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THE PARLIAMENT OF SWITZERLAND

by

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Books published in English sometimes do not come to the notice of Swiss scholars, and in any event contain so much that is familiar that it may not seem worth while ploughing through a whole volume in a foreign language. For these reasons, and to spare the expense of a book in which the reader might be disappointed, I am submitting to this Journal a summary of a book *The Parliament of Switzerland* which was written in 1960-61 and should be in print in 1962. This is also an opportunity to clarify the general ideas on which the work was based, for an English public expects ideas to emerge from the evidence but resents a preliminary discussion of concepts.

Conceptual Framework

A *Rechtstaat* which functions over a long period is based on two factors, power and law.

I. *Power*. For a society to function there must exist within it a group of people who have in their hands collectively the whole power of the state and who respect each other sufficiently to discuss political matters with each other. This is the *élite* or ruling class. Each member of such a class has a *Hausmacht* (such as a Swiss Canton, or the Roman Church or a Trades Union) or, rather, must *seem* to have such a potential centre of resistance in his power—for when we look more closely we see that within the *Hausmacht* the picture repeats itself, and there are centres of resistance within it.

II. *Law*. In a *Rechtstaat* this ruling class does not conspire together, but “discusses” among itself in a formalised manner. It observes certain “rules of the game” such as open controversies between political parties, or such as a separation of the courts of law from the administration. The Chief Justice may “know” the Commander-in-Chief personally, and yet

decide a case quite independently of this friendship. Such conduct is not only essential for the legitimacy of the system but also for its efficiency: at certain moments there must be a “clean” decision, and this is one of the secrets of the effectiveness of the *Rechtstaat* system in the long run.

The problem facing the student of the Swiss parliament is to determine where one system ends and the other begins.

The truth may be expected to lie between the two extreme positions. The extreme positions are: (1) the idea that Swiss government is wholly a “conspiracy” between some four hundred members of an *élite* group—civil servants, party leaders, Verband secretaries, etc. And (2), that the formalised transactions prescribed by the Federal Constitutions of 1848 and 1874 suffice by themselves to make government work without the need for any conscious co-operation among those who run the system.

Swiss constitutional writers, as members of this Association know to their cost, are trained in the neo-Kantian school and therefore content themselves with describing the law structure “as it ought to be”. They perceive with a sort of horror the power structure, and either argue desperately that Article 32 legitimises it or fall into a sort of cynicism. It is against this cynicism that it is perhaps necessary to warn readers of this *Annuaire* who are already committed to a non-normative approach. It is not necessary, so soon as one perceives that the government actually works in ways which are not described in the Constitution, to fall into the other extreme and talk of the “*Herrschaft der Verbände*”. A substructure of *Verbände* (and not a long history) is the condition of democratic government, and free government is government by discussion, not by oratory. The public proceedings of the Swiss Assembly may be, for example, (as indeed they are) quite unreal and unconvincing. The business which is supposed to be transacted there may be, and is in fact, transacted elsewhere, chiefly by private discussions among the *élite*. But this does not mean that the “law” system, the system of “clean” decisions at certain points, does not exist. It does exist at certain places, and is in fact very effective in Swiss federal government. To some extent also this “law” system *depends* upon the apparently rather unwise detailed administrative rules laid down in the Constitution. The spirit of the Constitution is, moreover, very well observed—taking the picture as a whole. And even though the public proceedings of the Assembly are unreal, yet they form the sanction that ensures the working of the whole system. So long as things work well behind the scenes, what happens in public will continue to be a fraud. This is a weakness in the Swiss system because it would be better to have an Assembly which looked convincing, but the system has many points of strength which compensate for this weakness. It is not necessary to condemn it just because one follows the non-normative approach to it.

My own conclusion is one of high praise for the way in which the federal government *actually* works (e. g. for the extensive influence of the *Verbände*),

and of qualified praise of the constitutional rules that are often (and quite absurdly) taken as the whole description of how the government should work.

Method

In most cases the field is too vast, and too little explored by detailed studies, for any “proof” to be offered. The method I adopted—a method of study as well as of illustration—was to take a few persons and a few incidents which seemed to be typical, and then analyse them without any juristic or sociological preconceptions (so far as possible) and then, when a pattern emerged, testing it by the same or further evidence. The proof of this particular pudding, however, is in the eating: the resulting description is false if it does not “make sense” to the Swiss student or the administrator. As a matter of presentation, and because the book is written for English people to whom German names appear outlandish and difficult to remember, I have selected a very limited “cast” of actors—a few persons whom the reader can remember and can judge for himself whether they “make sense” in human terms.

As a foreigner I have taken great care not even to seem to be interested in any matter that appeared to be confidential. I should have liked in the abstract to have been better informed about the proceedings of the Federal Council and about the military lobby, but I felt myself debarred from inquisitiveness even when in the company of those who might have confided in me. As an investigator, also, I found certain necessary fields of inquiry either too laborious or too uncongenial, and the reader will observe large gaps in the treatment of industrial lobbies, of trade unions, and of the Roman church. These gaps are due to my own deficiencies, but others are due to the peculiar difficulties of Switzerland—the lack of biographical material, the way in which shares are held and directorships indexed, the lack of indexes to newspapers, the lack of political histories after 1848, the lack of studies of specific incidents (referendums, National Council elections, elections of Federal Councillors, etc.).

It is time, however, to leave general reflexions and come to the actual argument.

Society

To find the ruling class one must reflect where one would expect it to be, from history and from the location of the power of resistance—the trades unions, for example, could (perhaps) strike, the Roman church could (perhaps) lead an armed rebellion, the military leaders could share secrets with a potential enemy. One must also see who are the people who do in fact

treat each other as members of a ruling group—the princes of society who may make war with each other but who treat each other as sovereigns. One must also seek corroboration by seeing who get elected to the seats of power and why, and who gets a share of those pleasant positions which confer honour, require little work, and command a high salary. These latter, essential to the smooth working of politics, abound in Switzerland—certain embassies, certain international posts in the patronage of the Swiss authorities, certain directorships and so on. (I have chosen the remarkable career of the late Professor Max Huber as an illustration of the career which may await someone who, born to power through many titles, happens to have great ability.) One cannot help being struck when in following, for example, the committee career of a National Councillor, by the many points at which the leading actors come into contact with one another; and one can observe with one's eyes that they are intimately acquainted, though in a peculiar way, as hostile princes are "dear cousins" to each other.¹

In this analysis I have not been concerned with the question "What did people intend in 1848 and in 1874 when they spoke of Switzerland as a democracy?". I have been concerned with the question "What is the sort of society described in Ludwig Räber's biography, or Ernst Laur's *Erinnerungen*?" These books describe a democracy, yes, but the voice of the people is not the voice of God—it is a factor to be used, when it is on one's own side. Just as the financier uses the civil code in order to get rich, so the politician uses the constitutional code in order to get power.

That there is a ruling class of this sort in Switzerland is essential to my argument. In my actual location of it I am sure to have made mistakes, of which the largest will be that my material is always out of date. I hope I may point out in extenuation how very little material there is in print on this subject. With regard to this very important word "democracy", my conclusion is that the "tone" of life in Switzerland is very democratic, and that the barriers to social advancement are not "social" barriers, but that the concept is not helpful in determining the actual location of leadership or the structure of society. Democracy is not a word I often use, but I mention it because I know the Swiss reader expects me to.

Party Doctrines

Analysis of power in society is corroborated by analysis of political doctrines. Social Democracy and Christian Conservatism, for example, are the doctrines that correspond to a Hausmacht (or centre of potential

¹ It is distressing, when one reflects how important it is that diplomats should be accurately informed about public opinion, that the embassy society in Berne shows no characteristics at all of being composed of the "ruling few". Is this everywhere so?

resistance to government) in Trades Unions and cantonal Catholicism respectively. The general impression Swiss political life makes upon me is that such doctrines are still formulated in terms of Radical-Liberalism as the norm, against which other doctrines are a protest. The German, protestant, upper professional class provides the basic ethic, and other political doctrines are stated as if they were the ethics of a minority. This corresponds to something in the political life of the nation. Power is thought of as belonging to a particular class, and the demand of the other classes is for subsidies and a share of salaries rather than for power.

Elections to the National Council

When an election is examined it is not possible to look only at the single campaign itself, but the political system must be studied as a whole. What sort of creature is a deputy? Why do the successful candidates stand, and who are those mysterious figures who fail to be elected? From the standpoint of the candidate, how does election fit in with his career? Who elects him? Why?

It is clear that there are as many types of election as there are candidates. But, to bring some order into the mass of material, I consider separately the "public career" (i. e. the deputy who works up from the communal and cantonal level), and the "Verband career": the classification in the statistics and the election returns is so loose that I was unable to obtain any reliable figures about the numbers of each. I have then examined an actual election in three types of cantons (Schaffhausen, Lucerne, Berne) and, mixing my methods a bit, used the Schaffhausen example to illustrate four typical political careers and the very close connection between elections to the two Councils. It is, at first, very disturbing to investigate a general election—for the element of popular choice is so small. The role of the electorate seems, at times, little more than that of the blind boy who used to draw out the winning tickets in Irish lotteries. It is the political system as a whole, not merely the election, which makes sense. The function of an election is not to choose persons who abstractedly "represent" the electors, it is to select persons to work the very peculiar system practised in Switzerland. At their best the Swiss National Councillors are of superb quality—higher than some Federal Councillors—and the problem is, rather, why people of such very great ability stand for election to a Council whose public activities seem so unremunerative. At the worst, there is no member who does not bring with him some political dowry, some source of power, to the parliament in Berne.

There is no agreement as to what sort of creature the "typical" member is. Councillors regard themselves as being spiritually independent, but the case can be made out that two-thirds in each Council are career politicians

(i. e. who hold or have held a paid political office in a Verband, party, or local authority). The field needs much more careful investigation than I could give it, and I obtained very different results when I counted up those *not* spiritually free (and reckoned the others as agents of an outside body) and when I counted those who are manifestly politically “tied”. It is clear also, from the figures published by Dr. Gruner in the *Annuaire* of 1961, that there has been an important shift in the type of person selected over the generations.

Elections to the Federal Council

This is the most striking attribute of supremacy of the Assembly. The “rules of the game” will be familiar to every reader of this *Annuaire*, though the English reader knows them only in a too simplified form. I have selected three elections (Feldmann, Wahlen, and the elections of 1959) and attempted to restate the rules from an analysis of these decisions. The three patterns which emerge are: (*a*) the foregone conclusion (“the Bernese type”); (*b*) the apparently foregone conclusion, when something goes wrong (Wahlen) due to personal factors; and (*c*) the situation when there is both a choice between what rules to apply and what person to select. In establishing this pattern I did, of course, try to reflect on each election since 1848, but the material is in too raw or too naive a form to be readily used.

Looked at in another way, the *career* of a Federal Councillor is of interest, and it is clear that there are “model careers” which can be compared with the model careers of leading National Councillors. Account must also be taken of those very formidable figures, the corps of unsuccessful candidates for the Federal Council. I do not think that the Swiss reader of this journal will find anything new in this part of the book but I think the *method* will interest him. A thorough investigation of, for example, the Wahlen incident would reveal very much of the power-structure of Switzerland.

Resignation from the Federal Council

The procedure of the Assembly would lose much of its point were there not a concealed mechanism for the accelerated resignation of Federal Councillors. A Federal Councillor needs to keep his grass-roots in his Verband and in his party, and needs the co-operation of the Assembly. Did, to take an example, Musy *want* to resign, and did Pilet-Golaz? As soon as one looks down the list of Federal Councillors and asks why they resigned, it is clear that there is a sort of concealed parliamentary system in the Federal government. There are in fact three categories—those who were forced out, those who resigned in reality from strain or overwork or death, and those

about whose resignations nothing certain is known. The delicate problems of employment of retired Federal Councillors needs to be cleared up. It is clear that resignation may be facilitated if a directorship of heavy industry, a seat on the board of semi-public enterprise, or an ambassadorship in Rome or a job in the World Postal Union, is available.

I believe that discussion of this delicate topic is quite new, though there is a hint of it in Nationalrat Akeret's thesis on *Regierung und Regierungsform in der Schweiz*—a dissertation of the greatest distinction.

Work of the Federal Council

The Federal Council (not the referendum) is the most interesting of Swiss institutions. In every government there must be some point at which the political role (explaining government to the citizens and obtaining their co-operation) meets the administration function and the sociologically-important ceremonial function. This point of contact comes right in the centre of the activities of a Federal Councillor—the political parties have not a sufficient interest in popularising the activities of “their” head of Department, so he must do it himself. The popular idea that the Federal Councillor should do only the work of a Head Clerk is quite extraordinary in a people so politically sophisticated as the Swiss.

The classification of activities I adopt is:

1. Ceremonial:
 - (a) Representing the State,
 - (b) Attendance at domestic ceremonies;
2. Political:
 - (a) Attendance before the Chambers (and, I should have added, their committees),
 - (b) As members of a political party;
3. Administrative:
 - (a) As members of the collegiate body,
 - (b) As Heads of Department.

Legislation

This is the longest chapter in the book. The outlines of legislative procedure—I mean the whole procedure from the inception of the idea in a *Verband* to the application of the law in the courts, and not just the brief passage through the Councils—is well described in Eichenberger's brilliant

thesis *Die oberste Gewalt*. I therefore adopted a different method, and have described a particular Law—a somewhat trivial one for reasons of discretion and my own convenience.

Among the problems which interested me (I have written a book on the legislative process in Britain) was at which point the “political” calculation was made, and how far back into the legislative process the long shadow of the referendum reached. I was also interested in establishing evidence of a “tacit conspiracy”, a process of “fixing” opposition by means of the network of personal contacts that stretch from the deputy to the Verband, the official, the party, the committees, the legal profession and the Finance Department. There is no *a priori* reason why the whole matter should not have been settled over a cup of coffee, but it is quite certain that in the case I studied it was not. Probably it sometimes is, but I received the opposite impression.

Initiated by a Verband, the law I studied seemed to have been drafted, as a “clean” decision, by a civil servant who made, at this stage, no political calculation—except what was inborn in him by reason of his class and education. A fresh decision also was taken (no doubt with some political colour) by the Head of Department (Federal Councillor) when the draft was already fairly viable. At the stage of the committee of experts the role of these committees was made clear in a remarkable little allocution, from which I print an excerpt. This stage proved extraordinarily interesting, and many patterns emerged which must surely be typical—the member whose standpoint subsequently disowned by his Verband, the absentee member, and the member whose integrity is such that his unsupported statement is at once accepted by all subsequent participants, and who leaves thereby an identifiable imprint on the law.

The college of the Federal Council took another “clean” decision, and, before it had reached the parliamentary committee, the draft had already received most of its final form.

The parliamentary committee stages are then considered, and it was fortunate that two quite different patterns emerged in the two Councils. In the first committee the Chairman merely acted as mediator—it was his first time as chairman—while in the second he acted as despot. One wonders whether the first pattern is not more common than Eichenberger suggests. It also emerged clearly how difficult it is to establish “who makes the law”. Some of the amendments made by the committee, for example, were suggested by the official or by the Federal Councillor, though they appeared on the order paper as committee proposals against the Federal Council’s draft. The nature of the authority of the Federal Councillor, of the responsible officials, of the Verbände, and of arguments “from the public interest” was very apparent in the Protokoll. It was also interesting to see how, after every attempt had been made to secure the agreement of the Verbände, in

the end it was the powerful Verband which was intimidated by the National Council Committee, not *vice versa*.

The career of the bill is then followed through the two Councils and on to the statute book. Had I been a more competent lawyer I should have followed also the judicial interpretation of the Law.

Finance

The difficulty which an English student of government has in understanding Swiss constitutional structure is that Swiss government seems so loosely thought-out in terms of *sanction*. In British government the sanction is, as it were, primary, and the conventions of the constitution are the mere effects of the existence of a sanction. But the Swiss constitution has several vital provisions of law (especially as regards the relationships of legislature to executive) where the legal sanction, if it is present, is vague and unenforceable. The extreme example of this is finance. A 'budget' is passed, but no-one really knows what the point of passing it is, or what would really happen if it were not passed. If a Federal Councillor would resign if the budget were defeated then the constitution is a parliamentary one. If nothing would happen then it is not a constitution at all.

The truth is that there *are* sanctions, but they are socio-political ones. It is this which compels the student of Swiss parliamentary procedure to study social structure and political structure—and not just the law. At any particular point the legal powers of the Assembly are vague and unexercisable. The one advantage it possesses is that it can draft and pass its own laws without the co-operation of the Federal Council, but it never does this. Taken as a whole, however, the powers exercised by members of the two Councils are enormous. The willing co-operation of the Councils is absolutely assential to government in practice, and government would come to a standstill if deputies, and the interests they control, ceased to co-operate with the executive. The Assembly is, in other terms, a principal centre of organised potential resistance to the executive. This is why it is consulted and this is why great men still sit there. Apart from this consideration the interest the Assembly takes in government finance would be incomprehensible.

The apparent weakness of financial control is increased by the departmental system, which affords no theoretical supremacy to the Finance Department. It is not a Treasury in the British sense and (in view of the weak Presidency and Chancery) it would seem impossible to transform it into one. To explain my surprise at this it is necessary to remind the reader of the British system whereby (1) annual legislation is needed for most taxation, (2) annual legislation is needed for expenditure, and (3) annual legislation is needed to transfer money from the Exchequer (where it is paid in) to

the Treasury (where it is paid out): an official under parliamentary control supervises this transfer. The Treasury, controlling the funds, has a stranglehold on all other Departments: its departmental chief is a leading member of the Cabinet.

There are two remarks I have to make about the Swiss system:

1. It is realistic. An assembly which is totally sovereign must at once divest itself of its power and let others exercise it. The socio-political influence of the House of Commons (which is “legally” more or less sovereign) is, perhaps, a shade less than that of the Federal Assembly—which has rather a minor place in the constitutional set-up if one looks only at available sanctions. Popular control over government, which is the aim of an assembly, is always rather weak and disappointing, and the ineffectual-seeming Federal Assembly promises no more than it performs. To achieve *any* popular control, over the years, is a miracle, and this miracle the Swiss system achieves.

2. The Swiss system seems, in the case of finance, to be evolving towards a British system. The key-figure here is the *Secretary to the Joint Finance Delegation*, who stands right at the centre of the federal financial constitution. The natural analogy is to the Comptroller- and Auditor-General who, similarly, stands in the very centre of the British financial constitution. The Secretary’s office seems, as it were, to be floating out of the “departmental” structure into a position of semi-judicial independence relying (for the sanction of its independence) on the power of the Finance Delegation and Committees.

Two other offices seem to be floating away from the departmental system in a similar manner. These are the *Zentralstelle für Organisationsfragen*, and the *Secretaryship of the Federal Assembly*. These three developments (by making certain decisions as regards finance, personnel, and the order of business, “clean” decisions) are highly desirable. The original Constitution of 1848 seems to have envisaged a Presidency and a Chancellorship which were to be independent centres of power. For various reasons (interesting, but not explorable here) both attempts failed, and a collegiate executive without any restrictions on its power over the central administration resulted. It is interesting to see how the need for clarity in administration has succeeded in re-inserting into the constitution the independent offices which had apparently been suppressed.

In a system like the Swiss, where all politics seem at first sight to be organised in order to obtain federal subsidies for particular enterprises, the way in which the national economy survives and flourishes is a great tribute to the political ability of the politicians. A demand for expenditure the whole year round, with a brief interruption of two days (i. e., while the Budget

and Accounts are being debated) in which a demand for economy is made and then forgotten—this apparently is the secret of solvency and public frugality, while the British system, which seems on the face of it to be perfect, leads to the paralysis of industry and national insolvency.

Postulates, Interpellations, etc.

My treatment of these is to take half a dozen typical (but to some extent imaginary) situations in which a deputy puts down a motion or a postulate. One of these, of course, is the situation given in the text-books, where a Verband initiates an amendment of the law in this manner. But it is clear when one follows up the history of a postulate that this is not the whole story. Postulates may be put down, for example, in order to legitimise negotiations between a group and a Department, and used as a sort of pressure and then withdrawn: "If you won't listen then I'll put down a postulate, and you'll have to listen". A postulate, in fact, is a sort of mild sanction which in certain circumstances a deputy may choose to exercise in order to influence the administration. But it serves very many other functions—to satisfy constituents, or to secure a place in a debate or a seat in a committee. But the publicity of the postulate is itself all the sanction that there is. The Federal Council need not reply, and often does not, nor need it comply even with a mandatory motion. Here as elsewhere the Assembly is a toothless watchdog.

The material for this chapter was mostly derived from the Stenographic Bulletin. Very often rapporteurs give the whole legislative history of a project in their opening speeches, and it is possible from this to gather the role of a postulate in the parliamentary process. It is a much more subtle instrument than appears from the books, and it is only possible to judge whether it attains its aim when one has ascertained what in fact its aim was.

Referendum and Initiative. Federalism.

In a book on the federal parliament I thought it possible to limit my scope, already very wide, by excluding consideration of the referendum, apart from considering how far back in the administrative process considerations concerning the referendum are taken into account. Had there been studies of various types of referendum in existence I should have included a chapter, but I shrank from the detailed work involved. The referendum is clearly a powerful weapon in the hands of a Verband. Like a postulate, the constitutional initiative is clearly of value as a threat, and legitimises the negotiations of the initiating committee with the government. There is a fascinating field of inquiry here of which the surface has not even been scratched.

Similarly I ignore federalism as a topic. But I see that the cantons are in a quite special position as pressure groups. The Council of States really hardly enters this field and is merely a chamber composed of the Radical and Catholic parties. Occasionally, indeed, the Council of States may play a "federal" role, but its normal action is as a device to undo the effect of proportional representation.) Here again, I limited my field, though I should have dearly liked to investigate a Direktorenkonferenz and to have followed the threads into cantonal politics. Like the "Bundesrat" of the Bonn Republic, the Direktorenkonferenz seems to be the hub round which the wheel of Swiss government as a whole, federal and cantonal, revolves.

Conclusion

The parts of the book which will be of most interest to the Swiss political scientist will be, I think, those which illustrate or are based upon unpublished documents, namely the description of legislative procedure and the reproductions of certain official papers. It is a book which will, I hope, be superseded in a few years time—when detailed studies of the topics I have successively treated have appeared. When my mistakes have been revealed I hope the student will bear in mind that in 1960 the only predecessors I had in this field were Claus Burkhard and Kurt Eichenberger, to whose seminal dissertations I wish once more to pay tribute, and Erich Gruner. To ski on new snow is an exhilarating experience, but it is easy to lose one's way and come to grief.

POSTSCRIPT

Political Science in Switzerland?

The issue of whether political science is a useful or legitimate subject of study can best be argued on the basis of particular attempts to use the "science", such as the one I submit. In a country like Switzerland, which is genuinely well governed, knowledge of the truth can only strengthen institutions. (My own conclusions, for example, concerning the parliament of Switzerland are thoroughly in favour of things as they are: my *first* impressions had been decidedly unfavourable, but as I studied the protokolls and the people involved I was compelled to change my mind.) At the present day indeed there is extraordinarily little written material which would enable a statesman to improve the machinery of government, either by learning from the past or knowing more about the present.

Among the information I found I needed and could not obtain, were data concerning:

Ownership and management of industry,
Social mobility in Switzerland,
Trades Unions,
The “Vorort” and other Verbände,
The Press News Agencies, and the Verbände,
Individual elections,
Lives, and elections, of Federal Councillors,
Resignations of Federal Councillors,
Federal administrative history,
Lives and statistics of National Councillors, past and present,
The histories of particular laws and referendums,
Administrative relations of canton and Confederation,
Particular Standing Committees (e. g. Foreign Affairs, Alcohol),
Constitutional History since 1848 (*not* merely amendments to the formal Constitution), and
Cantonal Executive Councils, referendums, etc.

It seems to me also that to *refrain* from writing books on “Article 32^{ter} of the Bundesverfassung und der Begriff der Absinthverbot”, “Is the influence of the Verbände in politics consistent with the Federal Constitution”, and “The Levying of Tithes in Bubikon between 1387 and 1429”, would also, in the meanwhile, serve the interests of science