democratic awakening and a liberal Europe.

It was as part of this process that a 'regeneration' movement grew up in Switzerland after 1830. The majority of cantons voted in favour of genuinely democratic constitutions. The pressure exercised by the conservative monarchs stoked the fires of Swiss independence. Liberal elements wanted a Switzerland which was more united, with total political independence, a permanent federal authority, improved economic coherence and a federal army. But the conservative cantons, mostly Roman Catholic, resisted and came together in a military alliance, the Sonderbund, which was supported by the monarchies beyond Switzerland's borders.

In 1847 the majority in the Diet, which was in favour of strengthening federal power, decided to act against the Sonderbund and to impose their views by force. This policy was implemented in a brief military campaign, conducted with skill and moderation by General Dufour, and the result was that in 1848 the old confederation of sovereign states was turned into a federal state, in which the cantons were left part of their sovereignty but where the federal authority had overriding jurisdiction in diplomatic, economic, monetary and military matters.

Switzerland was the first country on the continent of Europe to carry out an internal revolution, modernising and democratising political structures, so that it could more easily face up to the revolutionary turmoil of the day – which was spreading throughout Europe – as well as to any military consequences which might stem from German and Italian unification. The progress made in this domain enabled it to cope much more easily than would otherwise have been the case with the enormous industrial, commercial, railway and social changes which the end of the century brought to a western world which was enjoying the intoxication of its own power. ■

Switzerland's federal constitution

Reform as bi

Switzerland wants to provide itself with a new federal constitution on the occasion of the 150th jubilee of the federal state. The constitution in force today dates from 1874 and has its roots in the original document of 1848.
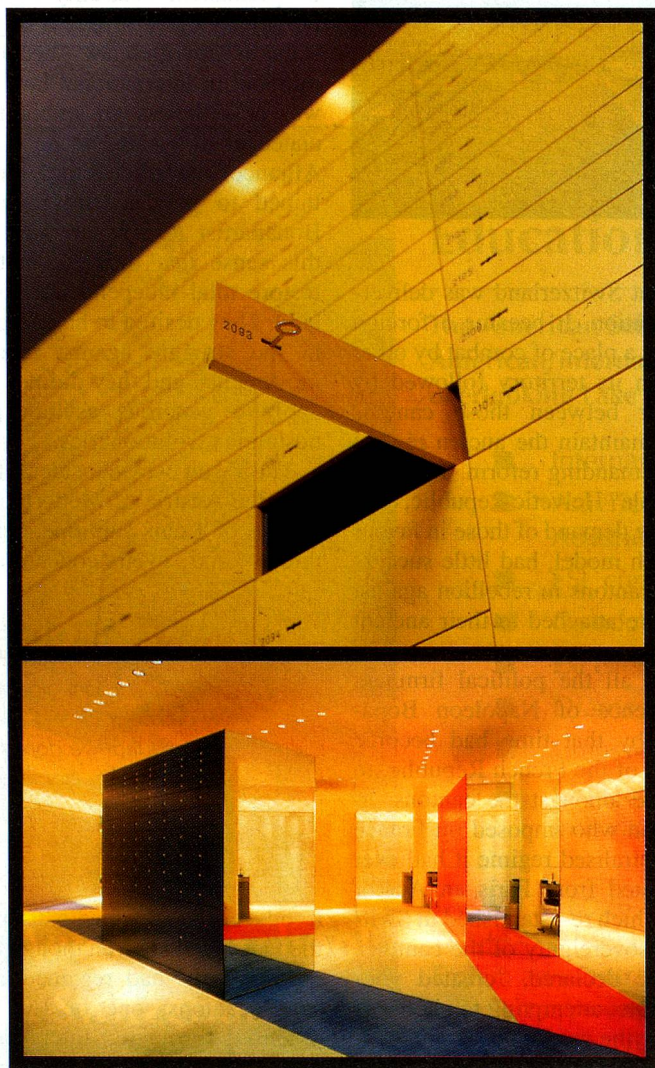
Following the end of the Sonderbund War, the Swiss Diet elaborated a new draft constitution within a remarkably short time during the spring of 1848. Fifteen and a half cantons, which together represented seven-eighths of the Swiss population, approved it.

On September 12, 1848, the Diet voted to accept the new constitution, and it entered into force on November 16 of that year.

The 1848 constitution

The federal constitution of 1848 was based on a number of liberal cantonal constitutions and took from them the following principles: division of power, democracy based on the rule of law including compulsory constitutional referendum, representative democracy in legislative matters, freedom before the law including all basic freedoms (freedom of the press, right of petition, freedom of association, freedom of establishment and freedom of religion – the last two, however, applying only to Christians). Most of these principles had been introduced for the first time in 1798 with the constitution of the Helvetic Republic, but had been cancelled in the meantime.

The federal authorities were to comprise the people and the cantons, the Federal Assembly (made up of the National Council and the Council of States), the Federal Council and the Federal Supreme Court. With the recognition of freedom of establishment, abolition of internal customs (both between and within cantons) and harmonisation of external customs duties, the federal constitution of 1848 transformed Switzerland into a single economy.

...hday present?

The total revision of 1874

The democratic movement in the cantons, the Kulturkampf and a number of wars amongst Switzerland's neighbours soon led to calls for revision of the federal constitution. But a first attempt, drafted by the liberal majority in the Federal Assembly, foundered on resistance from a number of Roman Catholic and French-speaking cantons, which were more inclined towards federalism.

However, by eliminating the most centralist clauses and by abandoning the idea of introducing the popular initiative, it finally proved possible to win

99 MY SWITZERLAND:

It is a bad thing that Switzerland is not in the EU. It shows that we are small-minded and don't want to adapt. I find it positive that many foreigners are given asylum and that we are free to say what we think. I am also pleased that our country is clean and that we have four national languages.

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this French-speaking minority over to the liberal majority. On April 19, 1874, the new federal constitution was accepted by the people and the cantons with a substantial majority. It entered into force on May 29, 1874.

The so-called total revision of 1874 did not in fact replace the federal constitution of 1848 in its entirety. In fact, most parts of the state structure and the organisation of the authorities remained unchanged. But the federal government was given a large number of new areas of jurisdiction (the military, the railways, the telegraph, control of establishment and the exercise of voting rights, issue of banknotes, regulation of factory labour). In addition, the legislative competence of the federal parliament was extended to new areas, such as civil law, debt recovery and bankruptcy law and supervision of primary education, as well as the policing of forestry and hydraulic engineering.

The Federal Supreme Court became the tribunal of final appeal for all fields included in the new legal harmonisation and the constitutional court in matters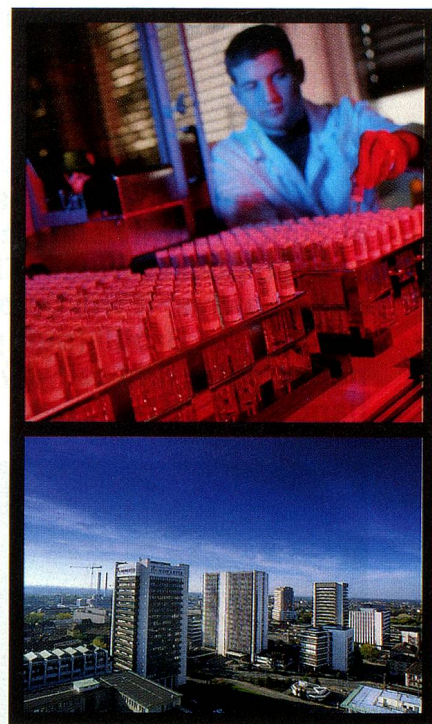 concerning those citizens' rights defined in the constitution. It was also given the authority to settle inter-government disputes both between cantons and between the federal government and cantonal authorities.

The federal constitution of 1874 also instituted the optional referendum against laws. In addition, the new basic rights enshrined in the constitution included freedom of trade and industry as well as freedom of conscience and religion, now applying to all beliefs. Corporal punishment and the death penalty in peacetime were prohibited.

The present reform process

Since 1874, the federal constitution has not been subjected to a further total revision, although there have been about 140 amendments to it since that time. However, complaints are permanently being made that it is obsolete, incomplete and no longer relevant to citizens' concerns. The many amendments, it is said, have turned it into an incomprehensible and unreadable patchwork. In many fields there now exists unwritten constitutional law, which ought to be integrated into the basic document itself.

After a number of attempts at revision (the most recent under the auspices of Federal Councillor Furgler), the

The constitution – our social contract

Our constitution embodies the political heritage of the state and the way the nation sees itself. It may be described as 'our social contract'. Its purpose is to harmonise the wide variety of state activities. This means that alongside its legal and political significance the constitution has a major directing and integrating function. As the basic legal document of the state, it takes precedence over all others.

The constitution contains the basic principles of the state order. It defines the legal position of citizens in the state, lists the main purposes of government activity, separates areas of jurisdiction, regulates the organisation and procedures of government bodies and thus at the same time consecrates the division of state power.

Federal Assembly in 1987 mandated the Federal Council to revise all present constitutional law. Following this, constitutional reform was taken thoroughly in hand in 1994 under Federal Council Koller. An initial draft was published in 1995 and subjected to an extended consultation process (public discussion). After this had been concluded and evaluated, the Federal Council in November 1996 approved a message to parliament including three draft federal decrees: 'Revision', 'Citizens' Rights' and 'Legal Reform'.

This message is at present being considered in parallel by parliamentary commissions of the National Council and the Council of States, and in 1998 the draft reform is due to be put to the Federal Assembly for approval. If possible a referendum will be held upon it before the end of the year.

The principle behind the reform is to renew the constitution. The purpose is to bring together all written and unwritten constitutional law at present in force into a logical order and to put it in the language of today. Of course this process is not without its critics, both those who think that the review is not a priority matter and those who feel that it is not extensive enough.

The draft at present under consideration proposes that constitutional renewal should be followed by further reforms in the definition of citizens' rights and in the legal system (see Swiss Review 6/95).

Robert Nyffeler ■