

The outlines of the Swiss constitution

Autor(en): **H.M.**

Objekttyp: **Article**

Zeitschrift: **The Swiss observer : the journal of the Federation of Swiss Societies in the UK**

Band (Jahr): **- (1948)**

Heft 1087

PDF erstellt am: **27.04.2024**

Persistenter Link: <https://doi.org/10.5169/seals-689695>

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THE OUTLINES OF THE SWISS CONSTITUTION.

Lectures given by M. Aubaret and Dr. Lindt at the Open Meeting of the Nouvelle Société Helvétique on 16th March, 1948.

M. Aubaret had undertaken to sketch some salient legal aspects of the Swiss Constitution:—

The Constitution of 1848 is Switzerland's first Constitution. It has, however, many roots in the numerous pacts and charters adopted between 1291 and 1815. Switzerland, being a Confederation of 22 states, must have a Constitution particular to its structure.

One particular legal aspect of the Constitution is that it has to limit the competences of the individual Cantons on one side, and of the central organisation, the Swiss Confederation, on the other; it has to take into account the existence of 25 cantonal Constitutions.

It is interesting to realise that there are two elements that can have an influence on the Constitution, namely, the majority of the Swiss people and the majority of the Cantons, and neither of these sovereign entities can severally or independently influence the Constitution on its own.

While the Constitution defines the structure of the Confederation, it does not define the structure of the cantonal states. They can be organised on whatever lines chosen by the inhabitants of the Canton, provided that the rights of the citizens, as laid down in the Federal Constitution, and the rights of the Confederation are respected.

Switzerland has no Head of State. It is the Government, the Federal Council, that acts as a body, where in other states the President acts on his own. The President of the Confederation merely is the chairman of the Government and on many occasions its representative.

The Swiss Constitution stipulates a lucid division of the powers:—

The *legislative body* is called the Federal Assembly and consists of two chambers:—

- (a) The Council of States is the representation of the 22 Cantons, each Canton being represented by 2 Councillors and each half-Canton by one Councillor. These representatives are elected according to the Cantons' own regulations.
- (b) The National Council is the representation of the nation with its various political, economical, social and religious groups. The National Councillors are elected all over the country according to the same rules, which are laid down in the Constitution.

The *executive body*, that is the Federal Council, consists of seven members and is elected by the Federal Assembly. It is interesting to note that, although general elections take place every four years, the Swiss Government is not so much subject to personal changes, as one might expect. It has happened that Swiss have been members of the Government for over 25 years.

The *judicial authority* is called Federal Tribunal, the seat of which is in Lausanne, not in Berne, the federal capital.

A very important feature of the Swiss Constitution is the guarantee of two vital rights:— the Referendum and the Right of Initiative.

The Referendum can be considered as the Right of Veto granted to the people. It is compulsory for

amendments of the Constitution and optional for matters of legislation. The Right of Initiative gives the people the opportunity of demanding the amendment of part or the whole of the Constitution.

The Swiss Constitution has, during the hundred years of its existence, proved to be an excellent instrument. The question, however, arises whether it is still working as it was meant to work. During the recent years of emergency many regulations have been set up, which overrule certain provisions of the Constitution. The problem also arises whether the Constitution will prove a good instrument in times to come. Partial and total revisions have been suggested on several occasions.

Dr. Lindt then outlined some practical aspects of the Swiss Constitution.

The policy of every state can be guided by two extremes: It can follow the *Zeitgeist*, the way of thinking proper to the period, or it can keep to the traditions and live in the past. We can compare the life of a nation to a quiet lake, but also to a sea with its high tides and low tides. A nation can be stirred up by storms of foreign influences; its surging waves can break on the reefs of foreign powers.

The old Confederation of the thirteen Cantons succeeded in living a life which was, in its tendencies, very individual and not very much influenced by trends that provoked upheavals abroad, until the end of the 19th century, when the French Revolution did not stop at the Jura, but overflowed the Swiss Cantons and their allied territories.

The result of the French Revolution was the Helvetic Republic, an attempt to make Switzerland a centralised state with one Constitution only, irrespective of any previous constitutional facts. It is obvious that such a structure, so alien to the Swiss character, could not last. The Mediation, by which Napoleon tried to mediate between the two extremes of an exclusively federal and a strictly centralised organisation, only lasted as long as its author was in power. As soon as Napoleon had disappeared from the European platform, the old times were revived for some years. The Federation of 1815 is first of all a union of independent states rather than one Constitution. This revival of pre-Revolutionary practices was completely in line with the tendencies alive all over "restored" Europe. But in 1830 Switzerland also followed the general European trend, and one Canton after the

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other, after more or less quiet revolutions, had to democratise their Constitutions. So the ground was prepared for a Federal Constitution based on the principles of liberalism. Several drafts were discussed by the Diet; but the discussions were interrupted by internal disturbances and by a civil war, the Sonderbund, before, in 1848, the Constitution was accepted by the majority of the people and of the Cantons. It was an entirely Swiss achievement. There was no Napoleon to guarantee it.

Switzerland had had to find a compromise between the modern idea of a centralised representative democracy and the old tradition of the Diet. She followed the example set by the United States and introduced a bicameral system. (Later on, she set an example to some American States, when they copied the Swiss idea of the legislative referendum.) By having a chamber representing the nation as a whole and one equally representing each Canton, a compromise was found between the principles of federalism and centralism, a compromise which, however, does not settle all differences of opinion once for ever. In to-days newspapers we can read about heated discussions between the two "camps" about the financial reform. It would be wrong, however, to assume that this tension existing between the principles of federalism and centralism should sooner or later come to an end, before conditions could be ideal. On the contrary, the two forces are complementary to each other. Both must co-exist, so that Switzerland may live. Modern tendencies try to stress the principle of centralisation. It

is a wise policy, however, to maintain the federal structure wherever and whenever it is possible.

The Swiss Constitution has been and still is subject to many amendments, and it often happens that an alteration is made, which does not completely fit into the whole building, or even disturbs its harmony. But as the Constitution is the picture of the country itself, it cannot be and does not want to be uniform and thoroughly logical. Hans Huber once said that the Swiss put the democracy above the Constitution, that they can do anything unconstitutional, because they have the power of changing the Constitution, if they want to achieve something which is unconstitutional. The Swiss people have the same right as in America the President has. They can veto any laws and are, at the same time, the supreme authority to decide, whether laws are compatible with the Constitution or not, an authority which in America, *e.g.*, is represented by a Court set up to examine the constitutionality of any new law.

It is interesting to point out some details of the Swiss constitutional life. If you compare the Parliaments of England and Switzerland you will notice a difference of atmosphere. While the House of Commons very often gives you the impression of being the battlefield of two camps, the National Council impresses you by its unassuming dignity. The Council of States appears to you as a working conference. The relations between the two houses are peaceful and not so much influenced by tendencies towards hegemony. The Swiss Members of Parliament do not exclusively follow party instructions. They very often defend the interests of their professional, social, or local groups. Industrialists and economists probably have a stronger voice in the Swiss Parliament than professional men. There are no professional parliamentarians. Switzerland does not know paid politicians or paid party leaders or paid leaders of an opposition. The Swiss Parliament does not sit through the year, it has its three regular sessions which last between three and six weeks.

The members of the Swiss Government do not enjoy the same popularity as English Cabinet Ministers do. Names of Federal Councillors are very rarely mentioned in connection with measures taken by a certain governmental department.

We must not forget that there is something like an unwritten Constitution in Switzerland including rights which are recognised everywhere, such as the right of the three biggest Cantons to be represented on the Government, or the right of the Italian-speaking part of Switzerland to have one, and of the French-speaking part to have two representatives on the Government.

The Swiss Constitution requires of every Swiss that he must know and must be interested in his duties as a citizen. He must be conversant with the ways of exercising his rights and of performing his duties. Business of state should not become more complicated, so that it can always be understood by the average citizen. Should the Swiss people perhaps also have experts to advise them on technical matters, as, for instance, the American President has his experts, whom he can consult?

It is gratifying to see that the life of the Swiss nation has not become a quiet lake, but still like a sea has its ebbs and floods.

H.M.

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