The political structure of the Swiss Confederation. Part 3, Avoiding concentration of power

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The political structure of the Swiss Confederation (III)

Avoiding concentration of power

In its classical sense stemming from eighteenth century political thought, the principle of the separation of powers meant that the legislative power, the executive power and the judiciary should be entirely independent from each other in terms of both organisation and persons.

According to this basic principle the Swiss Constitution attributes legislation to the Parliament (or Federal Assembly) – and in this connection the previously described popular power of initiative must not be forgotten (see Swiss Review 2/92) – execution of the law and the establishment of national policy to the Federal Council and judicial power to the Federal Supreme Court and the Federal Insurance Court.

However, it must be added that the principle of total division between these three powers has never been consistently applied.

Examples:
The Federal Constitution allows the Federal Assembly to take on an executive role by giving it the task of approving the federal budget and the annual federal accounts, as also the duty of supervising the operations of the administration. It also has a judicial function of sorts in that it can deliver pardons in certain cases and act as an instance of appeal.

There are also certain cases in which the Federal Council has a legislative and a judicial function.

Examples:
Practically without exception, it is the Federal Council and not the Parliament which prepares the initial drafts of new laws and in certain cases of administrative conflict it exercises a judicial role.

The Federal Assembly
The Federal Assembly is made up of two chambers: the National Council and the Council of States. These are non-professional bodies, and their members receive expenses rather than salaries.
● The National Council represents the Swiss people in their entirety. It has 200 members, and these represent the various cantons and half-cantons in proportion to the number of their inhabitants.
● The Council of States represents the cantons as such. It has 46 members, of whom each canton elects two and each half-canton one.

The legislative power is considered the most important of the three powers which make up the organisation of the Swiss federal state.

National and state councillors are elected every four years on a pre-arranged date in national general elections.

The two chambers have equal rights, and they meet at least four times a year at the same time. However, their deliberations are separate. All sessions of both chambers are open to the public.

The Federal Council
Switzerland is run by a group of seven federal councillors acting together in what is known as the collegial system – which implies joint responsibility for all decisions. The Federal Council is the supreme executive and governing organ of the Swiss Confederation. Its chairman is the current President of the Confederation; the latter, however, is head of state in protocol and symbolic terms only, and he possesses no more authority than the other members of the Federal Council.

The Federal Council is elected for a period of four years by the two chambers of the Federal Assembly meeting in joint session. During this period no member of the Federal Council may be voted out of office or in any way forced to step down. Not more than one member of the Federal Council may be elected from the same canton.
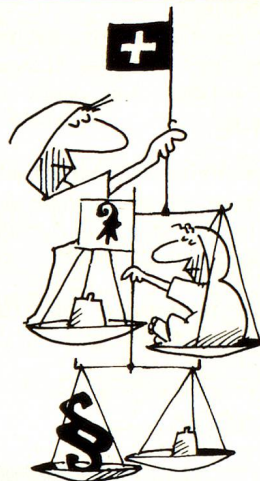
Graphic: Hugo Bossard

According to the collegial system political decisions are never made by one federal councillor alone but always by the Federal Council acting as a body. Any federal councillor who may have represented a divergent opinion during the deliberations of the council must adhere to any decision which is taken by majority vote and give it his full support as and when necessary before Parliament and public opinion. Some of the duties of the Federal Council as defined in the Federal Constitution are as follows:
● It shall ensure compliance with the constitution, the laws and the decrees of the Confederation.
● It shall submit to the Federal Assembly drafts of laws and decrees.
● It shall give effect to federal laws and decrees.
● It shall ensure the internal security of the Confederation and the preservation of peace and order.
● It shall watch over the external interests of the Confederation, particularly in international relations.
● It shall be in charge of the military affairs of the Confederation.

Since 1959 the so-called «magic formula» of seats on the Federal Council has been applied by agreement between the main political parties: the Christian Democratic People's Party, the Radical Democratic Party and the Social Democratic Party each provide two members, while the Democratic Union of the Centre provides one member.

The Judiciary
Most judicial authority in Switzerland is attributed to the cantons. However, the highest court in the country is the Federal Supreme Court, which meets in Lausanne.

It is rare that the Federal Supreme Court acts in the first and only instance. In most cases it acts as a court of appeal against judgements made in cantonal courts. The main task of the Federal Supreme Court is to ensure that federal laws are applied equally throughout Switzerland irrespective of any cantonal claims to sovereignty.

The judges of the Federal Supreme Court are elected by the two chambers of the Federal Assembly meeting in joint session and must be confirmed in office after six years.

The Federal Supreme Court also has the task of ensuring that federal laws are being correctly applied at all times throughout the various cantons.

In purely legal terms a decision by the Federal Supreme Court has the effect of a decision in one concrete case only. In practice, however, cantonal judges follow the example of the Federal Supreme Court in all similar cases.

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