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SWISS VIEWS ON THE NEWS.

By Dr. HERMANN BÖSCHENSTEIN.

New Constitutional Initiative on Constitutional and Administrative Justice.

The Swiss are rightly proud of their democratic, constitutional State. Should they experience any injustice on the part of some Cantonal Authorities, they can appeal to the Supreme Federal Court in order to obtain justice. This legal protection, however, possesses certain peculiarities. There exists no constitutional Court of Justice in Switzerland having the power to review or criticise any decrees promulgated by the Federal Authorities, the Federal Council or the Federal Parliament, and to check up the Federal Laws in order to see if they are truly constitutional. An attempt was made in 1938 to remedy this deficiency by means of a Popular Referendum. It is possible, at any time, for 50,000 voters to put forward a request for a constitutional revision. This is what occurred in 1938, but at the beginning of 1939 the proposal was rejected by a large majority. The example of the United States of America, where a Constitutional Court of Justice can, in certain circumstances, checkmate both the Government and Parliament, did not appear very enticing to the Swiss people. They feared that, for instance, it would be possible for a Parliamentary Decree or even a Law passed by Parliament to be overthrown by a decision of the Constitutional Court of Justice, carried by a narrow majority of say 5 to 4 votes. In Switzerland, the supreme power of the Confederation lies in the Federal Assembly, and this fundamental principle would have to be abandoned should the Federal Court of Justice be placed, so to speak, above the Federal Assembly, which comprises both Chambers of the Federal Parliament. It was also feared that the Federal Court might then also take on a political character. Its members are elected by the Federal Parliament, and thus it would be possible for the various Parties to vote for those Federal Judges from whom they could expect as little interference as possible in the doings of Parliament, in other words, men who would be pliant and accommodating in the extreme.

In spite of the non-success of the pre-war Initiative, there is a political movement afoot among the Independent Party, which is represented in Parliament by a small Fraction, to launch a new Initiative. Its purpose is to invest the Federal Court of Justice with the competence to deliver judgment not only in respect of complaints with regard to Orders issued by the Cantons, but also in respect of those complaints which are directed against any violation of the Constitution, by means of Federal Laws, Federal Decrees, Federal Ordinances and Decisions, and Regulations issued by Federal Administrative Authorities. Now, there are cases when a Referendum is launched against a Federal Law, and this Law is accepted by the people. Should it be possible for the Federal Court of Justice in the capacity of a Constitutional Court of Justice to overthrow a Law which has been approved by the people? Quite evidently, such procedure would be undemocratic. That is why, the Initiative of the Independent Party suggests that prior to submitting the Draft Bill of a law to a Public Referendum, the Federal Court of Justice should be asked to pronounce themselves on the question as to whether the proposed Law

is in accordance with the Constitution. Should the Federal Court of Justice emit a negative opinion, then the Law in question would only be considered as passed if the majority of the people and of the Cantons vote for it; in other words, it would have to be adopted as if it were a new Article of the Constitution.

In the second part of this new popular Initiative, it is suggested that the Federal Court should be set up to act as a universal Administrative Court of Justice for all disputes of an administrative character. Ever since 1929 there has existed a Section for administrative jurisdiction in the Federal Court of Justice. Certain powers have been allocated to it, but in the great majority of cases, all appeals relating to administrative matters are judged in the last resort by the Government. This circumstance is looked upon by a number of eminent legal lights as being a serious defect in a Constitutional State, in view of the fact that the political authorities constitute both plaintiff and judge, in one and the same person. At the same time, up to the present the great majority of Parliament and the people have been of the opinion that the Administrative authorities and the Federal Council were objective and impartial and that, in any case, they were far better acquainted with the disputes they were called upon to deal with, than would be a Federal Court of Justice, which would not have the same opportunities of coming into close touch with administrative wrangles. It is considered that it would be humiliating if the Federal Council which is the Supreme Executive, could be dismissed without ceremony by an Administrative Court of Justice, just as if it were a defeated party in a law-suit. Anyway, the Swiss people will have the opportunity, in the near future, of expressing their opinion regarding the proposed innovation. 50,000 signatures are quickly collected among 1.4 million voters, who will then have to go to the polls on this question.

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