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Political municipality, citizens' community, municipality of origin

Development through history

These three concepts are often confused. Cantonal differences make the problem worse. But if one knows how they arose, one can understand the various municipal functions better.

The political municipality (municipality of residence), to which every inhabitant belongs, is responsible for most municipal functions. In many cantons, however, there also exist citizens' communities which administer community property, distribute benefits to citizens and in some cases grant citizenship. This division into political municipalities and citizens' communities happened gradually throughout history.

Today every Swiss citizen has citizen's rights in one or more municipalities. This is what is meant by municipality of origin (the place of origin, the place where his rights are).

The concept of the community

The German language uses the same word for municipality and community. It descends from a medieval word meaning the land held jointly or in community, which was administered by an assembly. Today it is a territorial public body with a legal status and limited sovereignty. In Switzerland it is the basic level of political organisation.

Swiss municipalities have existed in their present form since the first half of the nineteenth century. Municipal autonomy is embedded in federal law, but the precise form in which it is exercised is part of cantonal law. There is therefore no such thing as Swiss municipal law, but 26 cantonal legal systems amongst which there are substantial differences.

History

The medieval community movement was at the origin of today's municipalities. From the beginning of the thirteenth century, citizens' associations joined by swearing an oath began to obtain self-government rights in the towns which were coming into being at that time. Such autonomy was either seized by force, purchased or bestowed from above. By the end of the Middle Ages, some towns had obtained complete political, legal and territorial sovereignty.

In the countryside, the first political communities were cooperatives which served purely economic ends: 'sumpter' or valley cooperatives in the mountains, usufruct or joint use cooperatives (for three-field crop rotation agriculture) on the Swiss plateau. Over time, however, these bodies gradually obtained legal and political functions in the framework of the manorial and bailiwick systems.

In this process the peasants of Uri, Schwyz, Unterwalden, Glarus and Appenzell obtained complete autonomy in the form of rural communities (Landsgemeinde), partly through the granting of royal privileges and partly as a result of rebellion against the nobility. In the areas which today make up the cantons of Grisons and Valais, special forms of self-government evolved, while in the other rural regions autonomy was mostly limited to the right to participate in local legal proceedings and decision-making in village matters.

After the Middle Ages the significance of these communities slowly changed in a number of ways. The cities and some of the rural communities, themselves previously vassals, subjugated vassals of their own. The upper class in social and economic terms became increasingly separated from the rest of the population. During the sixteenth and seventeenth centuries urban and rural patricians came to monopolise all the main municipal posts.

During the same process the communities sealed themselves off from the outside world. By levying high residence fees for new inhabitants they sought to protect themselves from an influx of outsiders with little means and from over-use of the community land. As part of this process a situation arose in which citizens with full rights were in a position of domination over mere inhabitants (the cottagers).

As the states (or cantons) came into being and the trend towards political absolutism increased, the rural and small urban communities gradually found themselves losing their political and legal autonomy. At the same time additional administrative tasks were imposed upon them, such as the duty to look after the poor, and it was from this latter task that in many areas the principal of the muni-

Importance for Swiss Abroad

In spite of their foreign residence, political municipality, citizens' community and municipality of origin (or canton of origin) may also be of major importance for Swiss Abroad in a number of matters. Here are some examples:

- *Since July 1, 1992, Swiss Abroad have been able to exercise voting rights in Switzerland by correspondence. They may choose their municipality of origin or any municipality in which they have previously resided as their voting municipality.*
- *In many cantons, cantonal citizens whose parents do not reside in Switzerland or who live abroad and have no parents may claim education and training allowances in their canton of origin provided they satisfy the necessary legal requirements.*
- *Pursuant to the Federal Law on International Private Law (see Swiss Review 3/97 and 4/97), Swiss citizens who are resident abroad may in some cases claim the jurisdiction of the authorities or the courts of their municipality of origin (e.g. in the event of divorce).*
- *Various documents may be provided by the responsible authorities of the municipality of origin (e.g. a certificate of civil status or a certificate of marriageability). The family register is also kept in this municipality, and a certificate of origin may be provided by it.*
- *Citizens of municipalities and cantons often receive special privileges in hospitals and other types of home. This is particularly the case with community hospitals and homes.*
- *In the past, Swiss Abroad in need of assistance were supported by their cantons and municipalities of origin. However, since the Federal Law on Welfare Benefits for Swiss Abroad entered into force in 1974, this has been a matter for the federal government. Like for Swiss citizens resident inside the country, support for returned Swiss Abroad is no longer a matter for the canton or municipality of origin, but rather for that of residence. Only in cases where the person to be supported cannot show a minimum duration of residence does the subsidiary responsibility of the canton of origin come into play.*

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cipality of origin gradually developed during the ancien regime.

It was in the constitution of Napoleon's Helvetic Republic (1798) that the concept of the municipality of origin was transformed into that of the political municipality, and in the process this was separated from the citizens' community. The equality of all inhabitants was proclaimed, and a centralist uniform system of government and administration was set up in which the powers of the municipalities were much reduced. During the mediation (1803–15) and restoration (1815–30) periods, however, some of the old municipal rights were brought back, although this process was reversed with the proclamation of the federal constitution in 1848.

However, in spite of the new concept of freedom of establishment the new constitution did maintain voting rights in municipal affairs for community citizens. It was only with the 1874 constitutional revision that all the old political privileges of 'original citizens' were abolished.

Citizens' communities

This was the name given to the body of citizens enjoying full rights in both towns and villages under the ancien regime – as against those inhabitants who were merely residents (the cottagers).

When in the nineteenth century political rights were transferred to the newly created and open-to-all municipalities of origin, the nature of these old citizens' communities changed – in those cantons that is in which they were not purely and simply abolished.

The task of today's citizens' communities is virtually limited to the administration of joint citizens' property – which in some cases is substantial. They also distribute certain benefits to citizens, which may include the right to take wood or to use land. And they may confer certain kinds of citizens' community rights. Until very recently, citizens' communities in some cantons also fulfilled social tasks (e.g. in the fields of welfare and health).

The names of these communities differ according to canton. In St. Gall they are called local communities (Ortsgemeinde), in Uri and Aargau local citizens' communities (Orts-Bürgergemeinde), in Berne and Valais citizens' communities (Burgergemeinde) and in Glarus the untranslatable 'Tagwen'. In the cantons of Zurich, Schwyz, Lower Unterwalden, Fribourg, Appenzell Inner Rhodes, Ticino, Vaud, Neuchâtel and Geneva, the old autonomous citizens' communities no longer exist.

Political municipalities

The political municipality is the most important type of community. In the cantons of Berne, Lucerne, Uri, Upper Unterwalden, Zug, Soleure, Basle Rural, Basle City, Schaffhausen, Appenzell Outer Rhodes, Aargau and Valais, this is called the municipality of residence (Einwohnergemeinde). In other cantons it is known simply as the local community, although – to confuse matters further – in Canton St. Gall the local community is the citizens' community.

The political municipality includes all Swiss citizens (in some municipalities foreign nationals also) who reside in the territory of the municipality, regardless of any citizens' community rights which may exist.

It is responsible for all tasks which are not covered by any other type of community, e.g. police matters, area planning and building regulations, the running of public services, etc.

Other types of community

Special categories of community often also exist to look after specific tasks within a municipality, e.g. a school community for school matters, or a church community for church matters. In some of the original cantons of central Switzerland, there are corporation communities whose job is to administer the property of the corporation (or the common land as it once was). In some districts of Canton Zurich, there exist civil communities for carrying out certain duties. Such special communities may cover the territory of one or several political communities.

In a number of cantons, however, there now exists only one integrated community in the form of the political municipality. Such is the case in Vaud, Neuchâtel, Geneva and Ticino.

Municipality of origin

In the case of all Swiss citizens, the municipality of origin (the place of citizenship or the place of origin) is the municipality in which they enjoy citizens' rights. These rights stem from the law of the canton in question (the canton of origin) and federal law. Citizens' rights are based on family law (descendence, adoption or marriage), or they may be obtained by naturalisation. A Swiss citizen cannot be expelled either from his municipality of origin or from Switzerland.

In addition, the municipality of origin maintains some civil law jurisdiction, particularly in matters of civil status (family register, certification of origin, etc.).

Robert Nyffeler ■

Initiatives in brief

The Sunday initiative

The initiative 'For one Sunday without automobiles per season – a trial for four years' (the Sunday initiative) was launched by a non-party committee. The intention is to add the following to the transitional provisions contained in the federal constitution:

- On one Sunday per season, all public squares and roads, including national roads, shall be given over to common use by the population, to be free of private motor vehicles from 04:00 hours to 24:00 hours. Public transport shall not be affected.
- This transitional provision shall remain valid for four years from the date of the first Sunday without automobiles. Four years after that date, the people and the cantons shall vote on the question of whether it shall continue in force without a time limit.

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Current popular initiatives

The following popular initiatives are still open for signature:

For one Sunday without automobiles per season – a trial for four years
until August 11, 1998
Judith Hauptlin, P.O.Box 40, CH-9414 Schachen bei Reute

For sickness insurance premiums proportional to income and fortune
until October 22, 1998
Swiss Labour Party, Elise Kerchenbaum, 25 rue du Vieux-Billard, P.O. Box 232, CH-1211 Geneva 8

Property rights to be transformed into usufruct or building rights
until November 20, 1998
Werner Mühlheim, P. O. Box 8140, CH-2500 Bienne 8

For medicaments at a lower price
until February 12, 1999
Denner AG, P.O. Box 977, CH-8045 Zurich

For speedier direct democracy (processing deadlines for popular initiatives taking the form of a complete draft)
until February 12, 1999
Denner AG, P.O. Box 977, CH-8045 Zurich