

Total revision of the Federal Constitution : no drastic changes in view

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No drastic changes in view

After long years of silence, the official voice of Berne has pronounced on the total revision of the Swiss Federal Constitution. At the end of 1985 the Federal Council published a comprehensive report on the subject, destined as a basis for discussion by parliament. Annexed to the report was a model study compiled by the Department of Justice and Police, which shows what a new federal constitution might look like.

What does it set out to do, what is it meant to do – this model study? With what hopes or misgivings can parliament rule on the resumption of the total revision? And how revision-minded is the present-day climate of opinion anyway? «Tages-Anzeiger» editors Roger Blum and Richard Aschinger talked to the four authors of the model study: the lawyers Paul Zweifel, Werner Moser, Aldo Lombardi and Christoph Voggensperger in the Federal Office of Justice.

As long ago as 1982 the Federal Council decided in principle that the total revision of the constitution should be followed through. However, it continued to put the business off for another three years because it was unable to reach any agreement on a draft constitution. This boded ill for the future debate. Can, then, any reform of the constitution be more than a mere cosmetic job on the text?

Zweifel: The question is, in fact, whether a substantive total revision can really be expected. This seems to me to be primarily a question of the dosage. After all, no fundamental reconstruction of

our State is being planned; iconoclasm is not imminent. But point-innovations in regard to material content in the sense of a further development of the present constitution should, even today, meet with the approval of the sovereign – the people. In the cantonal constitutional total revisions, too, substantive innovations found acceptance – alongside mere formal corrections.

And when the draft for total revision was being submitted at federal level to the various interested bodies for comment, material alterations in content were called for by a clear majority. I believe,

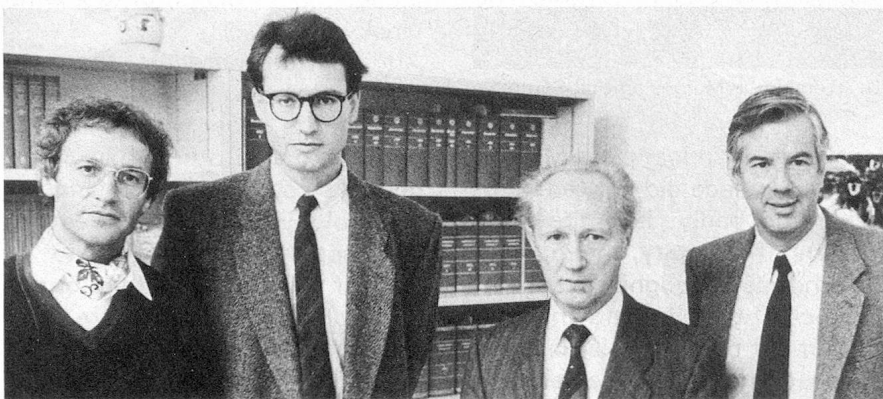
therefore, that the will for renewal is still there.

The mood of the eighties, however, is different from that of the sixties and seventies: there is a certain weariness of reform among the people. In these circumstances, is there any point at all in a public discussion on total revision?

Zweifel: There can of course be no question of a general weariness of reform. Just think of the flood of *popular initiatives* of the past 10–15 years! Think of the constant deluge of *federal legislative challenges*. All called for reforms at one legislative level or another. True, today we talk less of the total revision of the constitution than we did seven years ago because, ever since the draft of the Furgler «Committee of Experts» was submitted, nothing more concrete has been forthcoming, officially. So what should we talk about? Interest will revive, however, when the Federal Council's report is discussed in parliament. A synoptic view would be the very thing to appeal to the young people who want to know once and for all what is going on in this country.

This strikes us as being very optimistic. The latest report of the Federal Commission for Youth Questions shows that young people have almost no use any longer for politics. The desire to create something new, to alter structures, is manifestly less than it was seven years ago.

Moser: Once reform projects that have chances of influencing politics exist, then the interest of youth could quite well be found to exist. I do not really believe in this apolitical posture of youth, even though, admittedly, young people do not care for the pragmatic style of politics. None the less, youth is probably just as political as it ever was.



The authors of the Justice Department's study: Aldo Lombardi, Christoph Voggensperger, Paul Zweifel and Werner Moser (Photo: ruti).

The cantons which have totally revised their constitutions have, more than anything else, pointed up the present-day legal position. Has constitutional revision as a political control mechanism – as substantive impulse for the decades to come (as it was as a rule in the 19th century), gone off course?

Moser: Even the Federal Constitution of 1874 combined elements of restructuring with those of continuity. This would certainly not be otherwise today: no one wants to put the policies followed up to now fully into reverse. The constitution also purports to give support to policies, to establish, embody and anchor constants. But a reorientation of certain areas such as national goals or federalism is by all means the purpose of total revision.

You attempted a kind of re-orientation with the model study. What in fact is your status in this matter?

Lombardi: The study is seen as a possible model of a new federal constitution. To a large extent it accepts the criticisms of the interests consulted and it also contains our own ideas, i.e. those of our Department. It is a counterpoint to the draft produced by the Furgler Committee of Experts. In no way, however, does it prejudge the draft constitution which the Federal Council will have to work out in detail after an eye in principle of parliament. It is an attempt to show what a new constitution could also look like.

What is truly original in the model study, however, are the national goals which although recognized in a few cantonal constitutions, would be new for the Confederation. What were the reasons which led you to this solution?

Moser: There are two reasons. One is of the nature of constitu-

The Stages of the Total Revision

The process of the total revision of the Federal Constitution has already lasted 20 years. In autumn 1965, *Karl Obrecht* (FDP, Solothurn), a member of the Council of States, and *Peter Dürrenmatt* (Lib., Basle Town), member of the National Council, proposed *motions* which called for a comprehensive review of the constitution. Federal Councillor *Ludwig von Moos* said yes to the venture and in 1966 parliament remitted the two proposals. The Federal Council thereupon set up a small working group under the presidency of former Federal Councillor *Friedrich Traugott Wahlen*, whose task it was to draw up a systematic interpretative framework of the problems and difficulties. The questionnaire which followed was then sent out to the cantons, political parties, trade associations and universities. It met with a lively response and encouraged many hundreds of Swiss, women and men, to concern themselves with the question of how the House of Switzerland should then look. The Wahlen working group submitted its report in 1973. It affirmed the total revision and showed what had to be changed.

The Federal Council then set up a large Committee of Experts under the chairmanship of Federal Councillor *Kurt Furgler* and charged it with the task of working out a detailed draft constitution. This was presented at the beginning of 1978 and immediately aroused extraordinarily lively interest. Thousands of copies of the draft were ordered in Berne, and wide circles of the population were seen to be full of enthusiasm for it. However, the submission of the bill to interested parties for comment, which then followed, resulted in a less clear-cut picture. Above all, the cantons, the *bourgeois* (non-socialist) parties and the employers' associations sharply criticised the economic structure of the draft constitution as well as the repartition of tasks and duties. Faced with this outcome, the Federal Council was somewhat at a loss and in subsequent debate discussed, in several stages, variants to the draft of the Furgler Committee of Experts.

However, in 1982 the government resolved to continue along the path of total revision. And in 1983 it made up its mind first to report to parliament and only then to work out a definitive draft constitution if parliament gave instructions to do so. The report is ready and it is now the turn of parliament.

tional theory: we say that the constitution can be not merely an organization statute but can also aim at material goals. The second reason is one of system: even though the Confederation's tasks are itemized in keyword style only, they also need a goal so that the direction of impact of the activity becomes clear. We want rather to get away from the singling out of the problems and from specialization, and to anchor the broader lines and constants of policy in the constitution.

What, then, do national goals signify in practice? The rights to work, education, housing etc. were embodied in the «Experts'» draft of 1977. This has now been remodelled into goals of the state. What does this do for the citizen? Are national goals anything more than the expression of pious hopes?

Moser: Certainly. Today, we al-

ready recognize such programme articles in the constitution and these were never regarded as frills. They are at once stimuli and guidelines for the legislator. They form the bridge between the directly-applicable fundamental rights and the «competency norms» of the Confederation.

If parliament gives the green light for the total revision, it will be helping itself to a tremendous job of work: the task of total revision might well strain the limits of its capacity.

Would not a special «council for the constitution» be better?

Voggensperger: The Federal Council leaves this question open, showing, in the report, merely the advantages and disadvantages as well as the legal position. Any decision is a matter for parliament – and rightly so.

And what happens next? How soon will there be a «message», with draft, if at the end

of 1986 parliament has said
yes – carry on?

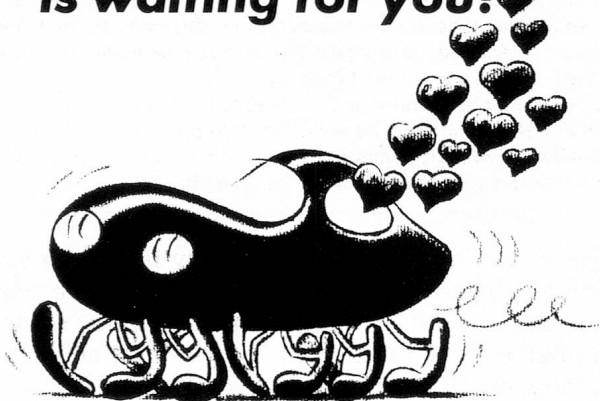
Zweifel: When the parliamentary debates have been evaluated, we shall have to submit certain questions to the Federal Council for preliminary decision. Within the framework of such decisions, the draft constitution, which will have been thoroughly examined and discussed by the Federal Council, is then worked out in detail.

This process will certainly take two years. Debate and discussion of the new constitution in parliament should take some four to five years. Then comes the referendum and, if the result is positive, the new constitution could thus enter into force between 1995 and 2000. ●

(Extract from the «Tages-Anzeiger» of 27. 11. 1985)

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