 percent of Swiss voters and majorities in twenty-two cantons prohibits the construction of minarets all over Switzerland, thus showing that religious liberty cannot be taken for granted. This also illustrates that the popular initiative, which has played an important role in accommodating traditional diversity, can be a divisive instrument in the face of new diversity. In August 2008, the Federal Council<sup>46</sup> proposed to the Parliament to reject the initiative, mainly because it violates Switzerland's international human rights obligations. According to article 139 of the Constitution, popular initiatives that would require Switzerland to violate mandatory rules of international law (*jus cogens*) have to be declared null and void by the Federal Assembly. According to the Federal Council, the initiative does not violate mandatory international law because neither liberty of religion nor the prohibition of discrimination are explicitly mentioned in article 4, paragraph 2 of the International Convention of Civil and Political Rights as essential human rights guarantees that cannot be derogated from in cases of emergencies. Both chambers of the Parliament accepted the proposal of the Federal Council and refused to declare the initiative null and void, but urged the voters to reject it because it would violate important human rights. The initiative's approval has drawn considerable criticism, and poses difficulties for Switzerland's compliance with the European Convention on Human Rights and international human rights treaties.

In 2000, 307,807 people living in Switzerland were Muslims,<sup>47</sup> 11 percent of whom are Swiss citizens. Switzerland counts 130 centres for Muslim culture and prayers; most are located in apartments or dwellings. Only two mosques, one in Zurich and one in Geneva, have a minaret; however, it is not used for the call to prayer by the muezzin. After a long political and legal

dispute, a new minaret was inaugurated in June 2009. Opposition to the delivery of the building permit had been dismissed on the grounds that the request complied with the requirements of urban planning. A refusal to deliver the permit could thus not be justified by objective reasons or a valid public interest and would violate the prohibition of discrimination based on religion enshrined in article 8 of the Constitution.

With regard to the forthcoming referendum, a spring 2009 poll indicated that 49 percent of the citizens would reject it and only 37 percent would give their approval. The main reason for those rejecting the initiative is respect for an unrestricted freedom of religion.<sup>48</sup> Of those rejecting the initiative, 50 percent are from German-speaking cantons and 45 percent are from French-speaking cantons.<sup>49</sup> This poll was taken before the start of the political campaign. The official council of all religions in Switzerland recently urged voters to reject the initiative for reasons of freedom of religion.

### *Health Policies*

Both the federation and the cantons are constitutionally responsible to ensure that everyone receives necessary health care.<sup>50</sup> The implementation of health policy, the prevention of disease, and the regulation, accreditation, and largely also the financing of hospitals lie with the cantons. Each canton has a government department on health run by a member of the cantonal government. The cantonal health ministers meet regularly to coordinate health issues, including hospital planning and financing. Several hundred bilateral and multilateral treaties among the cantons have been concluded to this effect.

The federation has powers in fields closely related to health policy, including drug and food policies, prevention and management of epidemics, protection of the environment, and, most important, social security (pension schemes, insurance against accidents and invalidity, and health and accident protection for workers). These powers enable the federation to influence cantonal and, to even a larger extent, municipal health policies. Although medical doctors are trained in cantonal universities, their professional diplomas are issued by the federal government and are recognized all over Switzerland. Accredited health insurers also are allowed to operate throughout the country. However, premiums for the federally mandated basic insurance vary considerably among and even within cantons. Moreover, the basic insurance generally covers hospital treatment only within the canton of the patient's domicile. Nevertheless, there is little difference among regions in terms of availability and quality of health care due to the mandatory federal health insurance and the exercise of federal powers in health policy. This is supported by figures on life expectancy, which do not show any noticeable variance across regions.

Apart from the varying costs of health insurance, diversities among regions and cantons exist mainly in the field of hospital planning. The power and the burden to set up and finance public hospitals are highly controversial. Although there is an agreement that the number of public hospitals, at almost 300,<sup>51</sup> is excessively high for a country the size of Switzerland, attempts to rationalize this sector frequently result in tensions between and within cantons and among linguistic communities. On the regional level, the question of the optimal number of high-tech institutions has sparked a controversy on whether Switzerland should have only two such hospitals (one in the German-speaking part and one in the French-speaking part) or whether the German-speaking cantons should have two or even more such institutions.

### *Multiculturalism and Immigration Policies*

As already mentioned, the integration of foreign nationals is a major challenge for Switzerland. According to some scholars, the difficulty may be insurmountable. The Swiss concept of *Willensnation* is based on the integrative value of Swiss citizenship rooted in common political values and does not allow for the integration of foreigners based on limited rights.<sup>52</sup> Compared to other countries, obtaining Swiss citizenship is extremely difficult. Federal law only lays down minimal requirements, consisting of, in addition to residence requirements, a demonstration of good integration and knowledge of Swiss culture.<sup>53</sup> Many municipalities enact additional requirements, including solid command of the local language and participation in the municipality's social activities.

The recently revised federal act on foreigners prescribes integration, for the first time, as a statutory aim.<sup>54</sup> Moreover, ten cantons provide in their constitution an explicit article on integration. Two cantons have adopted specific statutory prescriptions, others have enacted ordinances, and some cantons have specific directives on the integration of foreigners.

Closely connected with the general aim of integration are issues of political participation and language policy. Regarding participation, the Constitution explicitly allows the cantons to give foreigners the right to vote and be elected to local and cantonal offices.<sup>55</sup> Seven cantons have granted some voting rights to foreigners who have resided in the canton for a set period of time. In two cantons, foreigners can vote in cantonal elections, while the other cantons limit the right to vote to municipal matters. Only in Fribourg is a foreigner eligible for a political office in a municipality.

With regard to language, article 54 of the said federal statute on foreigners stipulates that foreign nationals can be required to learn one of the national languages in order to be granted a residence permit. The federal law as well as many cantonal laws provide also for the possibility to conclude so-called

integration conventions with individual foreigners. Based on these conventions, immigrants may be bound to take language courses. Some special requirements are also laid down in legislation concerning the education of children of parents who do not know one of the Swiss languages. The trend points clearly toward a generalized obligation for any foreigner wishing to settle in Switzerland to learn one of the national languages.

Multicultural policies are rare. On the federal level, only the ordinance for pedagogical education provides explicitly for education in multicultural issues (article 48g).<sup>56</sup> Among the cantons, only Lucerne's law on pedagogical education explicitly requires teaching institutions to enhance tolerance with regard to a multicultural society. One may thus argue that the current Swiss approach views integration mainly as a duty imposed on foreigners rather than a task incumbent on the whole society.

#### CONCLUSION AND PROSPECTS FOR FUTURE LEGITIMATE ACCOMMODATION

When Switzerland was founded, the integration of religious, historical, cultural, and linguistic diversity within one country was a major challenge. The founding fathers of the Swiss Constitution succeeded in this task mainly because they developed and pragmatically adapted the concept of the classical liberal nation-state to the special needs of accommodating Swiss diversity. The Swiss nation is based neither on an atomized society composed of acultural equal citizens (*citoyen*) nor on a homogeneous ethno-national community. The Swiss conception of nationhood is that of a composed nation built upon its diversities and united by both its federal and its democratic values enabling each community to recognize the federal state as its homeland. Minorities are neither tolerated as second-class people nor considered a burden. Instead, the various communities are considered equal partners living peacefully side by side, and their diversity is a foundational value of the Swiss polity. Equality, including the right to be different, and power-sharing among diverse political, cultural, and religious communities is part of a political culture that considers compromise not as a weakness but as both a political strength and a prerequisite for peaceful coexistence.

Democracy is not seen as a tool to produce efficient majorities but rather as a collective right emphasizing self-determination of the municipalities, the cantons, and the federation. It enables each citizen to approve or reject laws that may affect him or her as a member of the municipal, cantonal, or federal polity. This vision of democracy reflects the composite nature of the Swiss nation and the conviction that decisions need to be taken as closely to the citizens as possible. From the Swiss point of view, democracy and federalism are complementary, not competing, principles.

The tolerance and respect for traditional diversity contrasts strongly with the attitude toward new diversity caused by modern immigration. The Swiss have to face up to the challenge of integrating immigrants, and they need to develop an effective strategy to this effect. As Switzerland found its own answer to diversity accommodation in the nineteenth century, it may succeed in devising its own solution as regards today's third-country nationals in building on its democratic tradition and its culture of compromise and self-restraint. In doing so, Switzerland would again become a full democracy instead of a four-fifths democracy that excludes 20 percent of its residents from effective political and social participation.

#### NOTES

- 1 Of the twenty-six cantons, twenty are so-called full cantons. Six are referred to as half-cantons, namely, Basle-<sup>[1]</sup> 1 Of the twenty-six cantons, twenty are so-called full cantons. Six are referred to as half-cantons, namely, Basle-Town, Basle-Country, Appenzell Ausserrhoden, Appenzell Innerrhoden, Obwald, and Nidwald. As the word half-canton indicates, these cantons originated from the partition of full cantons, which took place in all three cases before the creation of the federal state for geographic reasons (Obwald and Nidwald), religious motives (the two Appenzells), or political reasons (the two Basles). Their status, however, is identical to that of full cantons, with the exceptions that they have only one deputy instead of two in the federal Council of States, and their votes count only half in determining the majority of the cantonal peoples needed to approve federal referenda.
- 2 Estimation for the year 2007; source: <https://www.cia.gov/library/publications/the-world-factbook/geos/sz.html>. Accessed 27 May 2008.
- 3 For the origin of the Swiss Confederation, see Nicolas Schmitt, "Swiss Confederation." In *Constitutional Origins, Structure, and Change in Federal Countries*, eds. John Kincaid and G. Alan Tarr (Montreal & Kingston: McGill-Queen's University Press, 2005), 348–80. See also Wolf Linder and Isabelle Steffen, "Swiss Confederation." In *Legislative, Executive, and Judicial Governance in Federal Countries*, eds. Katy Le Roy and Cheryl Saunders (Montreal & Kingston: McGill-Queen's University Press, 2006), 289–315; Thomas Fleiner, "Swiss Confederation." In *Distribution of Powers and Responsibilities in Federal Countries*, eds. Akhtar Majeed, Ronald L. Watts, and Douglas M. Brown (Montreal & Kingston: McGill-Queen's University Press, 2005), 265–94; Andreas Ladner, "Swiss Confederation." In *Local Governments and Metropolitan Regions in Federal Systems*, ed. Nico Steytler (Montreal & Kingston: McGill-Queen's University Press, 2009), 329–62; and Daniel Thürer, "Swiss Confederation." In *Foreign Relations in Federal Countries*, ed. Hans Michelmann (Montreal & Kingston: McGill-Queen's University Press, 2009), 269–94.

- 4 The official name of Switzerland, Swiss Confederation, points to the country's historical origin. Because Switzerland is legally a federal state and not a confederate arrangement, we use the term 'federation' to refer to the country as a whole or to the federal order of government.
- 5 Unless otherwise indicated, all references to the Constitution and specific provisions concern the federal Constitution of 1999, which is the constitution currently in force (the text is accessible, like all federal legislation, on the website of the federal authorities: [www.admin.ch](http://www.admin.ch)).
- 6 Preamble and article 2.
- 7 For an overview of the Swiss political system, see Ulrich Klöti, Peter Knoepfel, Hanspeter Kriesi, et al., eds., *Handbook of Swiss Politics*, 2<sup>nd</sup> ed. (Zurich: NZZ Verlag, 2007).
- 8 For all the statistical information, see Bundesamt für Statistik *Statistisches Jahrbuch der Schweiz*, (Zurich: NZZ, 2004 and 2008), the webpage of the Federal Office of Statistics (<http://www.bfs.admin.ch>), and the Federal Office of Migration (<http://www.bfm.admin.ch>).
- 9 In Obwald, for instance, only 3 percent of the citizens voted for the Constitution; in Appenzell Innerrhoden, only 7 percent did so. In two cantons (Uri and Nidwald), the approval rate was below 20 percent; in another two cantons (Schwytz and Ticino), it was below 30 percent. These data are drawn from the *Dictionnaire historique de la Suisse*, at: <http://www.hls-dhs-dss.ch/textes/f/F9811.php>. Accessed 22 January 2009.
- 10 For an analysis of the relationship between the various linguistic groups, see Ernest Weibel, "Les rapport entre les groupes linguistiques." In *Handbuch Politisches System der Schweiz*, vol. 3, eds. Raimund E. Germann and Ernest Weibel (Berne, Stuttgart: Haupt, 1986), 221–63.
- 11 Andreas Ladner, "Typologien und Wandel: Die kantonalen Parteiensysteme im letzten Drittel des 20. Jahrhunderts," *Swiss Political Science Review* 10 (2004): 3–32.
- 12 Markus Freitag, "Das soziale Kapital der Schweiz," *Swiss Political Science Review* 7(4), 2001, 106.
- 13 The instruments of direct democracy are described below in the section "Consociational Arrangements."
- 14 Today, the main difference between the composition of the two chambers is that the left is under-represented in the Council of States. See Yannis Papadopoulos, "Connecting Minorities to the Swiss Federal System: A Frozen Conception of Representation and the Problem of 'Requisite Majority,'" *Publius: The Journal of Federalism* 32 (Summer 2004): 47–65.
- 15 See section VI A.
- 16 Article 50, paragraph 3.
- 17 Article 188, paragraph 4.
- 18 See the judgment BGE 108 Ia 41, *Rivara*, in which the Federal Tribunal held that the prohibition of a religious procession in public spaces was unconstitutional. The judges stressed that the cantonal statute, on which the ban was based, was justifiable

when sharp conflicts existed among religious groups, but as antagonism between established religions has become far less significant, the statute could no longer be considered a proportionate limit on freedom of religion.

- 19 BGE 91 I 480, *Association de l'école française*.
- 20 See below, section 6.B. {I don't think the "See below" is clear to a reader as a lot of endnotes follow. Please identify the name of the work you're referring to.}
- 21 BGE 116 Ia 359, *Theresa Rohner*.
- 22 BGE 133 I 206, *Halter-Durrer*.
- 23 The following section is based on Maya Hertig, "Swiss Understanding of Minority Rights and Compliance with International Standards," (forthcoming).
- 24 Bundesgesetz über die eingetragene Partnerschaft gleichgeschlechtlicher Paare of 18 June 2004, SR 211.231.
- 25 For a comparative overview of the constitutional set up of the cantons, see Vincent Martenet, *L'autonomie constitutionnelle des cantons* (Basle, Geneva, Munich: Helbing & Lichtenhahn, 1999).
- 26 Article 52, paragraph 2.
- 27 Article 53, paragraph 3.
- 28 Article 50, paragraph 1.
- 29 Gebhard Kirchgässner, "Swiss Confederation." In *The Practice of Fiscal Federalism: Comparative Perspectives*, ed. Anwar Shah (Montreal & Kingston: McGill-Queen's University Press, 2007), 317-43.
- 30 Data from the lexfind program of the Institute of Federalism at [www.lexfind.ch](http://www.lexfind.ch). {Need Accessed dd mm yyyy info.}
- 31 Gesetz über das Sonderstatut des Berner Juras und über die französischsprachige Minderheit des zweisprachigen Amtsbezirks Biel of 13 September 2004.
- 32 Bundesgesetz über die Landessprachen und die Verständigung zwischen den Sprachgemeinschaften of 5 October 2007, BBL 2007 6951.
- 33 For a description of the drafting of the language act, see Christoph Reichenau, "Paritätisch erarbeitet durch Bund und Kantone: das Sprachengesetz," *LEGES* 3 (2002): 35-47.
- 34 Cf. Thomas Fleiner, "Sprachenfreiheit," *Handbuch der Grundrechte*, vol. 7/2, eds. Detlef Merten and Hans-Jürgen Papier (Heidelberg: C.F. Müller; Zurich, St. Gall: Dike, 2007), 405-43. For an analysis of the rights of linguistic minorities in education, see Barabara Wilson, *La liberté de la langue des minorités dans l'enseignement. Etude de droit international et de droit suisse* (Bâle: Helbing & Lichtenhahn, Bruxelles: Bruylant, 1999).
- 35 In case of a substantial minority, the denial of education in the minority's mother tongue would run counter to the prescription not to oppress local minorities enshrined in article 70, paragraph 2 of the Constitution. In an *obiter dictum*, the Federal Tribunal seems to consider a minority amounting to 26 percent of the population as substantial enough for the purposes of education (see BGE 106 Ia 299, 306, *Brunner*); the recently enacted language act of the canton Grison sets the threshold at 20 percent of the municipal population as regards the right to

education in the minority language (see article 16, paragraph 3 of the *Sprachengesetz des Kantons Graubünden* of 19 October 2006).

- 36 BGE 122 I 236, *Jorane Althaus*; see also BGE 100 Ia 462, *Derungs*.
- 37 BGE 91 I 480, Association de l'école française.
- 38 BGE 121 I 196, *Noth*; BGE 106 Ia 299, *Brunner*.
- 39 See in particular, articles 29 and 31, paragraph 2, Constitution and article 6, paragraph 3e, ECHR.
- 40 See <http://www.srg.ch/71.o.html?&L=o> (TV) and <http://www.srg.ch/52.o.html> (radio). Accessed 29 May 2008.
- 41 Article 24 of the Bundesgesetz über Radio und Fernsehen of 24 March 2006, SR 784.40.
- 42 BGE 161 Ia 252, Municipality of Cadro.
- 43 BGE 134 I 114, *A*.
- 44 BGE 123 I 96, *X*; the European Court of Human Rights declared a request challenging this decision inadmissible (App. No. 42393798, *Dahlab v. Switzerland*).
- 45 Decision 2C\_149/2008 of 24 October 2008, *X. and Y.* (not yet reported overruling BGE 119 Ia 178, *A. and M.*
- 46 Message of the Federal Council in BBL (Bundesblatt) 2008 7603
- 47 Message of the Federal Council to the Parliament BBL 2008 7614
- 48 Evangelisch-Reformierte Zeitung der Deutschen und Rätoromanischen Schweiz {I don't know what this is, so please confirm if it's a publication that needs to be italicized. Is the date noted a publication date?} 22 April 2009.
- 49 *Poll of March 2009 of the ISOPUBLIC Institut für Markt und Meinungsforschung*. {Since you've italicized this, just wanted to confirm that this is the name of a publication. If so, please provide the name and location of the publisher and the publication date. Or some other information that would help a reader find this reference?}
- 50 Article 41, paragraph 1b.
- 51 See Civitas, "The Swiss Healthcare System (2002)" at: <http://www.civitas.org.uk/pdf/Switzerland.pdf>. Accessed 3 June 2008.
- 52 This point of view was forcefully argued by Prof Lidija Basta Fleiner at the national roundtable discussion.
- 53 Bundesgesetz über Erwerb und Verlust des Schweizer Bürgerrechts of 29 September 1952, SR 141.0.
- 54 Bundesgesetz über die Ausländerinnen und Ausländer of 16 December 2005, RS. 142.20.
- 55 Article 39, paragraph 1.
- 56 Berufsbildungsverordnung of 1 January 2008, SR 412.101.