

Switzerland

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Introduction

The Swiss ethos for solidarity strongly refers to social cohesion inside the various territorial levels of the nation-state. Swiss federalism accommodates diversity and autonomy as the mechanism that accounts for the political and social equilibrium between the shared-rule at federal level and the self-rule at the cantonal level. The relationships vis-a-vis solidarity and federalism are subject to the cultural and territorial complexity of the State, which ascribe a core set of values and duties that stronghold cantons and citizens' peaceful coexistence and well-being. This chapter analyses how solidarity is conveyed implicitly and explicitly within the Swiss legal system, focusing on the direct impact of federalism and diversity on institutional solidarity schemes.

Solidarity as a Fundamental Constitutional and Federal Principle

The Swiss Constitution of 1999 (Cst.)¹ is a socio-political agreement that frames the basic rules for the democratic building of the Swiss society and

1 The Swiss Constitution (Cst.) is the fundamental law of the legal order of the State, which defines the structure and the organisation of the State and embodies the rights and guarantees of the citizens. The Swiss Constitution is part of the new wave of recent western constitutions, which reflects changes on decentralisation, deregulation, human rights and judicial review (Church 2011). It comprises a preamble, 6-title and 197-article. The Preamble contains the axiological dimension of the constitution as a set of ultimate values that provide an ethical and moral foundation to the everyday societal construction. The dogmatic dimension of the Swiss constitution comprises Titles I and II which define the fundamental rights, duties and constitutional guarantees of the citizens and cantons, in addition to the characterisation of the state. Title I designates cantons and the Swiss people as sovereign, while the Title II defines the fundamental rights, political and social rights. The organic dimension of the Swiss Constitution is very extensive. It covers more than two thirds of the constitutional text. Within Titles III – VI the relations between the

for the peaceful coexistence between the various territorial entities of the Federal State and its citizens, within the formula of “*diversity in unit*”. The preamble of the 1999 Swiss Constitution recognises the principle of solidarity as one of the fundamental values that governs Swiss society. Furthermore, it defines the Swiss State’s spirit as one in solidarity and openness towards the world, embedded in pivotal values such as diversity, sustainability, democracy and mutual consideration. However, the solidarity principle is only literally stated within the axiological framework of the constitutional order, as a fundamental constitutive value of the declaration of intentions that guides the legal order.

“In the name of Almighty God!

*The Swiss People and the Cantons, mindful of their responsibility towards creation, resolved to renew their alliance so as to strengthen liberty, democracy, independence and peace in a **spirit of solidarity and openness towards the world**, determined to live together with **mutual consideration and respect for their diversity, conscious of their common achievements and their responsibility towards future generations**, and in the knowledge that **only those who use their freedom remain free**, and that the strength of a people is measured by the **well-being of its weakest members**, adopt the following Constitution”* Swiss Cst. 1999 Preamble

In order to grasp the embeddedness of the solidarity principle in the Swiss legal system, one must untangle the relationships and tensions inside the Federal State; the quest for equilibrium between self-rule (autonomy of the cantons and municipalities), shared-rule (consensual power of the Confederation) and solidarity. In this sense the Confederation exists as a horizontal sociopolitical partnership of informal and dense networks (Kriesi and Trechsel 2008; Fleiner 2002). The association between federalism and solidarity translates into the principles that govern the cooperation between the Confederation and the cantons grounded upon diversity (Cst. Art. 2), subsidiarity (Cst. Art. 5a and Art. 43a), equalisation of financial resources and burdens (Cst. Art. 135) and social rights and objectives

State authorities are defined, determining as well the structure of the separation of powers and their competences. Therefore the organic part of the Swiss constitution contains the political, socio-economical and judicial structure of the State, as well as the mechanisms of control. In general terms, the Swiss Constitution is a written constitution, considered extensive (197-article) and not rigid. It does not require a special procedure for its reform (Art. 193 and 194). It is also considered an inclusive and consensual constitution, as the result of the compromise reached between the political forces, cantons and citizens.

(Cst. Art. 12 and Art. 41). The Constitution also states individual and collective responsibility (Cst. Art. 6) as core values of participation to civil life and society depending on each person's abilities.

In particular, Cst. Art. 2 requires the federal government to foster the cantonal diversity of the country and manage multicultural pressures caused by migration (Fleiner 2009). It also defines, as part of the role of the State to promote a common welfare, foreseeing some degree of solidarity and social cohesion between citizens and cantons. Correspondingly, the Cst. Art. 5a establishes the basic guidelines for these relations through the principle of subsidiarity, as the mechanism to foster internal cooperation and solidarity. In addition, within the 2004 federal financial reform, the principle of subsidiarity also accompanied Articles 44 and 135 allowing through the federal government an equalisation of financial resources and burdens, to enhance internal cohesion and to reduce inequalities between cantons, and citizens that benefit from collective services. In this manner, the legal system also recognises the State and cantonal duty to ensure every person access to social security (Art. 41). The bulk of this chapter attempts to capture, in more detail, the relationships between federalism and solidarity, which requires taking into consideration the Swiss socio-cultural background on the one hand, and the federal and cantonal legal systems, on the other.

The Socio-Cultural Dimensions of Solidarity

In terms of solidarity Switzerland reveals a tremendous challenge. The political and territorial complexity of the Swiss State is translated into the development of the nation-state building and the social security system. Largely, the idea of solidarity in Switzerland could be associated with the social cohesion inside the various territorial levels of the nation-state. Solidarity is first conceived as a process of creation of collective conscience, fulfilling a function of social integration; secondly as partial socialisation of social risks, under the principle of decommodification; and thirdly as individual acts of solidarity –like volunteering.

Since the ratification of the Constitution of 1848, Switzerland's cultural identity has been forged on the principle of linguistic and religious diversity which were the most salient cleavages within Swiss society. 'Switzerland came into existence as a classic Nation of Will across strong cultural differences' (Klöti et al. 2007, 798). The first federal Constitution repre-

sents compromise between the victorious Radicals and the vanquished Catholic conservative. Swiss federalism developed out of various forms of organisational tissue: rural corporations, small liberal democracies, aristocratic or economic oligarchies. The constituted system was a composite state of sovereign cantons, where religion constituted the salient issue for the formation of the Swiss nation (Kriesi and Trechsel 2008, 6-7). In the Swiss case, the territorial autonomy of the different cultural communities translates into various levels of collective belonging, which impacts the political and social structures of the national community. At the federal level, the nationhood sentiment vehiculates a civic-nationalism based upon the political will of Cantons and citizens linked through a common set of fundamental political principles and institutions –federalism, direct democracy and neutrality- which relates to the French republican model, as civic-political community (Kriesi and Wisler 1999; Kriesi and Trechsel 2008). On the contrary at the cantonal level, social cohesion is structured upon a sentiment of ethnic and cultural homogeneity within groups. This ethnic conception of citizenship and cultural monism relates to the previous German ethnic model of citizenship. However, in the case of Switzerland the ethnic conception of citizenship forges a segmented cultural state which needs to accommodate traditional diversities (Fleiner 2002). As described by Hanspeter Kriesi (2008):

“The multicultural Swiss nation is in fact composed of diverse ethnic groups, each relatively homogeneous, within itself. Switzerland constitutes a successful federation of ‘nations’ [...] Within a common procedural framework, the different constituent cultures of the Swiss nation lived their own way of life and tended to ignore one another.”

These various conceptions of nationhood belonging have forged the Swiss citizenship model and nourish the liberal conceptions of the federal State role of the Swiss citizens. Through citizenship, the legal bond establishes relationships of mutual responsibility between individuals, cantons and the State. The bonds of citizenship in Switzerland are the result of horizontal and vertical collaborations: as loyalties between cantons, between individuals inside the cantons and between the different territorial levels. Currently, every Swiss citizen has a three-fold citizenship: communal, cantonal, and federal which are the entitlement of individuals with full political and civic membership/integration (Cst. Art. 37). The acquisition of Swiss citizenship is very restrictive. It is based upon an assimilationist conception of integration into the three territorial levels of citizenship, and precedes full incorporation of migrants into the community (Froidevaux 1997, 51).

In addition, with respect to the role of government in society, various polls have shown that most Swiss people consider that it should be limited. A weak central power enhances and preserves both strong diversity and cultural and political autonomy through all the different administrative levels (Fleiner 2002; Armingeon 2001). Likewise, the Swiss welfare State's scope and structure of the social schemes are similar to the continental insurance-based model of social security contributions but it combines residual liberal traits when issuing social assistance programmes (Armingeon 2001). The schemes are mostly regulated at federal level but their implementation takes place at cantonal level, which varies importantly from canton to canton. The impact of federalism, direct democracy and diversity results in a complex social-liberal welfare State model at different stages where complementary measures to personal responsibility and private initiative are ensured by the cantons and the Confederation (Cst. Art. 41).

Lastly, when referring to individual citizens' acts, the Swiss legal system does not imply or bind individuals to act in solidarity toward each other. Individualistic acts of solidarity are then conceived as forms of volunteering, as prosocial behaviours based on norms of reciprocity and altruistic solidarity. The 2014 Swiss Volunteering Survey showed that at least 33% of the resident population in Switzerland aged 15 and older was involved in at least one form of formal or informal voluntary work. Volunteering has been defined as 'any activity in which time is given freely to benefit another person, group or organisation' (Gundelach et al. 2010; Wilson 2000, 215). Volunteering as a form of social capital benefits a large share of the society (Putman 2000). It is associated with altruistic and charitable engagement to support others' well-being. In Switzerland, volunteering rates vary substantially between linguistic regions. Through the empirical assessment based on 60 communes sample in Switzerland, Freitag (2014) analysed the impact of the linguistic cultures on the individual volunteering behaviours and the existence of regional volunteering cultures. As shown by the analysis the various patterns and manifestations of direct democracy in the cantons impact the type of organisations within the civil society (Baglioni, 2004). It also confirmed that the propensity to volunteer is highest in the German-speaking part of Switzerland, followed by the French- and Italian-speaking regions; and that French-speaking Swiss exhibited the highest propensity for volunteering behaviour. Volunteering produces sustained social and community involvement enhancing social networks based on relationships of trust and reciprocity. Interesting-

ly, in Switzerland, densities of these networks differ substantially through linguistic and cultural regions.

The Constitutional Entrenchment of Solidarity within Swiss Federalism

The Swiss Confederation has three political levels and a non-centralised separation of powers; these enhance various forms of vertical and horizontal cooperation between the different administrative levels. The Swiss bottom-up federalism is embedded in the principles of autonomy, democracy and diversity. Cantonal sovereignty is explicitly guaranteed under Cst. Art. 3. Cantonal sovereignty is such that cantons can determine the scope of direct democracy granted to their citizens, and decide their official languages and religions in accordance with the Federal Constitution Principles (Fleiner 2009). In addition, the Constitution also guarantees communal autonomy (Art. 50) accommodating as well communal diversity and autonomy. The Swiss Confederation (federal level) is responsible when empowered by the Federal Constitution, as in policy areas that directly affect national sovereignty (military, monetary policy or external relations) and which need special coordination, or to establish a framework legislation (social security, environment, energy and infrastructure). The cantons retain the powers related to culture, education, language, religion and social policies (health and social services). The communes on the other hand, have exclusive powers concerning the provision of local services (construction and maintenance of roads, local gas supply, electricity and water and so forth).

Swiss federalism accommodates diversity and autonomy through democratic participation of cultural communities in the decision-making process. They contribute as sovereign units enacting in solidarity to compromise at the federal and cantonal level. Compromise is key for consensual building of the Swiss democracy which legitimates shared-rule between units and guarantees self-rule within the units. The Swiss Constitutional Preamble stipulates that *'only those who use their freedom remain free, and that the strength of a people is measured by the well-being of its weakest members'* which suggests that through democratic consensus-oriented processes, individuals optimise their individual liberty through their participation in the community and contribute to the common welfare of the State, of the community, and of their fellow citizens.

However, in a composite federal State the equilibrium between diversity, autonomy and solidarity is not a simple one. The Swiss federal State needs to accommodate individual liberties respecting the autonomy and diversity of the different communities. The sense of universality tied to all human beings, in which equality is the prevailing assumption within the socio-political organisation, does not entirely fit with composite nations, united in diversity (Fleiner 1995 and 2002). Moreover, modern constitutionalism situates fundamental human rights at the core of the legal system. These rights are based on Karol Wojtyła's personalist principle – which locates human beings' welfare as the goal of social order. This conception based on the centrality of the person, whose rights' entitlements are core to preserve human dignity and bounded in solidarity, eclipse the purely citizenship container of rights. In addition, it also centers the person's entitlement of rights within an optic of equal opportunities between individuals, underscoring the responsibility and social duty to overcome social inequalities. Still, in the Swiss case, the latent tensions between individual and collective rights translate into diverse living conditions between cantonal populations. The centralisation and fiscal equalisation measures designed to overcome these inequalities are considered a threat to autonomy and diversity. 'Equality of community may often even have priority over equality of individuals' (Fleiner 2002, 118; Fleiner and Basta 2009). For instance, Cst. Art. 128-9 cantonal fiscal autonomy preserved in the constitution limit individual rights and impact solidarity between fellow citizens. As a consequence, the constitutional individual rights embedded in solidarity, like Cst. Art. 7 on human dignity, Cst. Art. 8 on equality before the law and Cst. Art. 12 on the right to assistance, are first dependent on individual responsibility and on equality between cantons (Cst. Art. 6; for social objectives, see Art. 41§ 4.), by means of contribution to collective responsibility and fulfillment of the community. Such a subsidiary conception of state intervention to individual rights impacts heavily on the scope of the Swiss welfare system.

'Cst. Art. 6 Individual and collective responsibility: All individuals shall take responsibility for themselves and shall, according to their abilities, contribute to achieving the tasks of the state and society.'

'Cst. Art. 41 Social objectives: 1 The Confederation and the Cantons shall, as a complement to personal responsibility and private initiative, endeavour to ensure that: a. every person has access to social security; [...]4 No direct right to state benefits may be established on the basis of these social objectives.'

To fully appreciate the relationships vis-a-vis solidarity and federalism, detailed attention must be given to the political and social compromises between shared-rule and self-rule, and to the cooperation principles structuring those equilibriums.

Solidarity between Shared-Rule and Self-Rule

The legitimacy of the Swiss federalism is based on the constitution-making power instituted as shared-sovereignty and the constitutional autonomy kept by the cantons and municipalities as self-rule (Fleiner 2002, 99). Federalism is the structural principle that operates on this equilibrium. The Swiss Federal shared-rule assumes equal sovereignty between cantons even if this might result in an asymmetrical electoral system (Stauffer et al. 2005; Fleiner 2002). At the federal level, solidarity exists as a minimal consensus upon the political values that hold the state together. At cantonal and municipal levels, solidarity accounts for the respect for diversity and independence. The federal government has to foster mutual understanding among the communities and solidaristic partnerships.

The Confederation with regard to its legislation and administration, has to take cantonal particularities into account and, at the same time, provide the largest possible autonomy to the cantons (Cst. Art. 46§ 2). The Confederation has to respect cantonal independence and self-rule (Cst. Art. 47), but also has to decide at which moment some federal regulations need to be issued for the sake of uniformity (Cst. Art. 42§ 2) (Fleiner 2002)

The practical result of the Swiss bottom-up federalism is the binding solidarity between the territorial units and the State. These partnerships are not grounded in a melting-pot logic but in a common political will of reciprocity and respect of diversity (Kriesi and Trechsel 2008; Fleiner 2009). The compromise between the various administrative levels enhances cooperation between the social actors and maximises social cohesion, through collective and individual responsibility. Some of the tools to establish a dense network of solidaristic collaboration inside the federal State correspond to:

- Cst. Art. 43a on the duties of the cantons and the principle of allocation of tasks; Cst. Art. 44 on the principles of cooperation between the Confederation and the cantons; Cst. Art. 45 on cantonal participation in federal decision-making; Cst. Art. 47 on the autonomy of the cantons and Cst. Art. 48 on intercantonal agreements. These legal tools stipu-

late that the Confederation only undertakes tasks it is appointed to perform, creating space for co-decision making, networks of assistance and mutual support between the various levels. In particular, it settles the principles for intercantonal agreements embedded in solidarity and cantonal responsibility.

One of the major legislative changes in Swiss constitutionalism was the 2004 adoption by referendum of the Cst. Art. 135 on the equalisation of financial resources and burdens. This article targeted the reduction of cantonal inequalities but not the equality of financial resources between cantons. It built intercantonal fiscal solidarity. The principal aim of the Cst. Art. 135 is to mitigate the differences between the cantons in terms of their financial capacity, setting a minimum ensured financial resource level per capita of 85% of the Swiss average. Enrooted in this reform is the expansion of the shared-rule power of the federal State, which was complemented by the self-rule power through the introduction of the principle of subsidiarity (Cst. Art. 5a). Under the principle of subsidiarity, nothing that can be done at a lower political level should be done at a higher political level. In Switzerland, the principle of subsidiarity is intimately linked to federalism: it holds that political issues should be dealt with at a local level—canton or town—wherever possible. The confederation or higher level is appealed to as a last resort. (Federal Finance Administration – FFA 2017).

Solidarity and the Swiss Welfare System

Like in most west European countries the Swiss social security legislation includes a set of policy technologies aimed at reducing selected social risks, consistent with ILO's Convention No. 102² which are the means directed to exercise institutional solidarity.

A core, yet uncodified, principle underlying the social security system as a whole, solidarity is not literally stated in legal provisions. It can be discerned from the various mechanisms used by the legislative body to enforce social security benefits and guarantee a certain redistribution (Greber et al. 2010). In particular, vertical (income-based) and horizontal (risk-

2 Military duty being compulsory for male citizens, a specific social insurance has been enacted to cover any health issue related to a period of service. Military insurance is not discussed in this contribution.

based) solidarity is embedded in mechanisms such as universal protection, mandatory insurance, capped benefits, uncapped contributions, (in)direct taxation, etc. Social security thus differs from private insurance, where benefits are directly and solely dependent on contributions of the insured person (principle of individual equivalence; Greber 1980).

The principal social scheme of the Swiss social security system is structured in three pillars. It is a threefold system of public, occupational and private insurance, where each pillar constitutes protection for the loss of income. It especially grants old age pensions to people of retirement age, survivors' pensions to spouses or dependent children of a deceased insured person and disability pensions to insured persons whose capacity to work is seriously impaired. Old-age and survivors' insurance (OASI) and disability insurance (DI) jointly constitute the first pillar, which intends to grant pensions to cover basic living costs. The first pillar is compulsory for all residents and/or workers in Switzerland, including the self-employed and people without gainful employment. The second pillar is obligatory only for salaried workers. Together, the first and second pillars must enable the insured person to maintain an appropriate standard of living. When they do not do so, there are supplementary benefits (CP) to top-up income to the minimum required level. The third pillar is an optional individual provision to meet further needs in other forms of savings offering tax benefits³

The Swiss legislation aimed at promoting institutional solidarity is very particular for it has been shaped by the strong cantonal autonomy, federalism and decentralisation of the State power. There is no comprehensive code on social security but distinct insurance laws, usually covering several contingencies and granting various benefits in cash and/or in kind. Each regime institutes distinct enforcement bodies at cantonal level, which are supervised by specific federal organisations. Despite the increasing power of the central structure, the keen impact of federalism and direct democracy have enhanced a mille-feuille security system.

Table 1 below, shows how the political values of federalism, diversity and democracy have affected the adoption of social schemes. Due to the consensus-oriented, compromise-seeking activity of the legislative body

3 Optional and private insurances are not discussed in this contribution, which focuses on selected social risks featured in ILO's C-102.

(Fleiner 2009), a maximum elapse of 106 years for the enactment of the compulsory health insurance law is observable.

The Swiss welfare State is considered liberal with a moderate decommodification but with a high generosity index, close to the one of Sweden (Scruggs and Allan 2006, 67). Mainly, Switzerland has been classified as a “welfare laggard” State because its redistribution system is poorly developed at the federal level (Esping-Andersen 1990). However, under the recent Swiss Constitution, the federal role has been reinforced. With regard to the legislation framework on solidarity, it is strongly dependent on *executive federalism*: the federal State regulates the bulk of the social insurance legislation on old-age, unemployment, disability and accident but their implementation is dependent on cantons (Kriesi 1998; Bertozzi and Bonoli 2003, 21). The *executive federalism* “is a process by which federal legislation is implemented by the cantons, and is thus re-appropriated and re-translated by actors at cantonal level” (Battaglini and Giraud 2003, 303). Together with the cantonal implementations of the social security system, the Swiss welfare State is then well developed and similar to the continental welfare models (Bertozzi and Bonoli 2003; Armingeon 2001).

Since the late 1970s, the Swiss welfare state has experienced a massive growth placing it close to the characteristics of the average OECD welfare state. The institutionalisation of the Swiss social security system has been strongly conceived within a labour insurance base scheme. Benefits are related to contributions moderated by solidary redistribution and oriented toward a family recipient model led by a male bread-winner. In addition, it combines limited universalistic policies while it keeps strong liberal traits (e.g. the administration of several of the social schemes is governed by private competition) (Armingeon 2001). To this day, “Switzerland has not yet decided on universality” (Greber 1984, 445).

Social legislation in Switzerland comprises federal mandatory and optional insurances and social aid legislations. The social security system is structured into a ten-branch scheme at federal level, complemented at cantonal level by the social aid legislations and complementary provisions, which are mainly cantonal responsibility and subject to limited federal uniformity beyond core concepts (for an example, see discussion about family allowances on this same chapter). Table 2 illustrates the competence distribution of some of these schemes between the cantons and the Confederation.

Table 1: Constitutional decision of enactment of national social security schemes

| SOCIAL SECURITY SCHEMES | Year of Constitutional Decision | Year of Enactment | Time Elapsed (years) | Law |
|-------------------------------------|---------------------------------|-------------------|----------------------|--|
| Health insurance | 1890 | 1914 | 24 | LAMA (revoked in 1995) |
| Health insurance (compulsory) | 1890 | 1996 | 106 | LAMal – Loi fédérale du 18 mars 1994 sur l'assurance-maladie, RS 832.10 |
| Accident insurance | 1890 | 1918 | 28 | LAA – Loi fédérale du 20 mars 1981 sur l'assurance-accidents, RS 832.20 |
| Pensions (1st pillar) | 1925 | 1948 | 23 | LA VS – Loi fédérale du 20 décembre 1946 sur l'assurance-vieillesse et survivants, RS 831.10 (OASI) |
| Invalidity insurance | 1925 | 1960 | 35 | LAI – Loi fédérale du 19 juin 1959 sur l'assurance-invalidité, RS 831.20 (DI) |
| Family allowances | 1945 | 1953 *2009 | 8 64 | LFA – Loi fédérale du 20 juin 1952 sur les allocations familiales dans l'agriculture, RS 836.1 *LAFam – Loi fédérale du 24 mars 2006 sur les allocations familiales, RS 836.2 |
| | | | | |
| Maternity insurance | 1945 | 2005 | 60 | LAPG – Loi fédérale du 25 septembre 1952 sur les allocations pour perte de gain en cas de service et de maternité, RS 834.1 |
| Pensions (2nd pillar) | 1972 | 1985 | 13 | LPP – Loi fédérale du 25 juin 1982 sur la prévoyance professionnelle vieillesse, survivants et invalidité, RS 831.40 |
| Unemployment insurance (compulsory) | 1976 | 1984 | 8 | LACI – Loi fédérale du 25 juin 1982 sur l'assurance-chômage obligatoire et l'indemnité en cas d'insolvabilité, RS 837.0 |

Source: Bonoli 2006 'Politique sociale', in U. Klöti (ed.), Handbuch Politisches System der Schweiz. Band 4. Politikbereiche (NZZ: 2006), pp. 798

Table 2: Social policy in Switzerland: Distribution of competences

| Programmes | Kind of programme | legislation | funding | implementation |
|---|---------------------|-------------|---------------|----------------|
| Old-Age and Survivors' Insurance (OASI) | Universal coverage | F | F/* | F/C |
| Disability insurance (DI) | Universal coverage | F | F/* | F/C |
| Complementary provisions (CP) | According to income | F | F/C | C |
| Unemployment insurance (LACI) | Social insurance | F | F/C/* | F/C |
| Accident insurance (LAA) | Social insurance | F | **/** | F |
| Health care (AMal) | Universal coverage | F | **/C | C |
| Family allowances (LFA and LAFam) | Social insurance | F/C | F/C/ **/** | F/C |
| Maternity allowance (LAPG) | Social insurance | F/C | * | F/C |
| Unemployment assistance | According to income | C | C | C |
| Social aid | According to income | C | C | C |

* Social contributions of employers and employees, at least in equal amount

** Premiums paid by the insured person

*** Premiums paid by employers and self-employed workers

Source: adapted from Bertozzi and Bonoli (2003)

We shall discuss some of the protection regimes and illustrate how solidarity has shaped some of their legal provisions.

Old-Age Benefit

In the first pillar (Old-Age and Survivors' Insurance, OASI), benefits are based on a contract between generations. Current pensions are primarily financed by contributions made by the so-called active generations (employees and employers, at equal percentage, Cst. Art. 112§ 3 let. a, OASI Art. 102§ 1 let. a; Baumann 2008). These active generations will then in turn benefit from contributions made by younger generations. Historically, until the 19th century, this kind of solidarity was dependent on family religious institutions and charitable organisations through local solidarity funds. The federal State did provide a restrictive and rudimentary system

of public assistance only for the very poor (Federal Social Insurance Office 2015). But in 1880s, mass pauperisation of the industrial proletariat made the creation of a national insurance system necessary. However, every attempt failed until 1946, when OASI, which is currently in force, was finally enacted.

OASI-based benefits are also financed up to 25% by federal public contributions, primarily based on taxes on tobacco, distilled beverages, gaming and VAT (cf. Cst. Art. 112§ 5, OASI Art. 102 ff). Through consumption of various goods and services, consumers are thus acting in solidarity with beneficiaries.

Solidarity claimed in the OASI is not only dependent on generations (horizontal solidarity), but also on economic criteria (vertical solidarity). Insured persons pay contributions of a certain percentage of their overall yearly income, while pensions are capped at a maximal amount. For salaried workers, contributions are paid evenly by employers and employees. The calculation of individual old-age pensions depends on various factors, including the medium insured income the insured person earned during the total period subject to contribution. As of early 2017⁴, the age giving a right to old-age pension is 65-year old for men and 64-year old for women. Full pensions require men and women to have respectively fulfilled 44 and 43 years of contributions. When such years are lacking, partial pensions, expressed in terms of a percentage of full pensions, are served. The lowest full annuity is CHF 1,175 a month (for an annual income up to CHF 14,100) and the highest, at CHF 2,350 per month (for an annual income of CHF 84,600 and above).

For married couples or same-sex registered partners, joint pensions are capped at 150% of the maximal single full annuity (OASI Art. 35). In setting a fixed minimal vital amount granted to any insured person and capping pensions, solidarity with the less fortunate is a strong feature of OASI (Message of the Federal Council, 10 November 1971, Federal Sheet No 51, December 24 1971, FF 1971 II 1609: 1625; Greber 1984).

For dependent workers earning at least CHF 21,150 per year, Occupational Benefits Insurance (LPP) is mandatory (LPP Art. 2). Self-employed workers and workers with lesser income can take out an optional insurance governed by the same set of rules. Since LPP only sets guidelines

4 An overall review of the pension system, including a uniform pension-opening age at 65, will be submitted to the Swiss people's vote in September 2017

and rules meant to harmonise the minimal mandatory regime, more favourable regulations can be enacted in execution of the law (public-sector statutes, specific branches, specific employer or even specific categories of employees of the same employer). According to Cst. Art. 113, the occupational benefits (2nd pillar) combined with OASI (1st pillar) must enable the insured person to maintain an appropriate standard of living. Both pillars aim at covering 60% of the insured person's previous income.

Contributions, set as a percentage of the insured salary, are borne by the employer and the employee, at least to an equal amount. Annuities are directly related to the amount contributed in the insured person's account. Thus, while solidarity is a strong guide in OASI, the principle of individual equivalence, or reciprocity, governs in LPP (Message of the Federal Council, 10 November 1971, Federal Sheet No 51 of December 24 1971, FF 1971 II 1609: 1625; Riemer-Kafka 2007).

Social Security in Case of Invalidity

Disability insurance (DI) and OASI were initially meant to be a single insurance (Valterio 2011). Together, they form the first pillar of contingency planning at federal level. Thus, they share the same scope of coverage (compulsory for all residents and/or workers in Switzerland), follow the same protection purposes (guarantee basic needs) and obey the same rules in terms of funding schemes.

While OASI covers the contingencies of old-age and death, DI ensures protection in cases of invalidity. Under Swiss law, "disability/invalidity" is an economic notion; for insured persons who were professionally active, disability is understood as a permanent or lasting loss of all or part of the insured's earning capacity in suitable professional fields, when such loss subsists after treatment or rehabilitation measures (Federal Law on the General Part of Social Insurances Art. 7 and 8§ 1 [LPGA; RS 830.1]). For the ones without financially-compensated professional activity, disability is evaluated in terms of hindrance to the fulfillment of the insured person's usual activities (LPGA Art. 7 and 8§ 3). Minors are considered to have a disability condition when damage to their health will most probably lead to earning incapacity (LPGA Art. 7 and 8§ 2).

DI first aims at preventing, reducing or suppressing disability by means of rehabilitation measures (DI Art. 1a let. a). Second, it pursues compensa-

tion of financial prejudice due to invalidity through cash benefits (DI Art. 1§a let. b).

The Disability Insurance has undergone three major changes since its creation in 1959, restricting its criteria. The 1959 law on disability defined invalidity as “the diminution of earning capacity presumed to be permanent or long-term, resulting from an impairment of physical or mental health from a congenital infirmity, illness or accident” (DI, former Art. 4). In respect to the major changes since 1959, three moments are fundamental for the law enforcement and development: first of all the fifth revision of DI introduced a new definition of invalidity, which is objectively measured by the competent authority (“il n’y a incapacité de gain que si [l’]atteinte à la santé] n’est pas objectivement surmountable” [LPGA Art. 7§ 2]) and foresees an income for the insured depending on this assessment.

In addition, the fifth modification of the DI provided prevention and support to people suffering from disability in order to prevent appearance of psychological risk factors linked to the health condition or disability (Geisen et al. 2008; Guggisberg et al. 2008). The sixth (DI 6a and 6b) modification of DI introduced the argument ‘poorly used working capacity’ of the people living with disability (Bieri and Gysin 2011; Probst et al. 2015, 111-112). It also appended a periodic review of rents, including the ones which had been permanently granted until then (DI Art. 8a). The paradigm shifted from “compensation rents” to working “readaptation rent” (Probst et al. 2015, 112). In other words, disability is now considered systematically as reversible and the insurance aims to restore or improve the earning capacity.

DI annuities are only served to the insured hindered at 40% of their earning capacity or higher and in terms of quarters of rent depending on the hindrance assessment (1/4 rent for invalidity between 40 and 49.9%, 1/2 rent between 50 and 59.9%, 3/4 rent between 60 and 69.9%, full rent at 70% and higher; DI Art. 28§ 2). As of 2016, 241,000 rents were served, 90% of which were sickness-caused and mostly for psychological or back-related health injuries; a striking 42% of requests are denied (Dossier assurances sociales 2017).

Federal government funding (46%) and uncapped social insurance contributions are the main financing sources of the DI. In this scheme, solidarity is expressed both horizontally and vertically, the latter through taxation (general resources of the State) and individual contributions (Greber 1984). Disability benefits are also insured in the 2nd pillar scheme and in accident insurance.

Solidarity and Mutuality: Swiss Mandatory Healthcare Scheme

In the Swiss healthcare system (Federal Law on Health Insurance [LAMal; RS 832.10]), horizontal solidarity is very pronounced, for it is based on universal coverage of all residents, which can be extended to specific categories of workers residing beyond national territory (LAMal Art. 3).

Healthcare is primarily governed by the principle of mutuality; similar premiums are paid by each insured person within the same canton, irrespective of their income or access to benefits, and similar legally registered benefits are covered (Greber 1984; Baumann 2008). Contributions are computed based only on the place of residence and not on socio-economic indicators except for age and sex (Dispositions Transitoires de la Modification du 21 décembre 2007 – Compensation des risques). Basically, the insured person covers health expenses up to personal excess (set by default at CHF 300.-/yr) and a 10% share of all expenses beyond excess, up to CHF 700.-/yr (LAMal 64§ 2).

Nevertheless, the Federal Court has affirmed that solidarity balances the principle of reciprocity inherent in mutuality (ATF 116 V 345, c. 5b). Thus, solidarity occurs in different forms in healthcare and certain groups of insured persons benefit from particular conditions. For example, children (under 18) are freed from excess, their share amounts to CHF 350.-/yr (LAMal Art. 64§ 4) and they pay lower premiums (LAMal Art. 61§ 3). Pregnancy and maternity-related expenses are free of shares (LAMal 64§ 7). Moreover, LAMal Art. 65 states that cantons subsidise premiums for low-income insured persons and hospital expenses are partly covered by cantonal subsidies as well (Baumann 2008).

The Swiss healthcare system is semi-private, since the insured persons can freely choose their insurer from a list of licensed companies (LAMal Art. 4§ 1). This basic insurance notably covers treatments performed by a doctor and prescribed medicines, hospital treatment costs on a general ward, maternity costs, and other benefits under certain conditions – vaccinations, health examinations, etc. – (LAMal Art. 25). Most strikingly, dental care is not covered under basic insurance conditions, except when caused by specific situations (LAMal 31). Furthermore, optional supplementary insurances allow the insured person to receive benefits that are not covered in the basic insurance scheme (e.g. the supplementary insurance for hospitalisation benefits insured access to private clinics and private services in public hospitals).

Social Protection in Case of Illness or Accident

Switzerland, most strikingly, knows no general social scheme for income compensation in case of illness (Dupont 2014). Income coverage under such contingencies is ruled by labour law, which illustrates solidarity between employers and employees.

Notable exceptions have been enacted for sick unemployed insured persons in Cantons of Vaud and Geneva, who are covered thanks to special contributions debited to daily allowances. Beneficiaries in these cantons are thus the most protected persons by public legislation in Switzerland in the event of illness. Public sector workers are also protected by law for their work conditions are set in statutes.

Article 324a of the Code of Obligations (CO; RS 220), mandates the employer “pay the employee his salary where the employee is prevented from working by personal circumstances for which he is not at fault, such as illness, accident, legal obligations or public duties” (Livewhat 2014, 405). Employers can decide to pay on their own or opt for a private insurance scheme whose contributions are at least equally financed.

In the event of an accident, social security protection differs depending on the existence and nature of the insured person’s work relationship. Federal Law on Accidents (LAA; RS 832.20) is only compulsory for salaried workers and unemployed workers covered under LACI (LAA Art. 1a). Optional insurance is available to self-employed workers (LAA Art. 4), while people without paid professional activity are covered by LAMal (see 2.7.5.3). LAA triggers benefits in kind (most notably medical treatment) and in cash, such as daily allowances.

Coverage and contributions also depend on the material characteristics of the contingency, for the LAA covers employment-related accidents, non-occupational accidents and employment-related illnesses (LAA Art. 6). Part-time workers are only covered for non-occupational accidents when they work 8 hours per week or above for the same employer (LAA Art. 8§ 2,). As for funding, employment-related illnesses contributions are fully settled by the employer, non-occupational accidents contributions by the insured person, and employment-related accidents contributions are equally funded by both parties (Frésard-Fellay et al. 2015).

In this insurance scheme, reciprocity between contributions and benefits is strongly implemented. Insured income determines the compensation amount to be paid, and premiums are related both to insured income and risks incurred by specific employers (LAA Art. 15 and 92). Solidarity

traits are nonetheless present, since premium amounts cannot be influenced by gender for non-occupational accidents, although statistically, men are more prone to be subjected to this contingency (Baumann 2008). Likewise, medical treatment is provided irrespective of the amount of contributions paid (Baumann 2008).

In conclusion, workers are treated in a very different manner depending on the contingency that occurred, whether in cases of illnesses or different types of accidents and assimilated illnesses.

Solidarity towards Families: Complementary and Survivor Rents, Maternity and Family Allowances

Solidarity expressed to families by single or childless insured persons (Greber 1984) is crucial to several protection regimes and types of benefit. It materialises in the entitlement to additional benefits for the insured person's family members without any additional contributions having to be paid to access benefits.

For example, when elderly insured persons reach pensionable age, they are entitled to complementary annuities, set as percentages of the amount of the main rent, for their dependent children, until they attain the age of majority or 25 if they are still enrolled as students or apprentices (OASI Art. 22 and 25; LPP Art. 17). The same conditions apply in the case of orphan pensions, both under the first and the second pillar (OASI Art. 25; LPP Art. 22§ 3).

Since DI and OASI were meant to be a single insurance when the constitutional mandate was enacted, similar benefits are guaranteed in cases of invalidity (see DI Art. 35 ff, which refer to the OASI). Moreover, in the first pillar (OASI/DI), fixed enhancements are added to the yearly insured income when the insured exercised parental authority over children or took care of family members under certain conditions (yearly amount of CHF 42,300; 2OASI art. 29^{sexies} and 29^{septies}; DI art. 36§ 2). In addition to orphans' annuities, survivors' rents are allowed to widows, widowers and surviving same-sex registered partners in the event of death of the insured.

In the first pillar, men and women are not subject to the same eligibility requirements. Married women whose spouse is deceased are entitled to a widow's pension if they have children. If they do not have children, they are eligible if they are 45+ years old and were married for at least five years before the death of their spouse. Under specific conditions, a pen-

sion is also provided for divorcees whose ex-spouse has died (OASI Art. 24a). Eligibility for men is focused on children: “men whose spouse or ex-spouse has died are entitled to a widower's pension if they have children under 18. The right to the widower's pension ends when the youngest child reaches the age of 18”. (OASI Art. 24§ 2). Widows are granted lifetime annuities except in the event of remarriage.

In the 2nd pillar, widows, widowers and surviving same-sex partners are all entitled to pensions based on the same conditions; they should have at least one dependent child or be 45+ years old and have been married for five years or more (LPP Art. 19, 20 and 22§ 2). When none of these conditions are fulfilled, benefits are served as a single allowance of triple the amount of a yearly annuity (LPP Art. 19§ 2). Other beneficiaries, notably common-law partners, can be instituted through regulation by the pension funds in accordance with the federal statute (LPP Art. 20a).

Cst. Art. 116 prescribes federal mandate to enact protection of families, especially in the form of “family allowances and maternity-insurance”. Consequently, federal law has been enacting income compensation since 2005 in the event of maternity (Loi fédérale sur les allocations pour perte de gain en cas de service et de maternité [LAPG; RS 834.1]). This income compensation is restricted to professionally active women (LAPG Art. 16b). Compensation is provided as a daily allowance for every working day of her maternity leave. The daily allowance is equal to 80% of the average income received 6 to 12 months before the entitlement to maternity allowances, yet capped at CHF 196.- (LAPG Art. 16e and 16f), and is paid for a maximum duration of 98 days (LAPG Art. 16d). Funding is implemented through additional contributions to the OASI scheme (LAPG Art. 27). As such, all residents and/or workers and employees in Switzerland contribute to LAPG, even though it only benefits professionally active mothers (Perrenoud 2015).

Cantons can improve protection by enacting specific provisions, such as the provision of adoption allowances, sometimes paid to adoptive fathers too, in most French-speaking cantons. Canton Geneva also provides maternity and adoption allowances up to 112 days and for a maximal daily amount of over CHF 320.- (Loi instituant une assurance en cas de maternité et d'adoption [LAMat; RS/GE J 5 07]).

Since 2009, a Federal Law on Family Allowances (LAFam) came into force. Previously, family allowances, except for people in agriculture, were only under cantonal jurisdiction. Self-employed and low-income parents have been entitled to allowances under federal law since 2013

(LAFam Art. 11§ 1 let. c and 1§ 1*bis*). LAFam sets unified minimal standards for monthly allowance in all cantons: CHF 200 francs per child under 16; vocational training allowance of CHF 250 per child between 16-25 years (LAFam Art. 3).

Cantons are entitled to enact more generous legislation, which has again been the case in all French-speaking and a few German-speaking cantons (see Table 3 below; LAFam Art. 3§ 2). Thus, in French-speaking cantons, monthly allowances are higher, and birth and adoption allowances have been enacted.

Table 3: Kind and amount of allowances according to cantonal laws

| Canton | Monthly child allowance | Monthly training allowance | Birth allowance | Adoption allowance |
|------------------------|--------------------------------|-----------------------------------|------------------------|---------------------------|
| Zurich | 200/250 | 250 | - | - |
| Bern | 230 | 290 | - | - |
| Lucerne | 200/210 | 250 | 1,000 | 1,000 |
| Uri | 200 | 250 | 1,000 | 1,000 |
| Schwyz | 220 | 270 | 1,000 | - |
| Obwalden | 200 | 250 | - | - |
| Nidwalden | 240 | 270 | - | - |
| Glarus | 200 | 250 | - | - |
| Zug | 300 | 300/350 | - | - |
| Fribourg | 245/265 | 305/325 | 1,500 | 1,500 |
| Solothurn | 200 | 250 | - | - |
| Basel-Stadt | 200 | 250 | - | - |
| Basel-Land | 200 | 250 | - | - |
| Schaffhausen | 200 | 250 | - | - |
| Appenzell Outer Rhodes | 200 | 250 | - | - |
| Appenzell Inner-Rhodes | 200 | 250 | - | - |
| St. Gallen | 200 | 250 | - | - |

| Canton | Monthly child allowance | Monthly training allowance | Birth allowance | Adoption allowance |
|-----------|-------------------------|----------------------------|-----------------|--------------------|
| Grisons | 220 | 270 | - | - |
| Argovia | 200 | 250 | - | - |
| Thurgovia | 200 | 250 | - | - |
| Ticino | 200 | 250 | - | - |
| Vaud | 250/370 | 330/450 | 1,500 | 1,500 |
| Valais | 275/375 | 425/525 | 2,000 | 2,000 |
| Neuchâtel | 220/250 | 300/330 | 1,200 | 1,200 |
| Geneva | 300/400 | 400/500 | 2,000/3,000 | 2,000/3,000 |
| Jura | 250 | 300 | 850 | 850 |

Source: Adapted from Information Centre OASI/DI, Memento 6.08 on Family Allowances (as on 1st Jan. 2017), p. 4.

Family allowances are financed through contributions set at a percentage of the insured income under OASI (LAPG Art. 11). Contributions are paid by employers or self-employed workers (and salaried workers when their employers are not subject to contributions under OASI; Perrenoud 2015). Family allowances for people deprived of compensated professional activity are usually fully financed by the cantons (LAFam Art. 20§ 1), sometimes partly supported by communes (Perrenoud 2015). Other family-related benefits are discussed below.

Social Security in Case of Unemployment

Swiss solidarity towards unemployed people is not one of the most developed in Europe, because the unemployed population is constantly changing and the unemployment rate is low⁵ (Giugni et al. 2014). Unemployment Insurance is regulated by a federal law (Loi fédérale sur l'assurance-chômage obligatoire et l'indemnité en cas d'insolvabilité [LACI; RS 837.0; last revision 2011]).

5 Swiss and OECD statistics differ for Switzerland only qualifies as unemployed persons who have been registered at Regional employment offices (LACI Art. 10§ 3).

While Cst. Art. 114§ 2 let. c expressly mentions that self-employed persons may insure themselves voluntarily, this option has not been enforced under the actual scheme. LACI is mandatory for every salaried worker and financed by equal contributions between the employer and the employee (LACI Art. 2). An additional contribution of 1%, called “solidarity percentage” is required for incomes over CHF 148,200 per annum. To access benefits, a contribution period of at least 12 months within 24 months is mandatory (LACI Art. 13). LACI provides benefits equivalent to 80% of the income for beneficiaries with children and 70% for those without children, with a capped amount of about CHF 455 (CHF 398 when 70%) per working day.

A waiting period is set before access to allowances, depending on the insured income and familial expenses of the insured (LACI Art. 18). Without a child under 25 years old, the shortest period before receiving the allowances is five days, if the worker’s income was under CHF 60,000 per year, and the longest is 20 days for a worker with an income over CHF 125,000 per year.

The main criteria to receive LACI is employability: “[someone who is] ready, able and qualified to accept reasonable work and to participate in integration measures” (LACI Art. 15). Every person over 30 years old is “required to immediately accept any job that corresponds to their experience and education, while unemployed persons below the age of 30 are required to accept any job, irrespective of suitability to their competences and experiences (LACI Art. 16)” (Livewhat 2014, 397). Cantonal unemployment benefits are prevalent in cantons with high unemployment rates: mostly the French-speaking cantons, Zurich and Schaffhouse (Bertozzi and Bonoli 2003, 27).

Although it is a contribution-based scheme with high reciprocity, vertical solidarity notably appears in capped benefits while contributions rest on all of the worker’s salary. Specific solidary provisions have also been enacted for certain groups of insured persons. For example, LACI Art. 13§ 2 enumerates circumstances where certain periods are assimilated to contribution periods to secure the insured person’s access to benefits (people who could not reach 12 months of contributions, notably due to sickness, military or civil-service or maternity). Likewise, certain groups of people are freed from contribution requirements, such as surviving spouses compelled to look for work because of their spouse’s death (LACI Art. 14).

Non-Contributory Benefits

The purpose of non-contributory benefits differs from the one pursued by insurance-based protection regimes. While the latter are conceived as a substitute-income scheme, the former aim at fighting extreme poverty (Beveridge's "Freedom from Want"). As such, non-contributory benefits are fully covered by public powers, through direct or indirect taxation, and thus reflect the People's will to act in solidarity with a selected part of its population (Greber 1984).

In the Swiss legal order, non-contributory benefits are embedded in several regimes, whether as separate laws or as provisions within an otherwise insurance-based law. Altogether, these benefits are considered as social aid in a broad sense.

The first of those regimes, is the one of complementary provisions (CP). When, in spite of pensions under both pillars, fundamental needs are not covered, complementary provisions can be served at federal (Loi fédérale sur les prestations complémentaires à l'AVS et à l'AI [LPC; RS 831.30) and cantonal levels. As such, CP can be considered as an attempt at providing minimum income guaranteed to specific insured persons belonging to the national community (Jöhl and Usinger-Egger, 2016). In particular, it is important to mention that, contrary to the benefits they top-up, CP are not subject to exportation, but can only be received by residents. As of 2016, 278,000 persons benefitted from CP (Dossier assurances sociales 2017).

CP reflect the people's will to guarantee freedom from want in case of old-age, death of family support (Greber et al. 2010) or invalidity (Cst. Art. 112a). As non-contributory benefits, CP are fully financed by public powers through general taxation. Perceived CP are strikingly, in general, not subject to individual taxation. Benefits are served in the form of annual complementary provisions, financed to 5/8th by the Confederation and 3/8th by the cantons, and of reimbursement for healthcare (including dental care) and invalidity expenses, fully supported by the cantons (LPC Art. 13 and 16).

Cantons can develop more generous regulations on the matter, which have been enacted in most cantons. For example, Canton of Geneva, covers additional health-related expenses according to its own regulation (Règlement relatif au remboursement des frais de maladie et des frais résultant de l'invalidité en matière de prestations complémentaires à l'as-

surance-vieillesse et survivants et à l'assurance-invalidité [RFMPC; RS/GE J 4 20.04]).

Moreover, a few cantons have notably enacted CP for families, granted in case of insufficiently income to cover basic household needs (Ticino [1997], Solothurn [2010], Vaud [2011], Geneva [2012]; while other cantons have enacted such legislation for a limited time period after child birth). In Cantons of Geneva and Vaud, selected parents are thus entitled to specific CP, including capped reimbursement for childcare and school tutoring expenses (Loi sur les prestations complémentaires cantonales [LPCC; RS/GE J 4 25]; Loi sur les prestations complémentaires cantonales pour familles et les prestations cantonales de la rente-pont [LPC-Fam; RS/VD 850.053]).

Another example of non-contributory benefits is the allowance for functional impotence set out in different insurance regimes. The choice of applicable law depends on the nature of the contingency related to the functional impotence (old age [OASI], disability [DI], accident [LAA]). This cash benefit means to cover the need, induced by a health injury, for constant support or surveillance by a third party to perform basic actions of daily life (getting dressed, eating, etc.). The allowance is fully supported by the Confederation in case of old-age or invalidity related to functional impotence (OASI Art. 102§ 2; DI Art. 77§ 2).

Other various means-tested benefits, including housing benefits and alimony advances, are contained in social aid in a broader sense. The latter, when unreimbursed by the debtor, are supported by public sectors at sub-federal level. As an illustration, in 2015, 51,171 persons received alimony advances in Switzerland (Federal Statistical Office).

At cantonal level, social aid provisions have been enacted for unemployed people. In Canton of Geneva, special publicly-supported benefits are provided by the cantonal Unemployment Law (Loi en matière de chômage [LMC]; RS/GE J 2 20), which includes return-to-work allowances (“allocations de retour à l’emploi”, in force since 2008), re-qualification professional internships (“stages de requalification professionnelle”, in force since 2012) and solidary jobs (“emplois de solidarité sur le marché complémentaire de l’emploi”, in force since 2015).

Last but not least, regulation on social aid most prominently embodies the People’s mandate to the legislative body to fight poverty. The fundamental right to human dignity is recognised (Cst. Art. 7). Persons in need and unable to provide for themselves have the constitutional right to assistance and care, and to the financial means required for a decent standard

of living (Cst. Art. 12). Consequently, social aid is subsidiary to any other form of financial support (social and private insurance, savings, family, etc.; Perrenoud 2015).

Social aid is conceived as a programme, including financial support, individual support measures (such as advice and orientation) and action plans for the beneficiaries' social and professional reinsertion. As a contract between the State and the individual, infringement of its conditions raise sanctions, including reductions in financial support to the minimum vital amount complying with Cst. Art. 12 (Report of the Federal Council of 25 February 2015, "Aménagement de l'aide sociale et des prestations cantonales sous condition de ressources: Besoins et possibilités d'intervention", p. 27). According to the latest statistics, 3.2% of the Swiss permanent resident population benefits from social aid financial support (265,626 persons; Federal Statistical Office: results for 2015).

At federal level, the law contains no material provisions but only establishes cantonal jurisdiction based on residency and coordination in case of intercantonal intervention (Cst. Art. 115; Loi fédérale sur la compétence en matière d'assistance des personnes dans le besoin [LAS; RS 851.1]). The cornerstone principle is one of absolute subsidiarity of social aid by any other means, including family support. Specific groups of residents are protected through topical regulations, which sometimes create a federal competence on the matter (such as assistance for asylum-seekers and refugees lodged in federal centres).

In general, cantons are solely competent to determine their own regulations and the amounts granted to beneficiaries. In order to reduce cantonal disparities, the Swiss Conference of Social Aid Institutions had adopted general recommendations to set guidelines on the matter (SCSAI Norms). These soft-law tools aim at guiding regional action and may be implemented in cantonal provisions.

Recommendations cover concepts and purposes of social aid, types of benefits, conditions, sanctions and methods of means assessment. Thus, for example, savings above CHF 4,000 should bar access to social aid for an individual (SCSAI Norm 2.1). Financial support is generally subject to reimbursement when the beneficiary's personal situation has improved, which can be perceived as exercising a negative effect on individual effort to break out of the system.

Conclusion

Swiss institutional solidarity stands under the Helvetic values of consensus, direct democracy and federalism. In general terms, the political and territorial complexity of the Swiss State is translated within the development of its Welfare State. The constitutional provision related to access to social security (Cst. Art. 41) does not ensure rights to the social schemes. The right to social security is not automatic; supplementary executional laws are key to gaining rights and for the implementation of the schemes at cantonal level. As seen in Table 1, the political values of federalism, diversity and democracy have strongly affected the adoption of the social schemes.

Solidarity pairs with individual and collective responsibility. Attachment to this value is so deep, that since a constitutional revision of 2010, improper claim of solidarity-based benefits (social insurances or aid) gives ground for loss of resident status and deportation of foreign residents (Cst. Art. 121§ 3 and 5). Swiss insurance schemes have of late strengthened their anti-fraud and abuse provisions, allowing private investigator-led surveillance⁶.

Finally, federal diversity also contributed to the creation of complementary insurance based schemes at cantonal level (e.g. Cantons Geneva and Vaud have created a complementary insurance for unemployed people suffering from illness) and to the substantial variation of cantonal complementary provisions. In this respect, the cantons of Geneva, Soleure, Tessin and Vaud are the only ones accounting for complementary family provisions based on a logic of means-testing and child-care responsibilities.

6 In 2016, Switzerland was held in violation of Art. 8 and 6§ 1 of the European Convention on Human Rights by the European Court of Human Rights for such a practice led secretly by a private accident insurer, in particular for lack of sufficient legal basis. ECHR, 18.10.2016, Case of Vukota-Bojić v. Switzerland, n° 61838/10.

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