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Autor: Büchi, Henri
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What you should know about BRITISH AND SWISS CONSTITUTIONS AND THEIR HISTORIES

by
JO. HENRI BÜCHI

This is the text of an extremely interesting lecture Mr. Jo. Henri Büchi gave to the Nouvelle Société Helvétique on 16th May at the Swiss Hostel for Girls at Belsize Grove, N.W.3.

After the lecture, which was much appreciated, a short and lively discussion took place about the right of vote in federal matters for Swiss abroad.

Mr. Homberger, the president of the Nouvelle Société Helvétique, directed the debate, and it was concluded that the majority of the N.S.H. is definitely against the motion.

* * *

On 14th October 1066, at the battle of Hastings, William, Duke of Normandy, won for himself the succession to the Crown of England.

Two hundred and twenty-five years later, on 1st August 1291, the free men of Uri, Schwyz and Unterwalden founded by oath and letter a confederation for the purpose of mutual help in the defence of their liberty.

For those times, none of these events would have appeared very extraordinary. But by looking back to them we can clearly see that they brought in due course: the entire transformation of existing political institutions in the one case, and the growth of a homogeneous nation out of an agglomeration of scattered units. Those two events, then, seem to me suitable points from which to start our review.

The Foundation

Now on 1st August 1291 there were dark clouds in the sky for the small Waldstätte. At the beginning of this millennium, practically the whole of present-day Switzerland was under the direct suzerainty of the German Kaiser. This meant that, except for paying their dues to the Kaiser, they were free to govern themselves as they wished. But the Kaisers were continually in need of cash. Thus, by lien, then by inheritance, much of the country came into the possession of the Kyburgs and the Breisgau family of the Zähringer. The south-western part was subdued by Peter II of Savoy. When the last Count of Kyburg died without a male heir the Kyburg possession

went to the Habsburgs. Both these houses were, of course, native to the country. The two "Stammburgen", the family castles, still exist, the one near Winterthur, and the other on a hill-crest on the right-hand side of the river Aare between Brugg and Wildeggen.

Meanwhile, however, the towns Zürich, Bern, and Solothurn had become free Empire Towns — "Freie Reichsstädte" — while the three parts of the Waldstätte had somehow been able to remain "reichsunmittelbar", i.e., only having the Kaiser as ruler.

The Habsburg family was already known as ambitious, and when Rudolf I was elected Kaiser there was reason for anxiety. However, Rudolf confirmed the status and the liberties that went with it. But on 15th July 1291 Rudolf died, and his son, Albrecht, who a few years earlier had been invested as Arch-Duke of Austria and Styria, succeeded also to, what we may call, the Swiss possessions of his house.

Thus, fearing that the new ruler would not, or at least might not, renew the privileges of their status but would try to merge them with his Arch-Duchy Austria, the founders of the Swiss Confederation met in conclave and swore to trust in God and their own strength.

The three, Uri, Schwyz and Unterwalden, were to all purposes direct democracies. No doubt their Aleman, or Schwaben, forefathers had brought the origins of their political customs from north of the Rhein at the end of the great migration. Certainly the Landsgemeinde is considered by historians to be of old germanic origin. The Schwyzerbund, then, allowed each part to govern itself according to its own desires. The Federation had an assembly of delegates from the individual countries which met as need arose. However, any decisions of the assembly, called Tagsatzung, had to be sanctioned by the individual members. It is evident without explanations that this often led to unsatisfactory situations.

Luzern and Zürich had semi-democratic government. The trade guilds were the main political bodies with their strict rules of entry. To correct myself, Zürich had for

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some time a patrician government, but the guilds got the upper hand after the Burgundian war. Berne, on the other hand, always was a patrician town. Patrician government could be beneficially despotic — since the political power lay with the patrician families who provided the members for the councils and the administration — or they could become tyrannical oligarchies. As times changed, so did their character. The land districts belonging to those towns were kept subject. Where the guilds were in power they made full use of the policy of the "closed shop". Country traders were excluded from many activities.

All the same, until the Reformation, and in some places beyond it, Switzerland, according to Gagliardi, was *in contrast to the whole of the surrounding countries, thoroughly democratic in character. For a few guilders a countryman wishing to reside in the town could buy himself in as a burgher and thereby acquire all the rights and privileges of the town people.*

With the Reformation the situation changed rapidly. Not only brought it a bitter struggle and a split between the religious groups, the Roman Catholics on the one hand, and the Zwinglians and Calvinists on the other;

but a deadening heaviness seemed to descend on the spirit of the time. Political parties, guilds and governments became more and more exclusive. The outsider was kept outside. It became almost impossible to gain membership of guild or council unless one "belonged" already.

Armed Neutrality

Two more cheerful events must be recorded. After many wilful violations of the Swiss frontiers and some of her territory the Tagsatzung was able to collect and organise an army of 39,000 men in 1647. Thereby the policy of "armed" neutrality was inaugurated.

At the following peace conference at Osnabrück, 1648, Rudolf Wettstein, Mayor of Basle, represented the protestant member countries of the Federation. His efforts were crowned with success. The conference agreed to a declaration of Switzerland's independence of any bonds with the German Reich.

Still, where there is shade, there must be light also. However much politics and government had deteriorated by then, it is reported that the 18th century meant for Switzerland a time of quiet life, "*eine Epoche des Stillebens*". But the end was near. The Eidgenossen-



Will these charming Valaisannes have one day the right to vote?

(Photo : Swiss National Tourist Office)

schaft went down in blood and thunder after the French revolution. Militarily unprepared, with what forces there were unco-ordinated, in spite of all the heroism displayed by her defenders, she had to give in to the "liberation" by the French army.

The country was forced by Napoleon into the straight-jacket of a unitary state *à la France*. From its introduction in November 1798 to February 1803, one constitutional crisis followed another and there was continual party-strife. The Swiss, with their clannish separatism and spirit of independence, could not accustom themselves to the new order. But though Napoleon may have been a maniac for power, he also was a genius in other ways than as a soldier. The *Helvetik*, as the new constitution was called, contained some very progressive parts. Much of the patrician privileges was discarded. The formerly subject territories, as far as France did not herself annex them, were made into new cantons with equal rights with the rest.

None the less, the constant quarrels could not go on. It was Napoleon again who acted as the midwife of another constitution. Because he had intervened, this one was called the "*Act de médiation*". It was favourable to the federalists. The central government had authority only over law and order, and over foreign affairs. The rest remained within the sovereignty of the individual cantons. Where there had been a "*Landsgemeinde*", this was restored. The other cantons had to establish a cantonal legislative council (die grossen Räte) as highest cantonal authority, and so forth.

Napoleon's fall brought renewed anxiety. The country, placed for so long between the anvil Austria and the hammer France, now faced the danger of interference from the side of the Alliance, but particularly from Metternich's Austria, not the least because of the still prevailing political turmoil within the country. It was fortunate that the friendly influence of Czar Alexander of Russia, but specially the fact that the English Government used its influence to restrain Metternich, as they did Napoleon III and the King of Prussia later in the Neuchâtel affair, prevented the feared calamity.

Restoration and Regeneration

The Mediation Act fell a victim of the time. The patricians wanted their privileges back, the land cantons disliked the central authority, the traditionalists wanted the old system back. In the end they agreed on a new

constitution which restored the loose federation and the greater independence of the cantons. But the new cantons remained as independent units of the federation. It was in its general aspect a *Restoration Act*.

The time between 1814 and 1830 was a restoration period, but it was also a time of gestation. New ideas gradually won ground. Demands for greater participation of the ordinary citizen in the affairs of his country increased as time went on. This movement for regeneration, for democratic rights, was stronger in the cantons and the demands were concentrated on cantonal constitutional progress.

At large public meetings in October and November 1830 the citizens of the canton Thurgau demanded direct election of the Grosse Rat, the cantonal legislative, and also asked that administrative affairs should be made public. "Der Hahn hat gekröh! Thurgauer wacht auf! Gedenket euer Enkel and verbessert eure Verfassung" — thus appealed Thomas Bornhauser to his compatriots. (The cock has crowed, wake up Thurgovians, think of your grandchildren; revise your constitution.) And so it went from one canton to another.

It was unfortunate, but fortunate perhaps in long sight, that the catholic cantons could not see their way during that period to come to terms with life and with their protestant brethren; fortunate in the sense that the swift defeat of the Sonderbund and the on the whole generous and tolerant treatment of the separatists at last prepared the way to brotherly toleration and co-operation.

On 16th August 1847 a commission was appointed and charged with the task of preparing a draft for a new federal constitution. In the incredibly short time of nine months the draft was ready. The Tagsatzung began its deliberations of it on 11th May 1848 and passed the final draft on 27th June of the same year. The delegates of 13½ cantons had voted for its acceptance.

That draft was sent to the cantons for dealing with it. Except in the canton of Freiburg, where the Grosse Rat decided on its own authority, there was a plebiscite in all the cantons. 15½ cantons with a population of 1,897,887 voted for it; 6½ cantons with a population of 292,371 voted against it. But the governments of five of these cantons declared that they would accept the verdict of the double majority. In the Tagsatzung on 12th September the new constitution was solemnly declared accepted.

(To be continued)

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