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# The Swiss Observer

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# COMMENT

## PERUSING THE FEDERAL CONSTITUTION

By the word "constitution" one understands the set of rules by which a nation is run. Firstly, a constitution lays down how a country is to be governed, defining who may hold which political powers and how. Secondly, it delimits the responsibilities of the State in the welfare of the nation's citizens and sets forth those rules which may further the life of its institutions. A constitution refers to individual citizens in so far as they partake in the government of a free country and are involved with the life of this country's institutions. The citizen is considered by the constitution purely as the member of a nation: what ordinary statute is to society in general, "constitutional law" is to all citizens of a same country. It is sometimes hard to draw a line between what may be termed as constitutional law, and ordinary civil or criminal law. The Swiss Constitution is quite special in that it contains numerous articles which ought really to belong to ordinary statute. Thus it sets forth the way farm animals are to be slaughtered, prohibits gambling, determines taxation and rules on the distillation of drinks. A judge could conceivably have to check the Constitution to rule on a civil case! In fact, the Swiss Constitution is a bulky document (far more so than the American constitution of 1787) of 126 articles covering 85 pages in their unofficial English translation.

There are reasons for this, the first of them being the particular period in which the Constitution was first drafted, which was in 1848, in the aftermath of the Sonderbund War. Its chief purpose was to unite Switzerland politically once and for all, but as the Cantons had

behaved rather like independent states in the past confederacies, it had to respect their political touchiness. Thus the first twenty articles of the Constitution lay down the behaviour of the twenty-two Cantons with respect to them selves and the outside world. The very federal nature of Switzerland calls for a lengthy and detailed constitution. Besides those articles defining how the Cantons are to behave in given circumstances, numerous articles have to point out which particular province of legislation belongs to the Confederation. Such precision would be unnecessary in the constitution of a centralised state whose sole legislating body would be a central government. In certain fields not covered by federal legislation, and where it is felt that a national law should be enacted, the people may start an "initiative" in view of an amendment of the Constitution. In some cases is tantamount to introducing a new article of civil law. Such was the case of the "constitutional" law that sets forth that animals must be stunned before they are bled. The slaughter of animals belonged to a field of human activity where varying cantonal legislation was considered unsatisfactory. In most cases however, an amendment of the Constitution need not resemble a plain amendment in ordinary legislation. For instance, article 64 lays down, among other points, that the Confederation is entitled to legislate on all legal matters affecting commerce and the transactions on movable property. Thus a vast domain is defined where the government is free to legislate and no item that it would cover need be entered separately in the Constitution following an initiative.

If one compares the Swiss and British styles of government, one cannot fail to conclude that Switzerland is run the more democratically, even from Bern. Most of the proposed legislation discussed in the two chambers have been introduced following a motion or a "postulate". The former is the same as a private member's bill in the Commons (which, as is well known, are often difficult to have debated). If it is accepted by the two chambers, it becomes a binding instruction to the Federal Council. The "postulate" is an invitation to the Federal Council to examine an issue and is naturally less authoritative than a motion. Therefore, not only have individual members of parliament less difficulty in introducing a bill for debate, but the people can do the same thing directly, by means of an initiative claiming an amendment to the Constitution. It must be admitted, however, that the use of the federal initiative is rather restricted in practise. There have only been twenty of them between 1892 and 1920. One proposal was withdrawn by the initiative committee, of the others, only five were adopted, the others rejected. From 1930 to 1944, signatures were collected for 27 initiatives, which were handed in. Few were withdrawn, others have been for a long time held back from the vote, in part purposely, others again were con-

fronted at the polls by a counterproposal put forward by the Federal Assembly (or two chambers) which found favour with the electorate. In general, the initiative has not proved a particularly fruitful method of popular cooperation.

The Swiss have then not made frequent use of the amendment procedure (indeed, most amendments and additions to the Constitution were brought about by motions in the Federal Assembly), neither have they made use of their right (dependant on a successful initiative) of voting for a total revision of the Constitution. This was only done once, in 1874.

The revision of the Constitution has been a topical question for some time. Federal Councillor Wahlen has drafted a questionnaire which was sent to every canton and every party. Each have appointed their own committee to set up a report inspired by the questionnaire and Geneva, for instance, has recently produced a 60-page report on where it believes the Constitution should be revised.

It is difficult to convince oneself that the revision of the constitution is a practically important issue. True, it was last revised some 95 years ago and has since become a rather untidy document. Most articles have been loaded with numerous additions. Article 24, for example, originally laid down the Confederation's right to supervise the maintenance of river-embankments and forests (1st paragraph) and its obligation to lend support to this maintenance and regulate it in detail when necessary (2nd paragraph). Article 24-bis, which has ten paragraphs, rules on the Confederation's rôle in the exploitation of water-power. Article 24-3 says that legislation on navigation is a federal concern. Article 24-4 gives the right to the Confederation of legislating on the protection of surface and underground waters against pollution. The execution of such legislation being entrusted to the Cantons. In article 24-5, the Confederation reserves the right to rule on nuclear legislation (two paragraphs), finally, article 24-6 (in four paragraphs) states the Confederation's responsibility in the protection of nature and landscapes (which, in its execution, remains a cantonal concern).

As life changes and the needs for entirely new legislation arise, the various articles of the Confederation are lengthened considerably. There is scope for improving the layout of the constitutional document, but this could not be achieved without a complete overhaul.

The Constitution's main shortcoming is that it clings to a federalism which corresponds more to a traditional ideal than to present reality. It implies a cantonal autonomy which is no longer actual. Articles that prohibit the Cantons from levying an army of over 300 men, from capitulating unilaterally in times of war, from passing treaties with foreign states or separate alliances among themselves are plainly outdated and unnecessary. All new legislation arising from progress and

industrialisation-patent legislation, banking, aviation, copyrights, trade etc. has to be confederal and the Constitution will no longer need to specify in which particular field the Confederation is entitled to legislate, but rather specify what is left for cantonal legislation. The trend is obviously towards a more unified and centralised country and this ought to be reflected in a Constitution which, as it stands now, pays an unnecessary lip-service to the autonomy of the cantons.

Articles 51 and 52 (which follow immediately two articles guaranteeing freedom of creed and conscience and free exercise of worship) ban the Jesuits from Switzerland and can clearly be reconsidered. Article 51 says: "The order of the Jesuits and affiliated societies may not be admitted to any part of Switzerland and their members are forbidden any sort of activity in church or school. This prohibition may be extended, by means of a federal decree, to other religious orders whose activities are dangerous for the state or disturb the peace among the different creeds". It is difficult to see, nowadays, how the activities of religious orders can be dangerous to the state! In the same vein, Article 52 says that "The establishment of new convents or religious orders and the re-establishment of those which have been suppressed are forbidden". Another surprising article is No. 12. It insists, in four paragraphs, that no officer of the Swiss army, member of federal or cantonal authorities and legislative assemblies may accept pensions, allowances, titles, gifts or decorations from foreign governments. Infringement of this prohibition shall entail the loss of mandate or office. However, the Swiss having no civil distinctions of their own, it is hard to understand why a worthy National Councillor may not accept an O.B.E. or the title of "officier de la légion d'honneur"!

These were impressions derived from a first reading of our Constitution. As the following article shows, they were far from exhaustive. In fact, the only area where I appear to have reached the same conclusions as the Geneva committee is that relating to the fate of the Jesuits in Switzerland . . .

### **'OVERHAUL' OF THE CONSTITUTION URGED**

The committee set up in February 1968 by the Canton of Geneva to make proposals for a revised Federal constitution has now submitted a 60-page report to the cantonal authorities.

The members of the committee were drawn from different sections of Genevese society and included political, legal and university representatives.

Among its very exhaustive proposals, the committee has come out in favour of the suppression of all forms of religious discrimination, universal suffrage (i.e. the federal vote for women), an increase in the number of Federal Councillors, the creation of

state secretaries in addition to Federal Councillors and nominated by them, the establishment of an Economic and Social Consultative Council.

As regards military service and compulsory duty, the committee proposes a new decree on the principle that "All Switzerland is expected to share in the country's defense."

Conscientious objectors should undertake some alternative service and women should also be expected to contribute to the general defense in some manner short of joining the army.

The committee advocates free education in the primary and secondary grades and the right to social security.

It also wants all fundamental rights accorded to all inhabitants of the country, irrespective of nationality, with the exception, of course, of political rights reserved for Swiss citizens.

The committee wishes to see Swiss expatriates have a say in certain fundamental questions, such as whether Switzerland should join the UN or enter the Common Market, and wants them to have a voice in the framing of a new constitution.

It also says that the naturalization procedures should be simplified and speeded up to encourage applications from desirable parties.

On financial questions the Geneva committee feels that the best solution would be for the Confederation to handle indirect, and the cantons direct, taxation, but the financial burdens on the Confederation and the diminishing customs revenue, the committee realizes, makes this solution difficult.

The committee has no hesitation in advocating that the federal type of constitution should continue.

It believes that the revision of the constitution should be carried out in stages, but the most delicate questions such as the vote for women and religious rights should be dealt with first.

*(Weekly Tribune, Geneva)*

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## **SWISS NEWS**

### **'GENTLEMEN'S AGREEMENT' —BANKS APPLY BRAKES**

As from the beginning of this month almost all Swiss banks have limited the annual expansion rate of their domestic credits to between 9 and 11.5%.

This move is the content of a so-called "gentlemen's agreement" between most of the country's banks—with balance sums exceeding Sfr. 20 million—on the one side and the Swiss national bank on the other.

Though it had been feared that the agreement would be scotched by the failure of too many banks to give their signature or to give it unconditionally, it has proved that all but a small

percentage of the banks in question will now respect the treaty's provisions. Among those who have refused to participate, incidentally, is the important Zurich-based Migros bank, the banking division of the Migros cooperative federation.

The effecting of this new credit control, the first since the end of the Swiss anti-overheating programme some two years ago, shows the awareness of the national bank and almost the entire banking community that some sort of new dampening measure is due in the light of recent acceleration in Switzerland's economic upswing.

The Banker's Association points out particularly that the voluntary move was made before the Central Bank fell back on any of its legal prerogatives—the bank rate and the Lombard rate, for example, remain at their July, 1967, levels of 30% and 3.75% respectively.

This does not mean, however, that no bank rate increase is now likely, since the Swiss level is so far below the European average that a rise would seem only natural, even taking into account that the bank rate has much less significance in Switzerland than elsewhere.

Whatever the case, the voluntary agreement has already had its first follow-up. On Friday the National Council's commission charged with studying reform of the National Bank Act recommended by 18 votes to five, in the light of the "gentlemen's agreement," that the law should not be revised at this stage.

While the Federal Council would have preferred new control regulations to be anchored in the expansion of legislative rights for the national bank, it seems certain that parliament will follow the commission's recommendation.

The agreement, though it precludes the suggested National Bank Act amendments regarding minimum reserves—which the Bankers' Association considers "inexpedient in view of the banks' limited liquidity"—is generally expected to be the first step, if not a very great one, towards a toning-down of the new and potentially problematical Swiss boom.

### **2,500 MERCY MISSIONS AND LOTS OF UNPAID BILLS**

The Swiss Air Rescue Guard has flown its 2,500th mercy flight since its reorganization only nine years ago.

The latest rescue was carried out in Canton Valais, where a mountaineer suffering from pneumonia was picked up by helicopter from an Alpine hut and flown to a hospital.

The Air Rescue Guard—which last year alone saved more than 400 sick and injured people—recently launched a nationwide fund-raising campaign to help finance its voluntary activities.