

Zeitschrift: The Swiss observer : the journal of the Federation of Swiss Societies in the UK
Herausgeber: Federation of Swiss Societies in the United Kingdom
Band: - (1968)
Heft: 1552

Artikel: Total revision of the federal constitution [to be continued]
Autor: [s.n.]
DOI: <https://doi.org/10.5169/seals-694523>

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TOTAL REVISION OF THE FEDERAL CONSTITUTION

Dr. Arthur Baur, Editor-in-Chief of "Der Landbote" (Winterthur), gave a lecture on this subject at an Open Meeting of the London Group of the Nouvelle Société Helvétique on 23rd May.

Before entering into the subject a few words must be said about the situation in Anglo-Saxon countries. For the Americans, the Constitution is almost a holy thing which they worship. In England, there is no Constitution at all. This shows the two possible ways of tackling the problem. Either there is a written, carefully framed collection of fundamental principles and laws on which the ordinary legislation and everyday practices of a country are built, or there is none at all. All the same, that does not mean that England has no Constitution at all. Even the most primitive illiterate negro tribe has a Constitution which is composed of the customs being observed by everybody. The English Constitution consists of a number of laws which date from different centuries as the Bill of Rights of 1689 or different laws fixing the ways how Parliament is to be elected. Besides these laws, there are traditions accepted by everybody, which also form the framework of the State's behaviour, that's why one may say that England has no *written* Constitution. And really, there is no official book with a title "The English Constitution", but one could easily write one based on laws and habits. The English way works well, and there is no reason why one should alter it. On the other hand, the nations on the continent as well as the United States of America stick to written Constitutions. They think that a Constitution is a necessity to grant legality. It is something which binds even Parliament. The M.P.s cannot go beyond the Constitution. History shows that this sort of brake does not always work, but perhaps it is better to have it than to do without it. In Switzerland, great importance is given to the Constitution, and one can compare its function to that of the Crown in the United Kingdom.

To resume: a Constitution is a collection of prescriptions which tell how the State is to be governed, what are the rights and tasks of the citizens, of Parliament, of the Government, of the President or of the King if there is one, and which states the principles upon which the civil and the penal codes are to be built. When the Constitution is fixed, every law which is promulgated by Parliament or any act of the Government must be in conformity to the Constitution. In most countries, not in Switzerland, there is a constitutional law-court which makes sure that no law or act is in contradiction with the Constitution.

History

The Swiss constitution of to-day dates from the year 1848. It underwent a total revision in 1874. Thus it is quite new. The old Swiss Confederation consisted of sovereign independent States each with its own form of government, democratic or aristocratic, and there was no common law for all of them. There were only treaties between the different Cantons and even these treaties were not uniform at all. Old Switzerland was a complicated system of different alliances. When Switzerland had succumbed to the attack of Napoleon, the then installed new unitarian Helvetic Republic received its first Constitution which was made up by some progressive Swiss, some of them very intelligent men, but not in touch with the people. They transformed the Cantons into departments and broke away from all traditions. In consequence, the

Constitution did not work, and there was so much trouble in the country, that the Swiss asked Napoleon for mediation. He spoke in 1802 that famous sentence "Nature has made you a Confederation", and reinstated the Cantons in their rights. The former set-up, however, was not completely restored.

When the Napoleonic Empire broke down, everything became again questionable, but the powers assembled at the famous Vienna Congress, exerted a certain pressure upon Switzerland to give herself a Constitution which should enable foreign countries to treat Switzerland as a real entity. The former alliances between Cantons were replaced by one federal contract. The Cantons remained very independent and retained their competences in almost everything, except foreign policy. The Diet (*Tagsatzung*) in which every Canton had one voice, had to decide about peace or war and make contracts and commercial treaties with other countries. It was also the Diet only which could name federal ambassadors in foreign capitals. The Diet could levy cantonal troops and name a federal general. In other words, foreign policy and defence became a matter of the whole country.

Under the system of the *Bundesvertrag* of 1815, every Canton had its own currency, its own tolls and taxes and it was completely free whether to have an aristocratic or democratic Government. After the first years of the period of Restoration there grew stronger tendencies in Switzerland towards a strong Central Government. As more and more aristocratic Governments in different Cantons were thrown over and replaced by democratic Governments, the trend towards a stronger Federal State became more and more potent. It was a period of heavy fights. It ended in a civil war (*Sonderbund*) in 1847 between progressive and conservative Cantons. The progressive ones won in a short but efficient campaign which was led by General Dufour.

So the way was open to realise the intention to create a Central Government. There had been so much discussion about it, and so many projects had been drafted, that in the final phase the new Constitution could be worked in the extremely short time of three months. It was accepted by the majority of Cantons on 12th September 1848. This was a great day, the birthday of modern Switzerland. The Cantons remained sovereign bodies, but above them there was a new State, the Federal State which took over quite a number of competences and tasks from the Cantons.

It was only in 1848 that Switzerland got a Central Government, the famous *Bundesrat* composed of seven members and a Federal Parliament composed of two Houses, a House of representatives elected by the people of the whole of Switzerland and a Second Chamber in which every Canton has two representatives. There is the same system as in the United States of America, which served as a model for Switzerland. Both Houses together form the *Bundesversammlung*, the Federal Assembly. One House is as powerful as the other, and no law can be passed without the consent of both Houses.

The new Constitution gave the Confederation the following competences: customs, postal services, currency, the right to stamp coins and print paper money, the fixing of measures and weights. Thus Switzerland very soon adopted the metre, the kilo and the litre. The Army still consisted of the troops which the different Cantons had to put at the disposal of the Central Government. The Constitution also granted the human rights but not in a very extensive way. It granted liberty to found association and the freedom of the Press.

The Constitution of 1848 was a great thing, but still it did not satisfy entirely the friends of a strong Federal State. The diversity between the Cantons was still considerable and impeding. In a total revision realised in 1874, the centralising tendencies made further progress.

Further Evolution

There was a paragraph from the very beginning which allowed changes in the Constitution. But it was only Parliament which had the competence to propose such changes which afterwards had to be accepted in a people's plebiscite. In 1891, a new paragraph was introduced in the Constitution, which had a very great influence on its further evolution: the people received the right to make propositions of their own concerning changes in the Constitution. This is the famous right of Initiative (*Volksinitiative*). If 50,000 people give their signature to any proposition, it must be treated by Parliament and then submitted to the people in a plebiscite. From 1891 until now, there have been 50 popular Initiatives, but only 7 of them were accepted by the people afterwards. On the other hand, during the same time the people accepted in the Constitution 57 changes, which were proposed by Parliament; 18 proposals by Parliament were refused by the people.

The number of changes is very considerable and a joke (originated in England) says: "In summer the Swiss milk their cows, and in winter they change their Constitution." More than half of all these changes gave more competences to the Confederation, that means the power of Cantons is dwindling away and the Central Government is becoming stronger and stronger. So Switzerland has nowadays one Penal Code, one Civil Code and a uniform Army, federal railways, federal motorway and a federal law on labour. A very important plebiscite took place in the 'forties, when a general old age insurance was introduced and the Confederation received the right to make laws about economy. Strictly speaking, this meant the death of Manchester Liberalism in Switzerland, though one must agree, that Swiss economy is still very free, possibly freer than in most other countries. The Swiss Constitution of today is in principle still the same as in 1848, but it has changed its look very much by the revision of 1874 and 70 amendments. Thanks to all these amendments, the Constitution is quite up to date, so one cannot reproach the Swiss for a Constitution lagging behind history, but some of its chapters look rather old-fashioned. Because of the great number of amendments, the Swiss Constitution is not a beautiful document well balanced and written in a masterly way, but a rather cumbersome thing, out of proportion which contains even very queer things. A "beauty bath" would be a good thing for it, but the main purpose of a Constitution is not to be beautiful, but to be up to its task. So there is no urgent need to reword the whole thing. There are people who say it is ridiculous and superfluous to touch the Constitution, that one should carry on, as one used to do. These opponents of a revision say also that, first of all, there ought to be a fundamental bulk of new ideas which should find their expression in a new Constitution. There was, for instance, such a fundamental idea which instigated the American Constitution, the idea that the supreme power comes from the people. The fundamental idea of the first Swiss Constitution in 1848 was to create a central power for a Federal State and to divide the competences between the Cantons and the Confederation. Nowadays, there is no such lead because the ideas of the ancestors who shaped the Constitution are still considered valid.

(To be continued.)

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