

## 3.2 The Municipalities

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## 1 Introduction

The Swiss municipalities constitute a public “corporation” that has shaped the entire territory since the Middle Ages. In other words, the implementation of all public and private projects is rooted at some point in the municipal territories. Given that most of them were established before the cantons, the municipalities were not created solely for integration into hierarchical state structures (Geser 1999). The institution of the municipality is based on the sovereignty of the 26 cantons which constitute the Swiss Federation. Thus, each canton defines the types of municipalities it recognizes, their organization, their powers, their resources and, hence, their autonomy. Therefore, different municipalities may co-exist in one and the same area, e.g., the political municipalities, which can be found in all of the cantons, and the “special” municipalities. The purpose of the latter, of which only the most common types are mentioned here, is to fulfil a specific task, namely: religious worship in the case of the “church municipalities”, which exist in almost all cantons; the granting of the right of citizenship, the management of the bourgeois heritage and, sometimes, the conservation of monuments in the case of the “bourgeois municipalities”, which exist in all but eight cantons;<sup>1</sup> and education in the case of the “educational municipalities”, which exist in five cantons.<sup>2</sup> Some cantons also have partial municipalities or bodies which operate at infra-municipal level and are responsible for certain public utility tasks on the level of the villages which constitute the political municipality.<sup>3</sup> Finally, the canton of Schwyz is the only canton which has provision for the shared distribution of local powers between the municipalities and districts (Kennel 1989).

Compiled at the time of the new allocation of tasks and new fiscal equalization between the Federation and cantons, the main aim of this chapter, which concerns the political municipalities, is to demonstrate their specific nature and the place they occupy in the federal system, both in theory and in practice. The analysis is based on the current status of research in political science and is divided into six parts which explore a range of questions concerning the diversity of the Swiss municipalities, their legal status, their autonomy, their relations with the Federation, their place in the context of cantonal and federal decision-making processes, and the rethinking of the municipal area of intervention.

## 2 The diversity of the municipalities

In reality, the term “municipality” covers a very wide range of political entities and modes of organization, and this has a strong effect on the role and place of the municipalities within the Swiss federal system. Indeed, it was this very point that prompted the editors of this volume to differentiate between the question of towns/cities (municipalities with over 10,000 inhabitants) and their agglomeration and that of the municipalities, to which this chapter is dedicated.

The diversity of municipalities in terms of size, political, socio-economic and administrative organization and financial capacity can be observed both within and between the individual cantons.

### *Diversity of size*

The number of inhabitants varies considerably from one municipality to another: while it may reach several hundred thousand in the country's big cities (in particular, Zurich, with 345,236 inhabitants and Geneva with 178,487), in late 2004, some rural and peripheral municipalities only had a few dozen inhabitants (Corippo, in the canton of Ticino: 17; Portein, in the canton of Graubünden: 24; Martisberg, in the canton of Valais: 24).

As compared with the international average, Switzerland's municipalities tend to be on the small side. Of the OECD countries, only France and Slovenia have as many small municipalities. (Horber-Papazian 2000). Table 1 presents the distribution by size of the 2,778 municipalities which existed in Switzerland in late 2004. At this point in time, the average population of the Swiss municipalities had reached 2,669 inhabitants: the municipalities in two cantons, i.e., Graubünden and Jura, had an average population of less than 1,000 inhabitants. Populations of less than 200 were recorded in 313 municipalities, i.e., 11.4%. Over 50% of the municipalities in Graubünden, Jura and Vaud have fewer than 500 inhabitants. Finally, the exceptional case of Basel, whose municipalities have a higher average population, can be explained by the fact that this canton has only three municipalities, which include the city of Basel.

Thus, the density of population varies considerably from one municipality to the next. The city of Geneva is the most densely-populated municipality in Switzerland (11,380 inhabitants per m<sup>2</sup>) and the least densely populated is Mulegns, in the canton of Graubünden, whose 25 inhabitants reside in an area of 3,381 hectares. Thus, there is practically no correlation between the physical size and number of inhabitants of Switzerland's municipalities.

Table 1: Population of the municipalities in the Swiss cantons (in %).

Canton	Cantonal population	No. of Municipalities	Average population	Percentage of municipalities with a population of:			
				less than 499	500 to 1999	2000 to 9999	10000 or more
AG	565,122	231	2,446	13.42	47.19	36.36	3.03
AI	15,029	6	2,505	0	50	50	0
AR	52,841	20	2,642	5	60	30	5
BE	955,378	398	2,400	32.91	38.19	25.38	3.52
BL	265,305	86	3,085	17.44	51.16	22.09	9.3
BS	186,753	3	62,251	0	33.33	0	66.67
FR	250,377	182	1,376	35.16	51.1	12.64	1.1
GE	427,396	45	9,498	4.44	35.56	42.22	17.78
GL	38,317	27	1,419	37.04	37.04	25.93	0
GR	187,812	208	903	63.46	25	10.58	0.96
JU	69,091	83	832	60.24	30.12	8.43	1.2
LU	354,731	106	3,347	14.15	44.34	35.85	5.66
NE	167,910	62	2,708	25.81	48.39	20.97	4.84
NW	39,497	11	3,591	0	27.27	72.73	0
OW	33,162	7	4,737	0	14.29	85.71	0
SG	458,821	90	5,098	2.22	31.11	58.89	7.78
SH	73,788	33	2,236	33.33	48.48	15.15	3.03
SO	247,379	126	1,963	23.81	48.41	25.4	2.38
SZ	135,989	30	4,533	6.67	30	50	13.33
TG	232,978	83	2,807	7.23	49.4	38.55	4.82
TI	319,931	204	1,568	38.24	44.12	16.18	1.47
UR	35,083	20	1,754	30	45	25	0
VD	647,382	382	1,695	53.66	29.58	13.61	3.14
VS	287,976	153	1,882	35.95	41.18	19.61	3.27
ZG	105,244	11	9,568	0	0	72.73	27.27
ZH	1,261,810	171	7,379	4.09	33.33	47.95	14.62
CH	7,415,102	2,778	2,669	31.28	39.06	25.31	4.36

Source: Office fédéral de la statistique (2005), data relating to 2004 (status on 31.12.2004).

### Diversity of socio-economic structure

The socio-economic structure of the Swiss municipalities is equally varied. The factors at work here include phenomena such as urbanization, the metropolization of the territory and its tertiarization (Bassand 2004). Table 2, which is based on the typology created by Schuler *et al.* (2005), demonstrates this diversity.

Like all typologies, the typology presented in Table 2 has a simplifying effect, as it sometimes enforces the differentiation of two relatively similar situations. Nonetheless, it clearly demonstrates the heterogeneity of the Swiss municipalities. A more detailed analysis confirms that this heterogeneity can also be found within the cantons. While it is clear that the phenomenon of urbanization and the resulting attraction for neighbouring municipalities are strong, there nevertheless remain a number of cantons which still have a relatively high proportion of rural municipalities. As Table 2 shows, the majority of rural municipalities are small.

This is particularly true of the cantons which have a high number of small municipalities (i.e., BE, LU, SZ, GL, SH, AR, AI, GR, TG, VD, NE, JU).

*Table 2 Typology of Swiss municipalities based on population size in 2000*

Typology of municipalities based on their number of inhabitants (in %)	- 499	500-999	1000-4999	5000-9999	10000 and +	Total for Switzerland
Urban centres	-	-	-	15	43	2
Suburban municipalities	-	1	14	48	49	9
Rich municipalities	1	4	5	7	7	4
Periurban municipalities	13	27	25	9	-	19
Tourist municipalities	5	5	6	3	1	5
Industrial & tertiary municipalities	7	11	22	13	-	13
Rural commuter municipalities	22	28	12	3	-	18
Mixed agricultural municipalities	27	19	13	2	-	19
Agricultural municipalities and demographic regression	26	5	2	-	-	12
	100 %	100 %	100 %	100%	100 %	100%
N	1092	547	920	158	107	2824

Source: Office fédéral de la statistique 2005, data from the census of the year 2000, number of municipalities of 2004.

#### *Diversity of political structures and modes of citizen participation*

The municipalities are free to designate their authorities within the framework of the organic laws promulgated by the cantons and are usually governed by an executive of between three and 30 members. On average, six of these members are elected by the people; the canton of Neuchâtel, whose municipal executives are elected by the legislature, is an exception to this rule. The personal involvement of the members of the executives in local life is a factor that is common to all municipalities. 88% of the members of the executives of municipalities with up to 1,000 inhabitants undertake their tasks on a voluntary basis. The corresponding figure for municipalities with 1,000 to 5,000 inhabitants is 82%, and for municipalities with 5,000 to 10,000 inhabitants it is 72%. The real professionalization of the political class is only found in the cities (source: Ladner, Steiner, Geser 2005<sup>4</sup>). It should also be noted that the municipal executives have an average of 27% of women members (at 37%, the Genevan municipal executive has the highest proportion of women members).

The municipal executives are responsible in particular for the implementation of the decisions of the legislatures, which may take the form of parliaments or municipal assemblies comprising all members of the population with the right to vote at local level.<sup>5</sup> According to Ladner,

Steiner and Geser's data (2005), today, 82% of municipalities have a citizens' assembly, while 18% of municipalities have a representative democratic system, i.e., a parliament. While the assembly system tends to be more common in German-speaking Switzerland and the parliamentary system predominates in the Francophone region, there is a strong correlation between the size of the municipalities and the type of legislature in all of the cantons. The cantons of Geneva and Neuchâtel constitute the exception to this rule, as they only have the parliamentary system. Moreover, some cantons specify a size beyond which municipalities are obliged to have a parliament. The studies by Ladner (2002) show that the smaller the municipality, the more crucial the weight of each vote, the more widespread the social control within the municipality, and the easier it is to identify with the issues that arise, the greater the level of popular participation in municipal assemblies and elections. While, as a general rule, the municipal assemblies are convened at least twice yearly for the adoption of the budget and accounts, and while they also have the option of convening to consider special issues, in the majority of cantons an assembly can be convened by between five and 30% of the population with the right to vote (Lafitte 1987).

The two main instruments of semi-direct democracy in Switzerland are the referendum, through which the population can express its views on decisions taken by the executive and/or parliament, and the popular initiative, through which the population can propose a new object for political intervention. The conditions of recourse to these two instruments at municipal level vary from canton to canton. Ladner (2002) demonstrates that the larger the municipality, the more inclined the population is to avail itself of these instruments.<sup>6</sup> Bützer (2005) identifies three political traditions at municipal level, each of which involves the characteristics of the participation of citizens in municipal politics: a tradition found in the German-Swiss towns whereby, despite the existence of a parliament, citizens participate significantly in municipal political life through instruments of semi-direct democracy; a tradition that exists in other German-Swiss municipalities which have municipal assemblies and whose citizens are sporadically permitted to express their views in referendums and popular initiatives; and, finally, a Latin tradition which basically allows the indirect participation of citizens in municipal politics through the election of the legislatures and executives and only provides recourse to initiatives and referendums in exceptional cases. Moreover, the latter require the collection of a larger number of signatures than the others to bring about the use of these instruments.

While there are approximately 5,000 to 6,000 local political groups which may be associated with political parties (Ladner 1996), it is interesting to note that, in most cases, even municipalities with less than 2,000 inhabitants often have more than two parties. In contrast to the

canton of Ticino, in the Francophone cantons the parties are less firmly rooted at local level in municipalities with less than 10,000 inhabitants. Thus, the majority of the executives of small municipalities present a joint list of candidates for election. A study by Geser *et al.* (1996) demonstrates the existence of a left-right polarization of local parties. This research also demonstrates the evolution of the topics for debate. Whereas in 1990, attention was very much focused on the environment, economic and financial issues tend to dominate today. These authors also reveal the difficulties faced by the local branches of parties in retaining their supporters in municipalities with less than 1,000 inhabitants and the losses they have recorded in terms of active supporters.

#### *The diversity of administrative structures*

The political diversity of the Swiss municipalities is equally matched by their administrative diversity. This raises questions with regard to the capacity of municipalities to manage their tasks, provide services that meet the needs of their populations and play a real role in the formulation of both cantonal and federal policy. In most cases, the cantons tend to delegate the same tasks to the various municipalities without taking their size or administrative capacity into account. Thus, the small and medium-sized municipalities often suffer from a lack of resources (the smallest of them have only embryonic, “militia” type administrations).

While attention tends to be focused in this context on municipalities with less than 500 inhabitants, Ladner’s studies (2001) revealed that the critical size for municipalities is around 5,000 inhabitants. In effect, municipalities of this size are big enough to experience significant problem pressure, but they are not sufficiently resourced in terms of administrative personnel to enable them to fulfil their tasks. The need to deal with complex problems which usually necessitate speed and flexibility of response explains why more and more municipalities are resorting to the use of external experts or the delegation of powers. As Table 3 shows, there is a correlation between the size of municipalities and their propensity to call upon external assistance. Furthermore, it is interesting to note that the more educated the elected representatives – which is mainly the case in large municipalities – the more open they are to the adoption of such approaches (Horber-Papazian 2004).

In addition, the survey carried out by Ladner, Steiner and Geser in 2005 demonstrates a correlation between the size of municipalities and the implementation of reforms based on the principles of new public management, such as, for example, the division of strategic and operational tasks, the abandonment of the status of *fonctionnaire* (i.e., official, bureaucrat), the introduction of performance-related pay and the development of guidelines for municipal politics.

*Table 3 Administrative personnel and outsourcing based on municipality size*

	-499	500-999	1000-4999	5000-9999	10,000 or more	Total
Average number of employees*	4.7	9.9	19.5	20.4	91.7	
Recourse to external experts/consultants in %	27.8	36.5	41.1	60.8	67.8	
Third-party delegation of tasks (outsourcing) in %	14.1	23.2	40.9	58.8	59.3	100
Number of municipalities which responded	453	320	606	99	49	1527

\* Administrative personnel in full-time equivalent.

Table compiled on the basis of the data from the survey by Ladner, Steiner, Geser (2005).

### *Diversity of financial capacity*

The question regarding the margin for financial manoeuvre at the disposal of municipalities, which are mainly reliant on municipal fiscal revenue, is a crucial one, as this determines the new tasks that the municipalities can assume and the investments they can make. The diversity that exists among the Swiss municipalities in this regard is also a source of inequality.

The figures published by the Swiss Department of Finance in 2003 indicate that the Federation accounted for around 31% of public spending, the cantons for 42% and the municipalities for 27%. This elevated figure for the municipal level as compared with other countries can be explained by the specificity of Swiss municipalities, which have the power to collect their own tax revenue and to set their taxes.

Based on Table 4, it would appear that the accounts of over 70% of Swiss municipalities which responded to Ladner *et al.*'s survey are either balanced or reflect a surplus; only 38% of cantons are in the same position. The municipalities with the most enviable financial situations are the predominantly suburban ones (5,000-9,999 inhabitants). In that light, it is easier to understand the repeated attempts by the cantons to shift new financial burdens to the municipalities. These attempts, which are always controversial, are sometimes contested by referendums, such as those recently held in the cantons of Geneva and Vaud.



*Table 4 Status of the accounts of municipalities which responded to the survey (expressed in %)*

Municipalities (number of inhabitants)	Deficit	Balanced	Surplus	N
- 499	36	33	31	626
500-999	29	25	46	426
1000-4999	21	22	57	824
5000-9999	22	15	63	148
10000+	33	13	54	91
Total CH	28	25	47	2115

Table compiled on the basis of the data from the survey by Ladner, Steiner, Geser (2005).

### 3 The legal status of the municipalities

As institutions of cantonal law, the municipalities exercise their powers within the limits defined by the cantons (Braaker 2000; Seiler 2001). Table 5 provides a clear summary of the powers enjoyed by the municipalities and compares them with those of the cantons. It demonstrates, in particular, that the municipalities enjoy less organic and legislative freedom, and highlights the fact of their subordination to the cantons, the real holders of sovereignty within the Swiss federal system.

The existence of the municipalities and their territorial limits are based on cantonal legislation. The same applies to the conditions of their reconsideration with a view to change. The significance of this has gained ground in the current debate surrounding the amalgamation or merger of municipalities.

As a public body, the municipality can be defined as a “group of persons organized corporatively in a separate legal entity for the long-term pursuit of a public interest objective” (Knapp 1986). Legally, the municipalities have private and public law personality, and they are allocated general public powers at local level (Moor 1992). The legal doctrine grants the municipalities the right to pass general and abstract regulations and, therefore, a legislative power over objects subject to their decision-making powers. In terms of the tasks delegated to them by superior instances, they may benefit from statutory powers based on specific legislative authority. Thus, the municipalities are politically decentralized public bodies when they take independent decisions (if necessary, based on a democratic procedure) in accordance with their general residual powers. They are administratively decentralized public bodies when they participate in the implementation of federal or cantonal laws and assume the tasks delegated to them by the superior instances. While their decision-making powers are strongly restricted or non-existent in the latter case, they may however benefit from executive powers, for example in relation to the distribution and treatment of water. They may also see their role as being limited to the assumption of a

proportion of cantonal financial expenses, e.g., based on the cost of cantonal social policy in certain cantons. Finally, in terms of jurisdiction, the municipalities have the power to act as a primary instance in the sanctioning of the contravention of municipal regulations.

*Table 5 Comparison of municipal and cantonal powers*

Cantons	Municipalities
The existence of the cantons is guaranteed by the Swiss Federal Constitution. Any change to the cantonal boundaries requires the approval of the cantons and populations concerned as well as that of the federal chambers of Parliament.	The existence of the municipalities is guaranteed implicitly by the cantonal constitutions and explicitly by Article 50 of the Swiss Federal Constitution, which refers to the limits defined by cantonal law. Some cantonal constitutions can impose modification of municipal boundaries by the cantonal parliaments.
The cantons are free to organize their authorities, legislatures, executives and judiciaries.	The municipalities are free to organize their authorities and administrations within the framework of cantonal norms.
The cantons select their authorities.	The municipalities designate their authorities.
The cantons have extended legislative and executive powers. They participate in the implementation of federal legislation and are involved in the administration of justice.	The municipalities have general residual powers, i.e., the power to legislate in areas in which the superior bodies have not legislated. They are also called on to assume the powers delegated by the cantons in the implementation of federal and cantonal legislation.
The cantons have their own financial resources, they create fiscal laws, collect taxes, make free use of the share of certain federal taxes which are guaranteed to them by the Federation.	The municipalities have their own financial resources and levy their taxes in the context stipulated by the canton.
The cantons are not subject to political control of opportunity. However, in terms of legal control, their constitutions, some of their laws and their strategic land-use plans are subject to either the approval of the Federal Parliament or that of the Federal Council. In the context of delegated tasks, the cantons are obliged to inform the Federation of the evolution of the policy implementation for which they are responsible.	The municipalities are subject to cantonal monitoring (control of legality, extended to the control of opportunity for delegated tasks).
The cantons (as such for the modifications of the Swiss Federal Constitution) participate with equal rights in the formation and expression of the national will.	The citizens of the municipalities participate in the formation and expression of the national will.

Source: Adapted from Aubert (1983), with information added for the municipalities.

#### 4 Autonomy and the municipal tasks

The survey carried out by Ladner, Steiner and Geser (2005) invited municipal secretaries throughout Switzerland to indicate their perception of their municipality's autonomy *vis-à-vis* the Federation and *vis-à-vis* their respective cantons on a scale ranging from 1 (lowest level of autonomy) to 10 (highest level of autonomy). The national average is 4.8. A more detailed analysis of these data demonstrates that municipal autonomy is considered strongest in the German-speaking cantons, where some cantons exceed the average of six (NW, ZG, AR, TG). With the exception of the municipalities in the canton of Valais, the average for the Francophone municipalities, which belong to historically more centralist cantons, is lower than the national average. The lowest (3.3) is found among the municipalities of Jura and Neuchâtel, which are closely followed by their Genevan counterparts (3.4).

Table 6 highlights a particularly interesting phenomenon: irrespective of their size, the secretaries of Swiss municipalities have the impression that their autonomy is declining.

*Table 6 Perception of the evolution of municipal autonomy (in %)*

Municipalities (number of inhabitants)	Increasing	No change	Declining	N
- 499	5	25	70	590
500-999	7	25	68	393
1000-4999	9	30	60	770
5000-9999	15	33	52	130
10000+	10	36	54	80
Total CH	8	28	64	1963

Table compiled on the basis of the data from the survey carried out by Ladner, Steiner, Geser (2005).

The evolution of municipal autonomy may be correlated with the new allocation of tasks and expenses between the cantons and municipalities. It is important to note that, as part of the "disentanglement" of tasks and expenses, and with the aim of achieving greater efficacy and efficiency of public action, a large number of cantons have launched processes for a new allocation of tasks in recent years. Whatever the process adopted, criteria such as the coincidence of decision-makers, funders and beneficiaries of services and the quest for greater homogeneity in the provision of services (Horber-Papazian and Soguel 1996) would support the transfer of decision-making and financial powers from the municipalities to the cantons. In view of the crisis in public finances and the difficulties faced by the majority of cantons in balancing their books, there is a considerable temptation for them to withdraw a number of decision-

making powers while attempting to share expenses with the municipalities. This may explain why the majority of the municipalities feel that they have lost some of their autonomy in recent years. In effect, all these changes do is increase their share of the associated expenses, which places a significant strain on their budgets and, therefore, their options in terms of availing themselves of their general residual powers.

By way of clarification of the concept of general residual powers, Auer (2003: 16) reminds us that “the cantonal constitutions acknowledge either explicitly or implicitly the municipalities’ power to assume all tasks concerning the local level which the superior level legislation does not reserve for the canton or Confederation.” The jurisprudence of the Swiss Federal Court refers to – legally protected – autonomy in the areas in which the municipal authorities benefit from appreciable freedom of decision (e.g., ATF 115 Ia 42; 114 Ia 82). As the municipalities enjoy appreciable freedom of decision, they can specifically refer to their autonomy to oppose (legally where required) interventions of the cantons which do not respect the necessary margin of discretion for the realization of local tasks.

On the other hand, it is important to note that the constitutional guarantee of municipal autonomy does not prohibit the cantons from modifying the allocation of powers and expenses through legislation. The municipalities’ freedom of decision is based on the cantonal legislation in force and it is possible for the cantons to modify this legislation – obviously in accordance with federal law and the relevant cantonal constitution.

Thus, the field of municipal autonomy varies from one task to the next based on the cantonal legislation and, hence also, on the scope and nature of the monitoring of cantonal authority (control of legality and/or opportunity). Attempts have been made to classify cantons on the basis of the autonomy they grant to their municipalities for certain specific sectors (e.g., Schaffhauser 1978 for political rights). These classifications must be qualified on the basis of the sectors involved and the scope of the cantonal monitoring of municipal acts. This monitoring basically focuses on the legality of municipal acts at the time of their approval (for example, allocation plans, real estate transactions, budgets), but can also extend to a control of opportunity in the context of delegated tasks (Nüssli 1985; Grisel 1984; Moor 1992).

The constant evolution of cantonal reforms (new system of fiscal equalization, new allocation of tasks, introduction of new public management, etc.) renders any attempt to identify the areas of intervention of the municipalities and their powers very difficult. Since the studies carried out by Giacometti (1941), no study has succeeded in obtaining a general view of the tasks assumed by the municipalities and the scope of their (decision-making and executive) powers. In general, irrespective of

the canton, the municipalities assume tasks of local interest for which, in most cases, they have extensive decision-making powers or even exclusive responsibility. These tasks include the management of the municipal heritage, the planning and management of municipal finances, the collection of municipal taxes, the granting of the right of citizenship, the organization of the municipal administration, policy relating to sport, culture, youth, the elderly and local management, the construction and management of school buildings, public and school transport, preschool and after-school childcare, school cafeterias, early-childhood structures, local police with responsibility for basic public safety, the construction of municipal roads and the promotion of the local economy and tourism. The municipal decision-making powers are more restricted in other areas as, in most cases, they involve the financing and implementation of federal and cantonal policies such as policy on political asylum (provision of accommodation centres), the environment (waste management, water treatment), health (home care, fighting addiction, health promotion), the administrative and commercial police, construction and, finally, civil protection (construction of shelters, fire prevention).

#### **5 Relations between the municipalities and the Federation**

Up to 1 January 2000, the nature of the legal-political relations between the municipalities and the Swiss Federation was rather ambiguous. While not explicitly mentioned in the Swiss Federal Constitution of 1874, they were implicitly referred to in some of its Articles in order to facilitate the response to the need for coordination and uniformity with respect to policy implementation, such as, for example, in the area of the harmonization of the Federation's direct taxation, political rights and naturalization.

The municipalities were (and still are) also entrusted directly by the federal legislature with the execution of tasks arising from the Federation's sectoral policies. This is particularly true in relation to military legislation (provision of suitable locations) and civil protection. Furthermore, other federal laws acknowledge the existence of the municipal level in the context of their implementation. Examples of this include local planning in the area of spatial development and infrastructure - in relation to water treatment in particular. This *de facto* rather than legal acknowledgement of the municipalities is also accepted in the area of finance, as the Federation makes payments to the municipalities to reimburse them for their contribution to the implementation of federal provisions.

The Union of Swiss Cities (*Union des villes suisses*)<sup>7</sup> and the Association of Swiss Municipalities (*Association des communes suisses*)<sup>8</sup> fought for the constitutional recognition of towns and municipalities. They were supported by the “municipal politics” parliamentary group,<sup>9</sup> which comprises over one hundred parliamentarians and whose purpose is the defence of the interests of the municipalities in the federal Parliament. In 1997, these instances presented to the federal parliamentary chambers a declaration by 1,700 municipalities demanding that they be included in the new Swiss Federal Constitution.

Article 50 of the new Federal Constitution, which was ratified by referendum on 18 April 1999 and which entered into force on 1 January 2000, rewarded these efforts and clarified the position of the municipalities within the Swiss federalist architecture. This Article stipulates that:

1. The autonomy of the Municipalities is guaranteed within the limits defined by cantonal law (which basically codifies the jurisprudence of the Federal Superior Court);
2. The Federation must take into account the possible consequences of its activities for the Municipalities;
3. In particular, the Federation must take into account the special situation of cities, urban agglomerations and mountain regions.

While highlighting the fact that the cantons remain the main partners of the Federation and maintain their organizational sovereignty, the legal analyses of the impact of Article 50 on the taking into account of the municipalities in federal decisions demonstrate the importance of the latter in the Swiss political architecture, on the one hand, and the reality of a three-level federal system, on the other (see Kölz and Kuster 2002; Zimmerli 2002; Aubert and Mahon 2003). Based on this provision, when undertaking their material tasks, all of the bodies of the Federation are obliged to automatically pay particular attention to the repercussions of their decisions for the municipalities, to keep the latter informed, and to find suitable solutions to the specific problems of cities, urban agglomerations and mountain regions. Conversely, the municipalities have the right to assert their interests directly among the federal authorities. Thus, as highlighted by Kölz and Kuster (2002), paragraph 3 of Article 50 of the new Federal Constitution enables the establishment of direct information channels between the Federation and the municipalities and, therefore also, the direct maintenance of the latter’s interests.

In addition to the legal and administrative application of the law, Article 50 mainly targets the legislative activity of the Federation to the extent that current legislation must be adapted to the provisions contained in Article 50, paragraphs 2 and 3. Moreover, if the cantons are not in a position to represent the cities, urban agglomerations and mountain regions adequately (for example, when a conflict of interests arises between the first and second or when the municipalities are called on to

apply federal law), Article 50, paragraphs 2 and 3 authorize exceptional institutionalized collaboration between the Federation and the municipalities.

One of the first repercussions of this provision was the creation in 2001 of a new dialogue instrument at government level, i.e., the tripartite conference on agglomerations. Moreover, in 2002, the Federal Council adopted guidelines developed by a tripartite working group which constitute recommendations for vertical collaboration between the Federation, the cantons and the municipalities. This new situation was not greeted with universal enthusiasm by the cantons. Their reluctance to embrace this development is rooted in the fear that the strengthening of the links between the Federation and municipalities could result in the restriction of the organizational sovereignty of the cantons and their right of participation in the formation of the national will within the Federation.

It should, however, be acknowledged that – even in the opinion of the main parties involved (Föderalismuskonferenz, Fribourg, 2005) – beyond the symbolic effect of these measures, little has actually changed in terms of the relations between the Federation and the municipalities, the only exception here being the relationships initiated with the cities, which were strengthened by the Federation's agglomeration policy.<sup>10</sup>

## **6 The place of the municipalities in cantonal and federal decision-making processes**

As political institutions, the municipalities are subject to the norms and decisions passed by superior instances, in which they may participate through the intermediary of their deputies or populations. It is also possible for them to intervene through the action of their elected representatives. The latter have, in effect, the possibility of assuming a direct role in decision-making processes through the municipal initiative in those cantons which recognize this measure (i.e., Basel Land, Jura, Glarus, Neuchâtel, Nidwalden and Solothurn), through the response to the cantonal consultation process on matters of federal and cantonal policy, through participation in working groups or consultative cantonal commissions and, finally, through opposition to projects which affect their territory. In their analyses of the Swiss political system, its main challenges and characteristic decision-making processes, Linder (1999), Kriesi (1998) and Papadopoulos (1997) do not assign great significance to the municipalities: they are mainly interested in their role as implementing agents of federal and cantonal policies.

In an attempt to examine this question in greater detail, a survey was carried out among the secretaries and executives of the Francophone municipalities (Horber-Papazian 2004). This survey made it possible to demonstrate the reluctance with which the Francophone municipalities

employ the aforementioned formal modes of intervention at a level other than the local or regional levels, and their lack of interest in becoming involved in issues other than municipal or regional ones. This may be correlated with the perception of the Francophone elected representatives of their potential influence: strong at regional level, medium at cantonal level, weak at federal level. It is interesting to note that the size of the municipalities and the membership of elected representatives in a political network have a positive effect on the latter's perception of their potential influence.

When the Francophone municipalities intervene at cantonal or federal level, it is mostly in the form of opposition. Opposition mainly occurs at cantonal level in the context of the implementation of policies on issues relating to the allocation of powers, finance, spatial planning and transport. By contrast, opposition at federal level tends primarily to concern spatially related policies.<sup>11</sup> A detailed study carried out on municipal opposition<sup>12</sup> demonstrated that the municipalities, which do not generally feature in policy networks, mainly intervene on operational issues and only rarely become involved in questions involving the actual substance of a policy, i.e., its *raison d'être*, its objectives or its target population (Horber-Papazian 2004).

Moreover, irrespective of the level of intervention, the informal channel is considered most effective when the Francophone municipalities take up opposition (see Table 7).

Thus, being far more reactive than proactive, the Francophone municipalities stay away from organized consultations on issues of cantonal and federal policy, mainly because they: do not feel concerned by the questions involved; are mostly under-resourced in administrative terms; feel that the deadlines for responding are too short (between 10 days and three months); and are convinced that their views will not be heard. Regarding the participation of Francophone municipalities in cantonal consultative commissions, this is mainly the activity of a new elite which is younger, educated and active at a level other than the regional level and devotes over 30% of its time to political activities. Women play quite a significant role in this group. While it is not possible to apply these results to all of the Swiss municipalities, they provide a perspective for further investigation and an entire field of hypotheses on the possible variations with respect to these results in other linguistic and institutional contexts.



*Table 7 Perception of the most effective means of opposition based on the level of intervention*

	Level		
	Regional	Cantonal	Federal
Seeking the support of other municipalities or associations	54%	24%	9%
Mobilization of the press	33%	25%	22%
Seeking the support of other interest groups	24%	11%	12%
Petitions	18%	15%	12%
Participation in initiative committees	17%	10%	7%
Intervention with cantonal deputies	17%	53%	3%
Demonstrations	15%	9%	8%
Recourse to legal proceedings	13%	31%	23%
Intervention with the Cantonal Government	12%	52%	8%
Support for referendums	7%	19%	26%
Intervention with the Federal Council	2%	5%	30%
Intervention with federal deputies	2%	5%	43%
Other means	1%	0%	0%

Source: Survey "Francophone executives" (Horber-Papazian 2004).

## 7 The rethinking of the municipal institutional space

Irrespective of their size or resources, the municipalities must respond to the increasing demands of citizens in terms of environment and quality of life (Klöti 2000) and are central actors in the implementation of federal and cantonal policy. The majority of them struggle to face up to their tasks in this context for reasons of size, (Dafflon 1998), due to the pressures on them in terms of the efficacy and efficiency of public action, and due to the ever-increasing expectations of their inhabitants. While the experts (Faganini 1974; Jeanrenaud and Memminger 1988; Dafflon 1998) estimate that the optimum size for Swiss municipalities is between 3,000 and 5,000 inhabitants, 61% of Swiss municipalities had less than 2,000 inhabitants in 2003. The larger municipalities also face the question regarding the management of the effects of overlaps in the services they offer. Apart from economic problems, it would appear equally obvious that the policy implementation area largely exceeds the framework of the municipal boundaries (Della Santa 1996). Thus, a distinction is made between functional space and institutional space (Leresche 1996). This clearly raises the question of the limits of the area of municipal intervention (Klöti 2000; Leresche 2001; Vatter 2002; Horber-Papazian 2001). In this context, the main path chosen by the municipalities since the 19<sup>th</sup> Century (Meylan 1987) has been that of inter-municipal collaboration (Horber-Papazian 2001; Kübler and Ladner 2003; Ladner and Steiner 2003; Ladner 2005). However, other

more recent forms are emerging, i.e. those of the urban agglomerations (Perritaz 2003) and the movements for the merger of municipalities (Dafflon 2003).

#### *Inter-municipal collaboration*

Inter-municipal collaboration may take different forms, namely: private law associations; inter-municipal agreements between municipal executives on specific short-term tasks in certain Francophone cantons; and special purpose associations throughout Switzerland. Such associations have a legal personality. They have a managing committee and an assembly, within which the municipalities are represented, and they also have a budget allocated by the municipalities involved and pursue a public utility objective in the long term. Given the abundance of inter-municipal structures, the difficulty in recruiting candidates to represent the municipalities in such bodies, the lack of legitimacy of delegates appointed by the executives or by decision-making instances which lack any real mandate and, finally, the absence of horizontal coordination between the different associations and the municipalities, numerous cantons have introduced the instrument of multi-purpose associations. These can take different forms. Certain cantons authorize associations of municipalities with flexible structures. In this instance, the municipalities are not obliged to collaborate for all of the tasks managed by the association. Other cantons demand connectivity between the various tasks managed by the multi-purpose associations.

Whatever their form, the multi-purpose structures require that the municipalities be represented by executive members within the managing bodies. The advantage of this is that it strengthens the coordination between the municipal and supra-municipal structures. These structures also offer the referendum option. Often deemed as too cumbersome, this recently developed mode of collaboration does not attract the interest of elected representatives.

Irrespective of the type of collaboration, the data from the survey carried out by Ladner, Steiner and Geser (2005) reveal that over 40% of municipalities collaborate in the areas of civil protection, home care, education, fire service, water treatment, waste management and assistance for the elderly. It is clear from this list that the municipalities mainly collaborate in areas in which their collaboration is a condition of their obtaining federal or cantonal subsidies, based on the example of the areas of water treatment, construction and the operation of infrastructure (schools, hospitals) and home care, in which the cantons support regional processes. Irrespective of the size of the municipalities, the areas in which collaboration is weakest are those of municipal administration, public works, protection of the landscape and heritage, the granting of permits to build and the integration of foreigners, i.e., areas

which

are

mostly

based on powers unique to the municipalities and which they are reluctant to share.

Furthermore, when the size of the municipalities is taken into account, it would appear that the larger they are, the more likely they are to collaborate in the areas listed above and in those of transport and the promotion of the economy. Whereas a correlation exists between the size of the municipalities and their involvement in collaborative structures, the low level of enthusiasm shown by small municipalities for involvement in such structures is all the more surprising, as it is precisely these municipalities which are the most under-resourced in terms of administrative personnel, and many of them see themselves as having reached the limits of their powers in the majority of the areas mentioned (Geser *et al.* 1996; Perritaz 2003). A study carried out on the perceptions of the municipalities with respect to the reasons for collaboration (Horber-Papazian *et al.* 2002) made it possible to demonstrate specifically that the main obstacles to all forms of collaboration are associated with the disparity in municipal resources, the competition which very often exists between the municipalities and the fear of relinquishing power. Thus, a number of obstacles must be overcome for municipalities to embark on the path of collaboration, which is itself a prerequisite of amalgamation. Indeed, Dafflon and his team (2000) have shown that the more the municipalities collaborate, and the more they create strong nuclei of collaboration on a number of important issues, the easier it will be for them to achieve amalgamation.

#### *The amalgamation of municipalities*

Between 1848 and 2005, the number of municipalities in Switzerland decreased from 3,203 to 2,758. In other words, the Swiss municipalities did not follow the path taken by the countries of northern Europe (in particular Germany and Sweden), in which the local administration is basically conceived as an institution providing state services (Conseil de l'Europe 1995). Unlike the countries of southern Europe, where local administration is a highly political and representative institution, these countries opted for the path of mandatory amalgamation and centralization. Switzerland marks the boundary between these two options. While certain cantons display a strong desire to see the number of their municipalities decrease and specify the ideal number of municipalities to be attained, no Swiss canton has introduced measures which render amalgamation mandatory. On the other hand, in recent years a dozen cantons have introduced into their legislation the possibility for the cantonal parliament to force the amalgamation of municipalities by administrative order. To date, this has occurred in two cases. The first was in the canton of Ticino, where a municipality which was involved in an amalgamation project found itself obliged to merge despite a negative vote by

its inhabitants regarding issues surrounding the boundaries of the amalgamation. The second occurred in Valais under the same conditions, i.e., a municipality saw itself as obliged to merge because it was demonstrated that if it did not, it would be unable to fulfil its tasks. In both cases, the legal appeals lodged by the municipalities in the name of their autonomy were unsuccessful.

According to unpublished data of the Association of Swiss Municipalities (Association des communes suisses 2005), over half of the cantons have not experienced any amalgamations since 1970. However, the majority have introduced or are in the process of introducing – either into their constitutions or in the framework of special laws – measures enabling institutional reforms which would promote amalgamation. Based on the example of the most dynamic cantons in this context, i.e., Fribourg and Ticino, the majority opt for financial incentives and information and awareness-raising campaigns targeting the authorities. Moreover, three cantons (Fribourg, Ticino and Valais) have created a master plan which clearly demonstrates their willingness in this respect. Thus, it is unsurprising that most of the amalgamations of political municipalities in the past five years have taken place in these cantons. From 1950 to 2005, the number of municipalities in the canton of Fribourg decreased by 108, in Ticino by 53, in Valais by 17, in Grisons by 13, in Vaud by seven, in Solothurn by six, in Lucerne by four, in Schaffhausen by three and in Aargau and Glarus by two each.

The examination of the amalgamations of municipalities in Switzerland confirms that, until recently, they have mainly involved very small municipalities with less than 100 inhabitants, and, in some cases, they remain below the threshold of 500 inhabitants even after amalgamation, or just 150 inhabitants, as is the case in the last amalgamation which took place in the canton of Vaud. Thus, in 2002, of the 8% of the municipalities that had an amalgamation project pending, 21% had less than 100 inhabitants (Steiner 2003). A new movement has been emerging since 2005 as proposals for the amalgamation of agglomeration municipalities with the urban centre municipalities await the approval of the population – as is the case in the canton of Lucerne – or have been successfully completed – for example, the amalgamation of eight municipalities in Lugano to form a “Nuova Lugano”. These new amalgamations or amalgamation projects of larger municipalities substantiate the theory of *noyaux forts*, i.e., “strong centres” (Dafflon *et al.* 2000). Thus, the reasons for amalgamation no longer centre on the absence of political relief or financial deficits alone, but also take into account the existence of a necessary collaboration, a strengthening of transparency, efficacy, democracy and decision-making processes and the quest for a repositioning at regional and cantonal level.

## 8 Conclusion: from a highly diverse image of Swiss municipalities in the 21<sup>st</sup> Century to some open questions

The highly diverse image of the Swiss municipalities which emerges from this chapter and the role they play today in the Swiss political system raise a number of questions.

Many welcomed the introduction of Article 50 of the Constitution. However, the scope of this provision is above all symbolic: by confirming the practice of the Swiss Federal Court, the new Constitution introduced a basically formal update but did not institute any major changes, as the majority of the cantons are opposed to the occupation by the municipalities of a more important place in the federal architecture. Moreover, while the constitutional recognition of the municipalities and the cities is seen as a welcome development, the question must also be raised as to whether this does not risk the reinforcement of a kind of two-speed regime. There is a danger that the small and medium-sized municipalities will always be second-class instances while all of the attention is focused on the cities and their agglomerations. To ignore this problem risks reinforcing the city-country divide, the antagonism between urban centre municipalities and peripheral municipalities and between peripheral municipalities and the cantons. It is very likely that the cantonal finance crisis and the propensity of the cantons to try to transfer responsibilities to the municipalities without transferring the necessary powers will intensify such antagonisms. This is rendered all the more likely by the fact that the ideas regarding the new system of fiscal equalization and new allocation of tasks between the Federation and cantons (Frey and Schaltegger 2000) do not take the consequences of these transfers for the municipalities into account.

This is all the more regrettable because many municipalities are not in a position to assume new powers today, and in the absence of measures which would at least aim to extend and reinforce structures for collaboration (such as multi-purpose associations) at the level on which local problems are resolved or at regional level, any attempt to transfer tasks risks getting trapped in an either organizational or political impasse. It would appear that this impasse will reinforce the current trend for the "cantonalization" of the decision-making powers of the municipalities and the conditional delegation of executive powers.

At a time when the main thrust of Swiss spatial development (ARE 2005) and the proposal for new legislation on regional development focus on the development of the political and economic poles, the question regarding the role and place of small and medium-sized municipalities is a central one, as is that concerning their capacity to position themselves on a stage other than the local one by taking the opportunities offered to them to be more than simple policy implementation

agents and assume the role of real partners. The difficulty faced by the majority of such municipalities in assuming this role may be explained by the lack of resources, mainly in terms of political and administrative personnel who are competent to act and who are therefore involved in the relevant political and policy networks. Moreover, the heterogeneity of the municipalities does them a disservice at a time when it is particularly important for them to speak with a unified voice. For many, the solution resides in amalgamation. It would appear, however, that in Switzerland today the foundations are being laid for an institutionally very differentiated space involving some municipalities which collaborate, others which amalgamate, and semi-structured regions. The challenge will consist of connecting these different spaces, and the question of amalgamation will not go away. Even if the number of elected representatives who are open to such a measure increases on the level of discourse, their populations may not always follow their example. The failure of recent amalgamation projects has demonstrated that, for some people, the attachment to their municipality may be stronger than the prospect of a reduction in taxes. This clearly raises the question of the role of information campaigns and awareness-raising – not only among local political activists, but also among the general public. It takes time to achieve a change in mentality. Today, the amalgamation policy of the canton of Fribourg is universally referred to as exemplary. It is the result of a gradual reform of the institutions which started 30 years ago. Thus, the question arises as to how much more time the supporters of municipal autonomy will require to understand that, in reality, this concept is often devoid of meaning and that, apart from the autonomy granted by the cantonal legislature, it is crucial to have the means to support one's autonomy.

This question raises yet another question, i.e., that regarding municipal powers. Since Giacometti's study (1941), there has been general theoretical agreement on a tripartite classification of the scope of municipal autonomy, i.e., the cantons grant a strong, average or weak level of autonomy to the municipalities. This classification of the municipalities should be differentiated on the basis of the different legal and political contexts of municipal intervention and also on the basis of the evolution of the tasks and responsibilities assumed since Giacometti's study. It is a broad and fascinating field of study which should make it possible to obtain a more in-depth vision of municipal powers and, based on this, their *raison d'être* between now and the next edition of the Handbook of Swiss Politics.

## Notes

- 1 UR, SZ, NW, AI, FR, VD; NE, GE (Geser 1999).
- 2 ZH,NW,GL,SG,TG (Geser 1999).
- 3 The cantons of OW, BE, ZU, SG, GR, VD (Geser 1999).
- 4 I would like to express my sincere gratitude to this research team which, with the support of M. Meuli, made the unpublished data from a survey carried out in 2005 among municipal secretaries throughout Switzerland available to me. 79.5 percent of municipalities participated in this survey. I assume full responsibility for the processing and analysis of these data.
- 5 It should be noted that certain cantons, for example, Jura, Fribourg, Neuchâtel, Vaud, Geneva and some of the German-Swiss cantons, have introduced the right to vote at local level for foreign residents.
- 6 On the other hand, he stresses that in over 50 percent of municipalities, the decisions are taken by between 5 and 40 percent of the population with the right to vote.
- 7 Established in 1897, the Union des villes suisses had 125 members in 2005. Its main objectives are:
  - The recognition of the towns, cities and municipalities as the partners of the Federation and cantons.
  - The right of direct participation at federal level for cities and important municipalities for all matters which affect them directly or indirectly.
  - A federal policy incorporating the fact that Switzerland has become an urbanized country and contributing to the resolution of national importance of the towns and cities.
- 8 The Association des communes suisses was established in 1953. In 2005, 1,918 municipalities and cities were members of the Association. According to its statutes, the aim of the Association des communes suisses is "to safeguard and strengthen the autonomy of Swiss municipalities, to encourage the study of common municipal problems (...)". It "tends to support the position of municipalities in general and, in particular of the small municipalities and the economically weak ones: it endeavours to maintain loyal collaboration between the different linguistic regions and between the country and the cities and maintains close relations with the cantonal and municipal associations".
- 9 The Union of Swiss Cities and the Association of Swiss Municipalities both contributed to the establishment of this parliamentary group.
- 10 These issues are examined in detail in chapter 3.3 Agglomerations of this volume.
- 11 These policies take the form of federal planning or, since the introduction of the Federal Law on Spatial Planning of 1 January 1980, a federal sectoral plan which, in accordance with Article 13 of the Law on Spatial Planning, must be taken into account in the cantonal strategic plans. The implementation of these policies involves direct access to the municipal territory as is the case, for example, with the national roads policy, aviation policy (airports), military policy (army camps) and energy policy (high-tension wires).
- 12 This is based on case studies carried out in the different linguistic regions of Switzerland.



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