

Is the Swiss Constitution of April 1999 really constitutional?

A preliminary test of the "veil of ignorance" hypothesis

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Introduction

In this paper, we suggest an empirical analysis of the power distribution outlined in the Swiss Constitution of April 1999. This study is integrated in the “Veil of Ignorance” Research Program developed by Louis Imbeau and Steve Jacob at ULaval (Canada) integrating 16 country-specific research teams.

Based on the idea of decision-making behind a veil of ignorance proposed by Buchanan and Tullock in their seminal work, "The Calculus of Consent" (1962), and later developed in John Rawl's "Theory of Justice" (1971), we assume that the motivation of Constitution drafters is reflected in the power distribution defined in the Constitution. Within the “Veil of Ignorance” Research Program, we test two main theoretical hypotheses. As Constitution drafters are more uncertain about their future political position (authority) than their future economic (wealth) or preceptoral (knowledge) positions, they have the tendency to insist more on political than economic or preceptoral power definition (H1) and to limit more than to ascribe political power (H2) during the Constitution formulation and adoption processes. Preliminary empirical results suggest that this first hypothesis is confirmed in the

Swiss case. We have however to reject the second hypothesis: in the Swiss Constitution of 1999, power is rather enhanced than limited.

1. Historical background: the constitutions of 1848 and 1874

Modern Switzerland is created with the promulgation of the Constitution of 12 September 1848. The Constitution lays the foundation stone for the new federal nation-state which emerged from a very loose confederation of 25 independent cantons considering themselves sovereign states. Since 1815, a conference of cantons' delegates --called the "*Diet*"-- was empowered to implement the "*Federal Pact*", a treaty guaranteeing the independence of each canton and, at the same time, their mutual assistance. However, the *Diet* was not a real Parliament and, the *Federal Pact* could not be regarded as a formal constitution either (Kölz, 2006: 167). Furthermore, no federal government was elected at that time to exercise executive powers (Linder, 1994:5).

The constitution of 1848 marked thus a paradigmatic institutional change. It was adopted in response to the "*Sonderbundkrieg*", a quick civil war opposing Protestants (or Progressives) to Catholics (or Conservatives) in November 1847. The conflict between a majority of protestant and industrializing cantons, on one side, and a minority of catholic and rural cantons, on the other side, crystallized around the traditional role devoted to the Catholic Church in public affairs, and the strengthening of the central power within the cantons' confederation. Protestants, were in favor of a laic State and power centralization; they tried unsuccessfully to overthrow the government of Lucerne by force when, in 1844, the Jesuits took over the secondary education in this canton. As reaction, seven conservative cantons -- namely Schwyz, Uri, Unterwalden, Lucerne, Zug, Fribourg and Valais-- formed the so-called "*Sonderbund*" (i.e. literally the "separate league") and negotiated a separate treaty to protect

their common interests and rights. They wanted to preserve the traditional role of the Church and, they were also skeptical about any centralization process which could lead into the formation of a federal government. The progressive cantons demanded for the dissolution of the *Sonderbund*; but it was only in 1847 that the *Diet* declared this "separate league" to be a violation of the *Federal Pact*. The conflict then escalated into a 27 days --but almost bloodless-- civil war. Finally, the *Sonderbund* was ended after a major battle taking place in Lucerne: the Catholic *Sonderbund* members surrendered after their defeat against the federal troops. The various cantons, which had been engaged in this religious conflict, then united to form a single nation-state (i.e. a real Federation replacing the Confederation of cantons in place between 1815 and 1848; see Linder 1994:6).

The victorious Progressives were logically the leading drafters of the Federal Constitution of 1848. Their proposal provided (1) for federal authorities including a parliament (*Federal Assembly*), a government (*Federal Council*) and a judicial power (*Federal Supreme Court*); (2) a federalist structure of the Swiss State with three levels of power (i.e. federal, cantonal and municipal), with subsidiarity as guiding principle and, consequently, with the necessity to have an explicit constitutional base for every new policy competency delegated by the cantons to the federal power; (3) a mandatory vote by the people and by the cantons to introduce, or to refuse, any new constitutional amendment. This constitution's draft was submitted to a popular vote in the various cantons. In September 1848, the *Diet* declared the Constitution adopted as a large majority of people and cantons had accepted it.

The Swiss Constitution of 1848 is directly influenced by its counterpart in the United States (US). As a matter of fact, several claims of the Catholic cantons against power centralization were similar to the grievances expressed by anti-federalist forces in the US a few decades before (Linder 1994:6). As a compromise solution between Progressives and

Conservatives, the 1848 Swiss Constitution finally combines the democratic principle (i.e. one person, one vote) with the federalist principle (i.e. one canton, one vote) (Linder 1994:16-18). For example, the *Federal Assembly* is organized as a two-chamber system based on the American model: the *National Council* represents the people, while the *Council of States* represents the cantons. Furthermore, this parliamentary bicameralism is perfect insofar as both chambers are equal: the *Federal Assembly* can only exercise its powers through the agreement of both chambers. The strong power of the "upper chamber" should thus protect the Catholic minority from unilateral decisions taken by the Protestant majority. The same institutional balance between democracy and federalism is also at work when it comes to change the Federal Constitution. In order to be adopted, a constitutional amendment that is submitted to citizens in the form of compulsory referenda always requires a "double majority" of both the people (majority exceeding 50% of the voters) and the cantons (i.e. majority of 13 cantons at least).

The Constitution of 1848 was then revised at several occasions, either partially (1866, 1891, 1921, etc.) or wholly (in 1874 and 1999 only). The global revision of 1874 did not change the structure of the Swiss Federation *per se* but extend the direct-democracy beyond the existing mandatory popular vote that has to be organized on every constitutional amendment proposed by the *Federal Assembly* and *Federal Council*: "The system was extended in 1874 with the introduction of the optional referendum for laws (1874), with the popular initiative (1891) and the referendum for international treaties (1921). (The year 1977) brought a first extension of direct democracy in foreign policy, and in 2003, a second reform opened the optional referendum for all substantial international treaties." (Linder 2009: 66-67).

Of particular interest here is the *popular initiative* that allows for a total or partial revision of the Federal Constitution¹ and generally takes the form of a formulated draft (i.e. concrete proposal of a constitutional amendment). Launching a popular initiative requires 100,000 signatures. To be accepted (i.e. to modify the Constitution), the initiatives require a "double majority" of both the people and the 26 cantons forming today the Swiss federal system. Note that the *Federal Assembly* can propose a counter-proposal to the popular initiative on which the citizens also vote at the same time. In the case of an initiative and a counter-proposal, a third question is added, asking citizens which of the two they prefer.

Owing to popular initiatives, on one side, and to the proposals directly formulated by the *Federal Assembly* and *Federal Council*, on the other side, the Swiss Constitution was subject to continual changes over time. In a nutshell, no less than 140 constitutional amendments were accepted since 1874. From a historical perspective, we observe an increased use of popular initiatives (i.e. proposals formulated by citizens) and mandatory referendum (i.e. proposals formulated by the federal Parliament and Government) since World War II. In particular, the more frequent activation of direct-democracy has been related to the growth of the federal "Welfare State" (see Linder 2009 for a detailed account of this long term evolution). As every new policy competency gained by the federal authorities needs a formal constitutional base (see the compromise negotiated in 1848 and presented above), there were several popular votes on specific policy issues. These partial revisions of the Federal Constitution concerned, for example, the guarantee of private property rights and land-use planning, the development of public infrastructures (i.e. transportation, energy, communications, etc.), education and research, health care, the consolidation of social

¹ Note that Swiss citizens may *not* propose a new law or to modify an existing law through a popular initiative. But 50,000 citizens or eight cantons may launch an *optional referendum* against federal laws, urgent statutes exceeding one year of validity or, under certain conditions, international treaties. This optional referendum requires only a simple majority of the people in order to succeed (i.e. to prevent the entry into force of the tackled law). Approximately 7% of the legislative production that is eligible for an optional referendum is effectively challenged in the ballot via this direct-democratic instrument.

insurances, economics and labor market regulation, the adjustment of fiscal policies, environmental protection, defense and external affairs, morality issues such as abortion, biomedicine etc. The gradual addition of more than hundred *ad hoc* amendments unsurprisingly led to a patchwork and, to internal incoherencies of the Federal Constitution of 1874. The federal authorities thus decided to revise it wholly in the mid-1960s. This revision process took more than four decades to eventually translate into a new fundamental text in 1999. Even if this new Constitution is a global revision of the former text of 1874, it does not, however, change the institutional structure of the Swiss federal nation-state. It shall be considered as an update of the 1874 Constitution without changing it in substance. The new version of the Federal Constitution was approved by popular and cantonal vote on 18 April 1999, and it came into force on 1 January 2000. The following section recapitulates the milestones and outputs of this long decision-making process.

2. Genesis of the constitution of 1999

We first address the historical context of the new Constitution's genesis and, then present the interests of its drafters and adopters. The next section 3 will discuss its core elements in terms of power relations, as conceptualized in the theoretical chapter of the present volume.

2.1. Drafting and adopting the Constitution of 1999²

Several attempts to completely revise the Federal Constitution failed before the 1960ies. In September 1935, for example, 72% of the voters and 22 cantons rejected a popular initiative calling for a new Constitution. In 1966, the *Federal Assembly* finally accepted two parliamentary motions asking for a major constitutional revision. Two experts groups, directed by a *Federal Councilor* (i.e. elected member of the Federal Government), were

² This historical sketch is mainly based on the yearly accounts of Swiss politics exposed in the "*Année Politique Suisse*" since 1976.

designated to elaborate a first draft of the new Constitution. The so-called *Furgler commission*³ presented its proposal in November 1977. This draft was submitted by the Government to an open public consultation procedure. About 885 reactions coming from the cantons, political parties, interest groups, trade unions, private firms, NGOs, associations etc. were collected, analyzed and weighted. This external consultation allows identifying five main conflictual issues, namely: (1) the limitation of private property rights and economic freedom, (2) the institutional relations between the Federation and the cantons, (3) the people's right to launch a popular initiative, (4) the constitutional review of federal laws by the Federal Supreme Court, as well as (4) new social goals and rights. The latter corresponded mainly to unwritten fundamental human rights that were recognized by the *Federal Supreme Court's* extensive case law and, that were already guaranteed in the European Convention on Human Rights (ECHR), which Switzerland ratified in 1974.

Notwithstanding this impressive preparatory work, the revision process was strongly delayed when Rudolf Friedrich was elected as successor of Kurt Furgler in the *Federal Council*. Only the year 1986-87 brought a new start: the *Federal Assembly* urged the Government to pursue the formal update of the Constitution and, Elisabeth Kopp take over the head of the Ministry for Justice and Police. Great expectations accompanied this personal change in the Federal Government.

However, the whole revision enterprise was soon frozen, once again, when the Government decided to change its strategy towards the European integration. Concretely, the *Federal Council* decided to participate into the European Economic Area (EEA) and, furthermore, to apply for full accession to the European Union (EU). In accordance with the Federal Constitution, entry to the EEA required a mandatory referendum. On December 6th

³ Kurt Furgler was President of the *Federal Council* in 1977 and at the head of the Justice and Police Ministry.

1992, a day which became known as the "Black Sunday", the Swiss citizens rejected in a popular vote, and in contradiction to their Government's position, joining the EEA. Through this refusal, Switzerland found itself with a disadvantageous access to the single European market. Since taking up membership of the EU has proved unviable due to domestic opposition, the Government has pursued a strategy consisting of the completion of "sectoral bilateral agreements with EU" with the aim of countering economic isolation. In parallel to this European affairs policy, the revision of the Federal Constitution was re-launched to stimulate an internal reform of Swiss institutions and their anchorage in the Federal Constitution.

In June 1994, the *Federal Council* --with Arnold Koller as new Minister in charge of the Justice and Police Ministry-- proposed a revised draft of the Federal Constitution. This new governmental proposal suggests (1) doubling the number of signatures required to qualify a popular initiative and an optional referendum, (2) strengthening the role played by the cantons in foreign affairs, (3) implementing the freedom of information and transparency principles in public administration and, last but not least, (4) guaranteeing social goals and human rights. Note that the constitutional review of federal laws by the *Federal Supreme Court* was abandoned in this new proposal.

After a second public consultation procedure organized in 1995, the draft went to the parliamentary commissions of the *Federal Assembly* in 1996. The MPs did not change dramatically the content of the text that was elaborated by the *Federal Council* and had integrated the remarks formulated during the public consultation procedure, with the notable exception of direct-democratic rights: the MPs preferred keeping the *status quo ante* (i.e. lower numbers of signatures necessary for validating a popular initiative or an optional referendum). So, exactly 150 years after the birth of modern Switzerland, the Parliament approved on 11 December 1998 the new Constitution with a very large majority in the

National Council (i.e. 134 Yes, 14 No and 31 abstentions) and unanimity in the *Council of States* (i.e. 44 Yes). This constitutional text was then submitted to a popular vote. On 18 April 1999, 59.2% of the voters and 13 cantons accepted the new Federal Constitution, which came into force on 1 January 2000.

2.2. Interest of drafters-adopters

In the Swiss context, it is quite difficult --if not simply impossible-- to clearly distinguish between the drafters and the adopters of the Federal Constitution of April 1999. A lot of preparatory "drafting" works were realized by successive expert groups directed by a member of the federal Government (1977-1995) and, then discussed by specialized parliamentary commissions in both chambers of the *Federal Assembly* (1996-1998). However, these rather "closed" and internal institutional venues are complemented by two very open and external consultation procedures (1977-1980 and 1994-1996) during which all political and non-political actors had the opportunity to articulate their opposition to the drafted text and, furthermore, to propose alternative contents and formulations.

These extensive public consultation procedures are essential in the Swiss political system, which is often interpreted as an emblematic case of "consensus democracy" (Lijphart 1999). Specifically, actors opposing a constitutional change may use direct-democratic voting campaigns to challenge the new constitutional provisions proposed by the political elites. Voters may overturn formal decisions made by the Government and the parliamentary majority through a negative vote at the *mandatory referendum*. Uncertainty for the dominant political coalition is thus introduced to the constitutional decision-making process through the use of direct democracy. The threat of being defeated at the ballot box, and thus of blocking any changes to the constitutional *status quo*, acts like a Damocles' sword pending over the

whole Constitution's revision process. As a general consequence, direct-democracy has led, in Switzerland, to power-sharing institutions and to a large governmental coalition (according to the seminal hypothesis formulated by Neidhart in 1970; see also Papadopoulos 2001 and Vatter 2009).

There are also tangible impacts of direct-democracy on the particular decision-making process investigated here: the constitutional considerations and specific positions of all political and non-political actors, which might otherwise (successfully) oppose any constitutional change during the referendum campaign, are already integrated at the pre-parliamentary phase of the decision-making process --where the initial constitutional proposals are elaborated-- in order to avoid an *ex post* defeat in the popular vote. The mandatory referendum is thus a key institutionalized veto point that might be used by opponents to any constitutional change and, can be labeled as a "veto player referendum" (Tsebelis 2002:125).

All in all, it does *not* make sense, when analyzing the Swiss case, to undertake a separate analysis of the interests promoted by the constitution's drafters on one hand and, by its adopters on the other hand. Instead of such a double analysis, we proceed hereafter to the identification of the main cleavages between the actors who supported, *versus* who opposed, the Federal Constitution submitted to a popular vote. This empirical analysis is based on an *ex post* survey of 1'203 Swiss citizens that was realized in April and May 1999. This empirical sample is representative of the different linguistic regions and cantons of Switzerland, as well as of the education level, professional occupation, age category and gender distribution within the whole population (see Delgrande and Linder 1999). Five results of this statistical analysis are very relevant for our interpretation of actors' interests:

(1) First, the French- and Italian-speaking cantons were stronger supporters of the new Constitution (with approval rates of 79% respectively 74%) than the German-speaking

cantons (61%). Furthermore, the rural municipalities within the German-speaking part of Switzerland were the most reluctant to accept the new constitutional provisions (54%).

(2) Two socio-economic factors are important to understand the final vote's outcome: the younger citizens who benefit from a higher education level (i.e. higher preceptorial power) and who earn a higher revenue (i.e. higher economic power) show the highest approval rates. It is also noteworthy that other socio-economic characteristics of the survey respondents (i.e. gender, religion, civil status, etc.) have no explanatory power.

(3) Voters who are affiliated to or sympathisant of the political left (i.e. Social Democrats), respectively the centre-right parties (i.e. Christian-Democrats and Liberals) supported the constitutional revision. On the contrary, 83% of the voters belonging to the radical-right end of the partisan spectrum (i.e. Swiss People's party) opposed the global revision of the Federal Constitution. This major cleavage between all political parties, on one side, and the extreme right, on the other side, is also reflected by the values defended by the opponents to the Constitution's revision: they neither support the political and cultural openness of Switzerland (i.e. no integration in the EU) nor do they accept equal opportunities between Swiss citizens and foreigners.

(4) Apparently, the federalist structures and processes of the Swiss political system were not a decisive issue at stake. The statistical analysis shows no significant difference between the voting behaviors of centralists *versus* federalists.

(5) Last but not least, citizens who do not trust the federal government and, who are not satisfied with the present functioning of the Swiss democracy have casted a NO-vote.

In one word, the authors of this study conclude that opponents to the constitutional revision are those who are attached to fundamental national myths formulated in the past: they are proud of their nationality and very much attached to the traditional political institutions. Their NO-vote translate an obsession with issues of identity: they are afraid of a dissolution of

their country and the citizenship. Their decision is thus not an expression of dissatisfaction with the Constitution's content, but more a symbolic vote. It is why specific points or paragraphs outlined in the amended text are rarely explicitly criticized (Delgrande and Linder 1999:24).

2. 3 Adapting hypotheses to the Swiss case

Based on the developments during the last century that led to the Constitution's revision in 1999, we suggest here to consider – besides the degree of uncertainty of the *Constitution drafters* - also the one of *Swiss citizens*. The amended Constitution was voted by the people, their degree of uncertainty seems thus crucial too when formulating our working hypotheses. Taking this into account, we still assume that Constitution drafters *and* the Swiss citizens were, at the moment of adoption of the amended Constitution, more uncertain about their political rather than their economic or preceptoral position in society (overall H1). This assumption is based on the fact that the above outlined major changes to the constitution concern mostly authority issues such as institutional and procedural definitions of competences, of direct-democratic and citizens' rights, and of Federal laws. Only few amendments concerned property- and social rights re-definitions.

However, it seems that the Swiss Constitution was not changed in the view of the *least privileged people* in society (as suggested by the overall hypothesis 2, see introduction to this edited volume): on the contrary, changes seem to go in the direction of ascribing rather than limiting the power of people. We have three major arguments for that: first, and as outlined above, better educated citizens with higher revenues voted in favor of the new Constitution; less privileged people mostly against. Second, direct-democratic instruments are strongly reducing uncertainty: during the extensive public (pre-parliamentary) consultation phase, not only the Constitution drafters, but diverse private and public representatives of economic and

civil-society interests were invited to comment the Constitution project. Together with the popular vote, this leads to the situation where a majority of people are defending their own interests rather than the ones of the less privileged people. And third, the Swiss Constitution is subject to continual changes over time, as 100'000 Swiss citizens may launch a popular initiative to amend partially the Federal Constitution. The mere existence of this direct-democratic instrument also means that the long-term perspective of constitutional choices (underlying the Buchanan and Tullock hypothesis) is not perfectly given in the Swiss case. As a matter of fact, more than 140 constitutional amendments were accepted since the first Constitution of 1874. Furthermore, the Swiss citizens may only modify the constitutional text through a popular initiative; but they may not propose a new law or modify an existing law through a popular initiative (see footnote 1 above). In a nutshell, the distinction between constitutional choices (choice of rules), on one hand, and "in-period" choices (choices within rules), on the other hand, is not clear-cut. All in all, we conclude that power in general, and political power in particular, should be rather ascribed than limited in the Swiss Constitution of 1999. We thus change the second hypothesis of this research program for the Swiss case: In the Swiss Constitution of 1999, power is rather ascribed than limited (hypothesis 2).

3. Content of the Constitution of 1999

The first subsection presents the general architecture of the new Federal Constitution and, is followed by an in-depth analysis of the instrumental and social power relations.

3.1 Description of the constitutional text

The Federal Constitution of April 1999 contains approximately 24'654 words (in the French version that was coded here), 197 articles and, is structured in 6 sections. The Preamble and Title 1 (articles 1–6) define the characteristic traits of the *Swiss State* on all of its three levels

of power, namely federal, cantonal and municipal. Title 2 (articles 7-41) is entitled "Fundamental Rights, Civil Rights and Social Goals" and, establishes a comprehensive and directly enforceable *Bill of rights* (e.g. right to life and personal freedom, right to privacy, freedom of religion and conscience, freedom of assembly, guarantee of ownership, exercise of political rights, acquisition and deprivation of citizenship, etc.). Furthermore, this second section also defines a set of social goals such as, for example, access to social security, to health care, to a suitable accommodation on reasonable terms or to education. Furthermore, everyone should also be protected against the economic consequences of old-age, invalidity, unemployment, maternity, etc. Title 3 (articles 42-135) presents the general principles for the *allocation and fulfillment of State tasks* by the Federation, the cantons and the municipalities. This third section stipulates which authorities are --exclusively or conjointly-- competent for the main policy domains concerning security and defense; education and culture; environment and spatial planning; public construction works and transport; energy and communications; economics; employment; social security, public health; finances etc. Title 4 (articles 136-142) is dedicated to political rights in general and, to the instruments of *direct democracy* in particular (i.e. popular initiative and mandatory or optional referendum). Title 5 (articles 143-191) presents the composition, powers and standard operating procedures of the Parliament (*Federal Assembly*), the Government (*Federal Council*) and judicial authorities (*Federal Supreme Court*). Finally, Title 6 (articles 192-195) contains transitional provisions as well as the rules of the game for any upcoming partial or total revision of the Federal Constitution.

3.2 Statistical results from the content analysis.

We found 931 power relations defined in the Swiss Constitution of 1999. Two third of these relations concern political power exchange, and only 10% relate to economic power relations respectively 5.7% to preceptoral power relations (see table 1). The dominant source of power

is thus authority; wealth and knowledge sources are by far less prominently defined and considered.

Furthermore, the Constitution drafters emphasize instrumental (62.9%) rather than social power relations (36.8%). That means concretely that agents are given or taken the competence to act on things or events; rather than the competence to act over other actors or people.

And very interestingly, only a negligible amount of power relations limits the competence of agents (1.5%). The big majority of power relations (98.5%) enhance agents to act over events or people. Swiss Constitution defines thus overall the rights and power that is given to agents, rather than to limit the latter. This fact will be explored more in detail in the following sections.

Table 1: Characteristics of Power Relations in the Swiss Constitution of 1999

	Observations	%
Resource of Influencing Party		
Authority	581	62.4
Wealth	94	10.1
Knowledge	53	5.7
Direction of power relation		
Positive	917	98.5
Negative	14	1.5
Type of power		
Instrumental	586	62.9
Social	343	36.8
(Total observations)	(931)	(100)

3.3 Which agents are identified in the Constitution?

We will outline hereafter the agents who are mostly engaged in power relations as defined in the Swiss Constitution of April 1999. In the federalist context of Switzerland, it makes furthermore sense to identify the institutional level (federal, cantonal and municipal) those actors belong to.

As outlined in table 2, the Swiss Confederation is with 34.4% the agent mostly engaged in power relations. Furthermore, the Confederation is always linked to other agents (social power), but never to events or things (instrumental power). On the national level, the other two most active agents are the Swiss government (i.e. Federal Council) and the Swiss Parliament (i.e. Federal Assembly), engaged in 7.4% and 6.3% of power exchange.

The cantons are the second most involved agents in the Constitution with 12.4% of the power relations. Municipalities are only mentioned three times what corresponds to 0.3% of power exchange.

Table 2: Most important agents involved in power ascription or limitation in %

	Positive	Negative	Total
Federal level			
Confederation	34.4	0	34.4
Federal Council	7.2	0.2	7.4
Parliament	6.2	0.1	6.3
Cantonal level			
The cantons	12	0.4	12.4
Municipal level			
Municipalities	0.3	0	0.3
The Sovereign			
The people	2.7	0.1	2.8
Every person	2.9	0	2.9
Citizen	1.8	0	1.8

Obviously, another very important agent is the Sovereign, namely the people (who may be call to the ballot box to vote on a popular initiative or referendum). Different expressions exist in the Constitution to name the Sovereign: we outline in table 2 the most common ones: People are mentioned 2.8%, every person 2.9, and the citizen 1.8% when it comes to define power distribution in the Swiss Constitution.

3.4 Which capacities do these agents have?

Before discussing the difference between acting over events or over other agents; and before splitting our analysis in relations that enhance or that limit power, we outline hereafter the distribution of the type of power within each power source and divided between positive (enhancing) and negative (limiting) power directions.

Table 3: Positive and negative power directions per source of power

		Positive	Negative
Authority			
	Instrumental	321 (56.4%)	12 (100%)
	Social	246 (43.2%)	0
Wealth			
	Instrumental	59 (64.1%)	2 (100%)
	Social	33 (35.9%)	0
Knowledge			
	Instrumental	36 (67.9%)	0
	Social	17 (32.1%)	0

Overall, table 3 provides us with three important insights: first, and for all power sources, instrumental power always dominates social power, and this also in negative power relations. Second, the ratio between instrumental and social power within each power source (authority, wealth and knowledge) gets always smaller: In political power relations, 43.2% are social

relations and concern thus at least two agents, a sender and a receiver. For economic and preceptoral power, only 35.9% and 32.1% respectively are social relations. And finally, no social relation is formulated negatively: all limiting power relations are expressed when an agent is in relation with a thing or an event.

In the next paragraphs, we analyze the capacity of actors to act over actors, events or things. We consider only positive power relations giving the capacity to agents over other people or events.

Overall, and as illustrated in table 1, *instrumental power* seems dominant over social power relations. The capacity to act on events or things (positive instrumental power) is split as follows among the different power sources: 56,11% authority, 10,31% wealth and 6,29% knowledge.

From all relations that express the capacity to act over other agents (*positive social power*), 71.72% concern political, 9.62% economic, and 4.96% preceptoral power relations. Also in the capacity over agents, the same split between dominant authority, and a minority of wealth and knowledge power sources is thus observable.

The question here is not only, who the “senders” are of power relations, e.g the actors who provide other actors with power; but also: who are the “receivers” of power relations. As illustrated in table 2, the Confederation is engaged in 34.4% of all power relations. But who’s power is enhanced? Having a closer look at the Constitution of April 1999, one notices that more than half of all positive relations that are coming from the Confederation enhance the power of the cantons. The cantons on their side are mostly (around one fourth of their power relations) enhancing the power of the communes and are also sending back (again around one fourth of their power relations) positive power relations to the Confederation. These relationships reflect both the Swiss "functional federalism" (i.e. the Confederation formulates the public laws, while the cantons implement them) and the principle of subsidiarity (i.e.

explicit delegation of powers from the cantons to the Confederation for every policy sector newly regulated by the Federal level of power) as well.

Most power relations of the Government and the Parliament are shared among each other. The Parliament furthermore ascribes considerably (one fourth of its relations) power to the Sovereign.

3.5 Which capacities does the text take from these agents? (What are they prevented from doing?)

In this subsection, we only consider negative power relations. Generally, and as outlined in table 1 already, negative power relations are very rare and thus the exception. And very interestingly, social power is never defined in a negative way (see table 3). This means that no power action is restricting in the Swiss Constitution of 1999 when it comes to execute it over other people. Furthermore, no negative power relation at all is defined within the category of preceptoral power (see table 3).

From all relations where an agent is limited by an event or thing (*instrumental power*) 85.7% concern political, and 14.3% economic power relations. The very few negative power relations (14 in total) are thus dominantly present within the authority source of power. Table 4 illustrates who is limited in its action by an event or thing.

Table 4: Limiting power relations (only instrumental)

	Article	Nr of negative relations
Federal level		
Federal Council	144/162	2
Parliament	162	1
Cantonal level		
The cantons	39/127/134	4

The Sovereign

The people	138	1
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Others

Foreigners	121	3
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Judge	144	1
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Chancellery	162	2
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TOTAL		14
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It is not a surprise that the cantons competences are – even though rarely – overall the most limited. Article 3 of the Swiss Constitution gives the overall sovereignty to the cantons if this sovereignty is not explicitly limited within the Constitution as this is the case four times. Furthermore, it is interesting to see that also foreigners are limited in their action and that this is made explicit in the constitution. Overall, foreigners are mentioned 10 times while three times their freedom of action is limited (Article 121).

4. Discussion and conclusion

The above presented results clearly show that the Swiss constitution contains a large amount of political power relations, and much less economic or preceptoral power exchange. We can thus clearly confirm the first research hypothesis. Swiss constitution drafters-adopters seemed to have a bigger uncertainty about the distribution of authority than the one of wealth or knowledge. Expressed differently, they were more certain about their future economic or preceptoral position, than their political role in the society.

We can furthermore confirm our hypothesis 2 as adapted to the Swiss case and outlined in section 2.3 saying that drafters-adopters tend to ascribe rather than to limit power over events or people. 98.5% of the power relations are enhancing agents' power over others

or on events/things. This leads us also to the conclusion that the theoretically deduced hypothesis 2 (for the overall research project), saying the contrary, namely that the Constitution tends to limit rather than to ascribe power has definitely to be rejected for the Swiss case. Note that this generic hypothesis is also falsified in other countries, in Canada for instance (as demonstrated by Imbeau & Jacob 2011).

What can we learn from this information regarding the test of the two research hypotheses? Swiss constitution drafters-adopters --and thus also the Swiss citizens-- seemed to be, at least for the revised constitution of 1999, more certain about their economic and preceptoral position, why they emphasized political power relations and why we could confirm hypothesis 1. However, their uncertainty was generally limited: They did not adopt the preferences of a less privileged individual what resulted in the fact that they rather ascribed than limited power in general, and political power in particular. This provisory conclusion needs to be confirmed by a more robust empirical test, based for example on a formal Social Network Analysis of the power relations embedded in the Federal Constitution.

In the meantime, we may already highlight the fact that our preliminary results are compatible with previous studies on partial revisions of the Swiss Constitution. Dietmar Braun has studied in detail the new equalization scheme and revision of competences between the Federal government and the cantons (NFA – "Neuer Finanzausgleich") that was accepted by the Swiss people in November 2004 (Braun 2009). This major change concerns seven articles of the Federal Constitution and more than thirty laws about the respective policy tasks of the Federation and the cantons, the intensified collaboration between the cantons, the horizontal and vertical fiscal equalization schemes, etc. Braun (2009) concludes that this constitutional debate over NFA remains a "mixed motive game" (Vanberg and Buchanan 1989): it combines a two steps procedure that was strategically crafted by the political elite. The first phase was a general discussion about the principles of the NFA reform. It was based

on "arguing", behind the veil of ignorance (that was "crafted" by the reform leaders) as the cantons could not know in detail and with certainty the concrete outcomes of the NFA. On the contrary, the second phase was a classical "bargaining" process, focusing on the distributive outcomes (in the respective cantons) of the concrete application of the NFA principles adopted during the first phase. In one word, Braun (2009) convincingly argues that the careful separation of arguing and bargaining was a key factor for the success of the NFA reform: "The veil of ignorance helps to raise the level of discussion to arguing, but it cannot transform selfish interests into common good interests. The constitutional debate remains a mixed motive game throughout the whole process" (Braun 2009:331).

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