

# The Swiss Federal Tribunal

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treprise, tous ces graves obstacles purent être également surmontés.

Charles Etzel, qui a dirigé la construction de la ligne du Brenner et dont le nom est intimement lié aussi à l'histoire des chemins de fer suisses, était originaire de Heilbronn en Wurtemberg. Ingénieur de chemin de fer, il travailla à la construction des chemins de fer de banlieue de Paris et de Milan. Plus tard, il vint en Suisse. Il a même été un certain temps directeur du chemin de fer Central suisse. C'est lui qui donna l'idée de construire les deux gares de Bâle, la gare centrale, point de jonction avec la compagnie française des Chemins de fer de l'Est et d'Alsace-Lorraine, et l'ancienne gare badoise à Petit-Bâle (aujourd'hui Basel D.R.), établissant la jonction avec les chemins de fer badois. Charles Etzel fut en outre consulté à propos de la construction de divers chemins de fer dans notre pays. Cependant, son œuvre de prédilection fut la ligne du Brenner, à laquelle il consacra ses dernières années, et qui a une grosse dette de reconnaissance envers lui.

Un tragique destin voulut qu'il succombât, le 2 mai 1865, des suites d'une crise cardiaque, avant que fût terminée son œuvre capitale. A bien des égards, son destin ressemble à celui de Louis Favre, constructeur du tunnel du Saint-Gothard. Ni l'un ni l'autre n'ont pu contempler leur œuvre achevée. La mort de Charles Etzel porta un rude coup à l'entreprise. Pourtant, grâce à ses travaux préparatoires, ses collaborateurs, s'inspirant de ses conceptions, purent mener à bonne fin la construction.

Le nouveau chemin de fer joua rapidement le rôle qui lui était dévolu. Le lac de Garde et la pittoresque Vérone, ainsi que Venise, exercèrent bientôt un puissant attrait sur les amateurs d'excursions. Mais ici encore la guerre a entraîné un changement radical. L'époque des voyages de plaisir est close, tout au moins pour le moment. Aujourd'hui, la ligne du Brenner, voie de communication de premier ordre, sert presque exclusivement à des buts militaires.

(Bulletin des C.F.F. No. 11.)

### SHORT WAVE TRANSMISSIONS FROM SWITZERLAND.

We hear from Berne that the Swiss Radio has begun a new service on the wave-length 47.28 metres called Les petites Nouvelles du Pays at 18.00 G.M.T. (60°c). The usual programme from 8.50 to 9.45 is still being sent out. The Radio Diffusion Suisse would welcome it if compatriots in this country would let them have comments on the reception in their part of the world from time to time, as this would enable them to improve the transmissions.

The Swiss Observer would be very glad to forward any forthcoming observations from our readers, so please write to us.

### THE SWISS FEDERAL TRIBUNAL.

By Federal Judge DR. HANS HUBER, Lausanne.

(For the translation of this article we are indebted to C. J. Bernheim, Esq.)

Everyone is happy not to have anything to do with the Courts of Justice. Yet, as citizens of a democratic state, we cannot remain indifferent as to how Justice is being administered in the Confederation and to whom its enforcement is being entrusted. The respect of the Law is one of the most important principles of a State. As, however, this respect of the Law must show itself in the first place in the administration of Justice, even the existence of a State might sometimes depend on whether or not the judicial authorities are equal to their high duties.

The Swiss Federal Tribunal is a conception of the Federal Constitution of May 29th, 1874. Before that date our country possessed only a non-permanent Tribunal, with but a limited jurisdiction, which assembled comparatively seldom and in different localities and to which also the member of the National Assembly could belong.

Just as the National Assembly represents the legislative authority and the Federal Council acts as the administrative and executive power, so does the Federal Tribunal stand for the supreme judicial authority in the country. In these three highest authorities of our state organisation is embodied the principle of the division of power. None of them is subordinated in any way to the others in the execution of its duties. It follows therefore that neither the National nor the States Council is entitled to interfere in the administration of justice although it is these two bodies, jointly acting as National Assembly, which elect the members of the Federal Tribunal. The Federal Council does not exert any control over it neither. Nevertheless, the Federal Tribunal submits every year an annual report to the National Assembly in which it gives information regarding the number of cases dealt with and the way they have been settled.

At the present time the Federal Tribunal consists of 26 Members. In case of need their number can be increased to 28 without necessitating any change of the statute. The Federal Judges are elected for a period of six years and, on the occasion of their first election, they are solemnly sworn in. After their first period in office, they are generally re-elected until old age or ill-health causes them to retire. They must devote the whole of their time to their charge and are not allowed to hold any other office of profit nor even to sit on the board of any company. Moreover, a Federal Judge cannot be a member of the Federal, National or States Councils or a judge of the Federal Insurance Tribunal at Lucerne. The Judges may, however, give their services to the State as judicial experts in the framing of new legislation. Likewise, it has happened during the war that the Federal Council has asked individual members of the Federal Tribunal to act as Chairmen of newly created Appeal Commissions.

The members of the Federal Tribunal are obliged to live in Lausanne or its environs. They absolve their military duties in the same way as every other citizen. Among them are to be found not only Colonels but also N.C.O.s and even ordinary privates. Often it happens that the Officers amongst them act as Judges in the military Courts. The higher officials and secretaries

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of the Federal Courts also belong to the Federal Tribunal. To them is entrusted the important duty of recording the arguments and reasonings connected with the verdicts. This has to be done with the utmost care as all these important verdicts are printed and later serve as precedents for all the other Courts of the country. Finally, the Federal Tribunal requires personnel for its chancery, library and treasury.

Particularly on account of the introduction of the Swiss Civil Code in 1912 and the extension of the judicial organisation in the State in 1929, the number of federal judges had to be increased. When, however, the uniform Swiss Penal Code came into force in 1942 it was found possible to avoid a further increase by generally reducing the number of judges sitting on one case from 7 to 5. No judge is allowed to sit on any case in which his home Canton or its Government is involved, the same applies in all cases where he is connected through family ties, friendship or even enmity with one of the parties. These regulations are meant to maintain the impartiality and objectivity of the Court and to avoid any embarrassment. The three linguistic parts of the country are represented among the judges and in the deliberations each speaks in his own language even when the case before the court comes from a district speaking a different language. As a rule, the parties to a case receive the verdict and decisions of the court in their own language.

Although, according to the letter of the Swiss Constitution, every Swiss is eligible to the Federal Tribunal, its members are, however, always exclusively jurists and lawyers. A high degree of judicial knowledge is indeed essential in order to solve the intricate problems with which a supreme court of justice can be confronted. Amongst the late members of the Federal Tribunal were and still are famous jurists who, thanks to their far-reaching knowledge and their impartiality have been called upon to serve on international arbitration courts. Others have given valuable help in the preparation of Swiss Laws or have been prominent as authors of learned scientific works. As their work is, however, mostly performed away from the limelight, their names have not become so well known as those of politicians and statesmen. Both the President and the Vice-President are elected for two years by the united National Assembly.

The Federal Tribunal sits in Lausanne. This town was selected in 1874 in order to grant to the French-speaking part of Switzerland one of the high Federal Authorities and also to further ensure the impartiality of the administration of justice by removing the Tribunal from the immediate vicinity of the Legislature and the Government in Berne. The Tribunal is housed in an imposing building which was erected by the Confederation in 1927 in the park of Mon Repos. The previous Tribunal building at Montbenon is now being occupied by the Cantonal Tribunal and other judicial offices of the Canton of Vaud.

With the exception of criminal cases, the sessions of the Federal Tribunal are public. Criminal or penal proceedings are those in which prison sentences or fines are imposed for crimes or infringements. In public sessions, anybody can be present even at the deliberations of the verdict by the judges. If any of our readers should find their way to the shores of Lake Geneva, they ought not to miss the opportunity to attend a session of the Tribunal and thereby acquire an insight into the ways of our judicial procedure.

As already implied, there is in existence an official collection of all the findings of the Federal Tribunal for the last 68 years. Every year four new volumes are published. Besides this, quite a number of newspaper reporters who attend the sittings of the Courts comment regularly on the verdicts which are of public interest.

The Federal Tribunal comprises four main divisions: namely the public and administrative law division, two civil divisions and the Court of Criminal Appeal.

The public and administrative division consists of nine judges and hears and decides competence conflict cases between the State and the Cantons, disputes between Cantons, actions by Citizens or Corporations against Cantonal laws or regulations. A competence conflict between the State and a Canton arises when for instance the cantonal police authorities do not allow the Federal Railways to keep a Station's Restaurant open until the departure of the last trains but insist on it being closed at the ordinary cantonal closing time. A dispute between cantons can arise over the amount of Income Tax a business undertaking with branches in several cantons is supposed to pay in each canton. The most important attribute of the Public Law Division is that of deciding on cases of alleged violation of the constitutional rights of the citizens, for instance cases connected with offences against the law of equality or privilege, freedom of the Press, freedom of worship, freedom of association, property ownership rights, etc. The administrative division is available in cases of alleged wrongful imposition of Federal Taxes and defence contributions. Although the Federal Tribunal is bound in its work and performance by the Federal Laws, it cannot repeal a Law on account of it being inconsistent with the Federal Constitution.

The two Civil Divisions deal mainly with appeals

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against verdicts given by Cantonal Tribunals and Commercial Courts. Cases connected with the Code of Obligations and Commercial Law go to the first Civil Division while the second Civil Division deals with cases connected with the Civil Code, i.e., Personal and Family Law, Code of Intestacy and Property Rights. In addition it also deals with converging matters of Civil Law such as for instance Railway and Motor Traffic liability, Patent rights, etc. — The Code of Obligations deals mainly with the contractual obligations of Purchase, tenancy, lease, work, transport and service agreements. When for instance a merchant has delivered goods too late, thereby causing the buyer to incur a loss, the latter can, if the amount involved is at least Frs.4,000, take the matter up to the Federal Tribunal. The Commercial Law also includes the Company Law and particularly also the Law dealing with Limited Companies. In connection with the Family Law, I would mention divorce and guardianship cases. Under the Law of Intestacy are included cases dealing with the disinheritance of ungrateful children by their parents, etc. — Associated with property rights are actions over rights of way, water rights, annoyance caused by noise or chemical odours from neighbouring properties, etc. —

The Criminal Court of Appeal attends to pleas of nullity against cantonal sentences. When, for instance, a verdict of murder has been pronounced by a Cantonal Court and the accused pleads that it is not a case of murder but one of manslaughter, i. e., that the act was not premeditated but occurred spontaneously in the excitement of the moment, he can appeal to the Federal Tribunal. If the appeal succeeds, the verdict is suspended and the Cantonal Court instructed to pass a milder sentence. As you know, the right to pardon a criminal or offender does not belong to the Courts, this can only be done by the National assembly or in some cases by the Cantonal Councils.

Besides the main four Divisions already mentioned, there are also in existence a board of control and appeal court, a debtors' prosecution and bankruptcy court and also various criminal courts for serious offences against the security of the State or public order.

The Federal Tribunal is the guardian of the uniformity of Justice for the whole Country both in Civil and Criminal Law. It sees to it that cases coming under the same Law are not judged differently in Mendrisio than in Basle or more severely in Rorschach than in Geneva. Moreover, it is not only the keeper of the unity and uniformity of the Law but the guardian of the Law in general and the custodian of the Legal State. Its functions have certainly not become any easier during recent years, particularly since the beginning of the war. The far-reaching events which have been taking place all over the world and whose amazed witnesses we all are, have not left the Swiss administration of Justice altogether unaffected. We will hope, however, that the confidence which the Swiss people generally place in the Federal Tribunal will remain fully maintained.

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The above is reprinted by courtesy of the "Verlag Hans Huber, Bern" which has published in pamphlet form a number of highly instructive lectures delivered recently over the Berne Radio by prominent Swiss statesmen. A foreword by Fed. Counc. E. Celio recommends this manual to every Swiss; it is entitled "Was jeder Schweizer wissen muss" and can be obtained at the price of Frs.2.80 (on the return of normal conditions).

## DEMOCRACY.

*(The original of this article has appeared in the "Schweiz Industrieblatt," of November 6th, 1943, from the pen of Walter Diethelm, Wabern, and the English translation has been kindly sent to us by Mr. C. Mayr.)*

We often hear it said nowadays that after the war we cannot simply start again where we left off in 1939. What is to be altered: whether these people all want to alter the same things and alter them in the same way, whether they want to alter themselves or only the others is not made clear. But one thing will be agreed by the large majority of our people: The democratic construction of our State must not be shaken and in that case we must also uphold certain fundamental principles.

Democracy means government of the people by the people. It is the kind of order selected by the people and governs the relations of each citizen to the other and to the community. The realisation of Democratic Government requires:

1. Respect for the rights of the individual by the community; that is to say the granting to him of the utmost freedom for spiritual and material development within the frame of the laws.

2. Voluntary submission by the individual to the laws approved by the community, and voluntary sacrifice by the individual for the benefit of the community.

3. The Constitution is the expression of the will of the people concerning their way of life. It is the mirror of the attitude of the people, the product of a healthy blending of tradition, actuality and anticipation for the future. The Constitution is a plant which has its root in the past, is fed in the soil of the present and is kindled by the light of the future. It must be respected by each generation and protected from the vicissitudes of momentary whims. It should only contain general principles and not details as to the way in which the principles should be applied.

4. The government elected by the people must see to it that the principles laid down in the constitution are observed by all, including themselves.

5. Each member of the community is jointly responsible for the continuance of the State. The young are to be educated in this sense. The elected members of the government are to be respected, but it is the proud right of the citizen to exercise control. Each citizen, even the highest, must be able to accept the truth.

6. Each citizen must realize that man is imperfect and that also his communal creation, the State, must be imperfect to the extent to which the citizens themselves are imperfect. From this arises the demand that each who wishes a more perfect order should first examine himself critically and make himself more perfect.

7. The citizen must in all discussions with others bear in mind that individuals are different. Nature has willed it so. No system will succeed to mould each citizen permanently into a uniform standard of perfection. The result would sooner or later be disintegration. Democracy demands from citizens not enforced, but voluntary co-operation, decency, mutual understanding and willingness to compromise. Let us beware of rigid dogmatizers and fanatics of any creed whatever.

8. The members of a democratic community must