CHAPTER I

The Swiss Political Tradition

Special Case of Swiss Democracy

Switzerland is the ethnological as well as the geographical centre of Europe. It is a land-locked country situated in the heart of Western Europe covering an area of 15,976 square miles with a population numbering a little more than six and a half million and borders for a thousand miles upon three large neighbours—Italy, Germany and France—as well as on smaller Austria and tiny Liechtenstein. No natural boundary marks it off from the Germans to the north and east, from the French to the west and from the Italians to the south. Its central Alpine position has made it the source of several international rivers: the Rhine, flowing northward into the North Sea, the Danube and the Po flowing south-eastward into the Black Sea and into the Adriatic, and the Rhone flowing south-westward into the Mediterranean. All these rivers spring or receive affluents springing from the Swiss Alps and pass through or touch upon the territory of ten foreign countries.

The Swiss people are not a homogeneous whole. They sharply differ in race, language, religion, and even to a certain extent in civilisation. Yet in this diversity is to be found the unity of the Swiss nation, and Switzerland presents to the world the most striking example of not only a united people, "but one of the most united, and certainly the most patriotic, among the people of Europe." Secondly, as a result of her geographi-cal position and her small size, Switzerland has succeeded in remaining aloof from the wars of Europe and in becoming centre of world activity by virtue of an internationally guaranteed neu-trality. The neutrality of Switzerland was guaran-teed by the Congress of Vienna in 1815 and reaffirmed by the League of Nations in 1920 and it formed the anchor of the nation's foreign policy during both World Wars.

Switzerland was the first in the world to experiment with republican institutions, and the only one State in Europe which has always been a republic. When the United States was born as an independent nation, Switzerland had behind it a republican tradition of some five hundred years. The impact of these republican institutions has been profound on the United States and other countries adopting the democratic way of politi-cal life. It is a government, moreover, under which the principles of direct democracy have been extensively applied. These devices of direct democracy were first adopted by the State of South Dakota in the United States in 1898, and set the ball rolling to vindicate the doctrine of popular sovereignty. Finally, Swizerland has worked out a system of government unique in character, but which in certain respects combines the stability of the American Presidential system with the responsibility of the Parliamentary sys-tem.

Physical Characteristics

Switzerland is the "country of a thousand valleys" and the Swiss people dwell on both sides of a gigantic mass separated from one another by craggy heights and widespreading snow fields. Vast mountainous areas render about a quarter of the territory unproductive. The major portion of the remaining area is suitable only for pastures or for woodland, and only about 35 per cent is actually devoted to agricultural production. Ag-riculture on the whole supports 22.2 per cent of the entire population.

Nor has nature been bountiful in the min-eral resources. Oil and coal do not exist and raw materials are almost entirely lacking. There is almost nothing of value which is exportable. The broken terrain of the country makes transporta-tion and communications difficult. The only natural advantages are important sources of hy-dro-electric power.

The hostility of nature in Swizerland, how-

ever, has been "mastered by man, civilised by him and stamped everywhere by his presence, his labour and activities." Nature only permitted Switzerland to exist, but man has made it a fairly prosperous country with a reasonably stable economy. Agriculture has been maintained at a very high level and the Wahlen Plan carried out in the Second World War, represented the country's determined food policy to diminish her dependence on imported foodstuffs. She has admirably succeeded in it and today Switzerland produces no less than 80 per cent of her own needs and imports only 20 per cent. The Constitution empowers the Central Government to take measures to promote the general welfare and economic security of the citizens.[1] While promoting the general interest of the Swiss economy, the Central Government may enact regulations on the exercise of trade and industry and take measures in favour of specific economic sectors or professions. Where this is justified by general interest the Central Government is entitled to enact regulations departing, if necessary, from the principle of freedom of trade and industry in order to preserve important economic sectors or professions whose existence is threatened and to improve the skills of persons exercising an independent activity in those sectors or professions and to maintain a sound peasant population, ensure agricultural productivity and consolidate rural landownership.

Paradoxical as it may seem, Switzerland is primarily an industrial country and 45 per cent of her population is dependent upon manufacturing industries. She balances her otherwise deficit economy by the excess of exports of manufactured goods and in normal times Switzerland is among the nations of the world whose foreign trade per head of the population is the greatest. By virtue of her water power and skilled workmanship, she has developed highly especialised manufactures such as machinery, electro-technical supplies, watches and textiles. The natural beauty of her landscape lures hundreds and thousands of foreign tourists, summer and winter, and the Swiss hostel industry remains one of the best equipped and most intelligently directed in the world. The tourist trade, in fact, is one of the essential credit items in the Swiss balance of payments. All told, the Swiss are now a prosperous population and the striking feature of their prosperity is a significant degree of equality.[ ] There "is no proletariat, no misery and no hovels"[2] in Switzerland. Material anxiety exists nowhere and prosperity extends to everyone and everywhere. The standard of living of the people in general is comparatively higher than in many of her neighbouring countries. This astonishing success, the Swiss people owe primarily to their own labour "reinforced by a practical intelligence of quite an exceptional quality."

Linguistic Divisions

Linguistically Switzerland is heterogeneous and the Swiss nation defies all nationalistic canons of demographic and cultural unity. Almost three-fourths of her people speak German, one-fifth French, the remainder Italian, except for a few who speak Romanche, an ancient language of Latin origin. It must, however, be remembered that the linguistic groups are geographically sharply separated from each other by the Cantonal boundaries. Thus, the Ticino is almost exclusively (90.3 per cent). an Italian-speaking Canton, Geneva (80.6 per cent), Vaud (86.1 per cent), and Neuchatel (86.9 per cent) are solidly French-speaking; and all the remaining Cantons, except Berne and Fribourg, are almost exclusively German. Even in Berne the German population predominates over the French in the ratio of five to one; and in Fribourg the French population predominates over the German in the ratio of two to one. Romanche is the prevailing language in the Grisons.

The Swiss Constitution provides that four languages—German, French, Italian and Romanche—are the "national" languages of Switzerland but that only German, French and Italian are "official" languages. The various Cantons choose their own official language or languages. A noticeable feature of the present-day Swiss life is the "linguistic interpenetration" among the various Cantons. Almost all educated people in Switzerland use two or even three languages. Nevertheless it is a trilinguistic country and nothing whatever is done, officially or privately, to lessen the linguistic differences among the Swiss.[3] Nor is there the slightest suggestion of any linguistic propaganda. In fact, linguistic peace reigns in this happy land of the Swiss and differences of languages are regarded as a stabilising factor to their national unity.

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1. Article 31. Also refer to Article 23.
2. Switzerland is, by per capita income, one of the richest countries in the world.
3. Article 107 of the Constitution provides that all three language groups must be represented on the Federal Court.

Religious Identities

Switzerland's religious diversity presented some grave problems in the past and it led to civil war and foreign strife. But fortunately for the national unity of the country, the religious and linguistic areas do not coincide, but overlap. The Protestants outnumber the Catholics in twelve Cantons of which nine are German and three French-speaking. The Catholics, on the other hand, outnumber the Protestants in ten Cantons, of which seven are German, two are French and one is Italian-speaking, Moreover, in most of the Protestant Cantons there are strong Catholic minorities whereas in eight out of the ten Catholic Cantons the Catholics cover 80 per cent of the total population. "This geographical and statistical distribution." observes Rappard, "of the two rival faiths even if it has not always prevented oppression obviously makes for mutual toleration."[4] The population as a whole is 57 per cent Protestant and 42.1 per cent Catholic.

The attitude of the Swiss to their religious differences is exactly the same as their attitude to their language differences. Religious minorties are highly respected and they do not coincide with linguistic minorities. One of the main purposes of the Federal Constitution set up in 1848 and amended in 1874 was to break the barriers created between Protestants and Catholics due to religious differences and, thus, to create a spirit of truly Swiss citizenship and guarantee certain fundamental rights to all Swiss people, no matter to which confession they had faith and to which part of the country they belonged. When the Constitution placed absolute reliance on matters of economic prosperity of the people and inculcated in them the spirit of national consciousness, it promoted and facilitated the growth of national loyalties. Today, there is complete religious toleration and the Swiss recognise the right of every one to profess the religion he prefers. The idea of oppressing religious minorities is foreign to the Swiss mentality and there is not a single Swiss who imagines that national unity can be furthered by confession in any particular religion. "Quite the contrary; here too," emphasises Andre Siegfried, "diversity is accepted as a condition of federal harmony for Swiss patriotism consolidates itself on a very different ground."

National Unity

Switzerland is, thus, a land of paradoxes. It affords a striking example of a federal experiment which tends to overcome conflicting Cantonal interests without annihilating their identity. It also mocks at the principle of political "self-determination" for racial and linguistic groups and offers a splendid example for how statehood and national patriotism can be fostered in utter defiance of such a principle. Woodrow Wilson wrote in 1896: "The Cantons....having allied themselves....went on to show the world how Germans, Frenchmen, and Italians, if they only respect each other's liberties as they would have their own respected, may by mutual helpfulness and forbearance build up a union at once stable and free."[5] Woodrow Wilson himself was the father of the principle of self- determination.

But Swiss diversity is not confined only to language and religion. There are differences in the occupations of inhabitants, in the external conditions of their life, in their ideas and habits of thought. Then, there is the local pride which clings to time-honoured ways and customs and resists the tendencies, strong as they have become, that make for uniformity. Despite these differences, Swiss legal and moral unity has grown firmer with each passing generation.

They are an exceptionally united and an exceptionally patriotic nation. Bryce, while analysing the salient features of the Swiss nation, says: "A strenuous patriotism bracing up the sense of national unity, an abounding variety in the details of social, of economic and of political life, coupled with an attachment of local self-governments which having been the life-breath of the original Cantons, passed into the minds and hearts of others also, making them wish to share in the ancient traditions, and contributing to the overthrow of the oligarchy in the cities even where, as in Berne, it had been strongest." Thus, members of three races, even four "national" languages, and two religions have become one people.

THE STRUGGLE FOR UNITY

Early History

Switzerland, as Andre Siegfried says, was not formed by unification but by aggregation. Originally, Switzerland consisted of a number of sovereign States without any co-ordinating central authority. These States comprised residents of different populations dwelling around the Alps. The inhabitants of these mountain valleys

4. Rappard, W. E., *The Government of Switzerland*, p. 11.
5. Wilson, W., *The State*, p. 301.

did not possess a common race or a common history or speak a common language, though they shared a common mode of life.

Towards the end of thirteenth century, however, three small Teutonic communities entered into a league of mutual defence to protect their common rights and privileges against the existing encroachments of their fedual lords; the most important being the Hapsburg rulers of Austria, themselves of Swiss origin, and then also Emperors of the Holy Roman Empire. The Hapsburg rulers made an attempt to reassert their fedual authority, but were met with successful resistance of the three confederated Cantons at the battle of Morgarten in 1315. During the next forty years, five more Cantons joined the confederacy of the original three. The confederation won its second victory over Austria in 1386 and thereby vindicated its *de facto* independence. For two and a half centuries thereafter the confederation maintained its existence, though the alliance was very often threatened by secessionist movement prompted by intercantonal strife.

The religious dissensions of the reformation period, once again, brought into prominence the secessionist tendencies. Half the Cantons embraced Protestantism and the other half adhered to the old faith. The confederation, however, survived, for the supreme interest of common defence held its members together. In 1648, the Treaty of Westphalia finally released the confederation from the suzerainty of the Holy Roman Empire and recognised its independent existence. By this time the number of the confederating Cantons had gone up to thirteen.

Nature of the Ancient Confederation

The authority of the confederation, thus, gradually extended over the greater part of the present Swiss territory. Although the Cantons proved unified enough to throw off outside control, they soon began to quarrel among themselves. In the management of their domestic affairs, the Cantons acted as completely sovereign entities. Their political institutions, too, varied greatly; the rural Cantons were pure democracies and governed themselves by meetings of the people; some, like Berne, were close oligarchies of nobles; and in others oligarchy was more or less tampered by a popular element.

Swizerland remained all through this period an alliance bound together only for offensive and defensive purposes. The Confederation, accordingly, had jurisdiction only over foreign relations. matters relating to peace and war, and inter-Cantonal disputes. These affairs were managed by a Diet which met at irregular intervals in one of the Cantons. The delegates who sat in the Diet were the agents of their Cantons and they acted according to their specific instructions. In the Diet a certain formal precedence was given to the larger Cantons, such as Berne and Zurich, but it was a constant source of irritation for others who insisted on the substance of their equality "and behaved in a manner not unlike that of a sovereign State participating in an international conference." The decisions of this assembly were not regarded legally binding unless they were unanimous. In fact, the Cantons looked at the Diet with suspicion and as a consequence of their strong local affinities had come to be firmly established.

It is interesting to note that some of the Cantons had by conquests acquired new territories and they regarded their acquisitions like subject areas denying to their inhabitants all rights and privileges which the Cantons claimed for themselves and their citizens.

French Revolution and Restoration

Then, came the French Revolution sweeping away all the local institutions. The armies of the French Revolution foisted the Helvetic Republic in 1798, upon the weak and disunited confederacy. But the Swiss reacted so strongly against the French-imposed Constitution that Napoleon was forced to restore the Constitution of the Cantons by the Act of Mediation of 1803. Under this Act six new Cantons were formed chiefly out of allied and subject territories speaking French and Italian. After the fall of Napoleon, the Congress of Vienna gave to Swizerland the old Confederate and Cantonal institutions of the eighteenth century and added three more Cantons to it. The total number of the Cantons thus forming the confederacy came to be 22.

Although the New Constitution did not establish any central authority as such but it did establish a Diet containing a representative of each Canton, voting on instructions. The Diet was competent to declare war, conclude peace, name ambassadors, and to levy troops in accordance with a system of Cantonal contingents. It could also send troops into any part of Switzerland threatened by disorder. The Cantons, however, maintained their complete internal autonomy which many of them now used to restore aristocratic regimes. They could, moreover, conclude

treaties provided they were not prejudicial to the Confederation or to the right of other Cantons.

Birth of Modern Switzerland

The French suzerainty proved a blessing in disguise for it was between 1798 and 1815 that the basis of modern Switzerland had been firmly laid. The Act of Mediation added 6 more Cantons to the already 13. Three more, all French-Speaking were added in 1815, thus giving to Switzerland its present configuration. It was during this period that the trilingual status of the country, as it is today, was officially recognised. Finally, the French, liberal democratic and centralising influences began to manifest themselves into the Swiss political institutions. The Federal Agreement of 1815, therefore achieved, unity in diversity.

Partly as a result of the liberal revolution of 1830 in France, a movement arose to revise the Cantonal Constitutions in Swizerland in conformity with the democratic principles. In 1832, the Diet appointed a Commission to prepare a new or revise the federal pact. But it made no progress due to the serious religious differences. In 1845, the seven Catholic Cantons formed a separate league called the Sonderbund. The formation of this league led to a Civil War which was suppressed within a month.

The defeat of the seven Catholic Cantons was, in fact, the triumph for the movement of national unity. Influenced by the internal dissensions and motivated by the European liberal movement of 1848, the Swiss Diet now approved a new constitution which aimed to bring about a stronger and more highly organised government. Inspired to a certain extent by the example of the United States, the Constitution of September 1848 transformed Switzerland into a Federal Government.

The Constitution of 1848

The Constitution of 1848 was the child of compromise and it reflected the growth of new ideas with an attempt to retain ancient practices. The federating Cantons insisted on their retaining a sovereign character. A compromise was, accordingly, reached and the twenty- two Cantons remained sovereign "so far as their sovereignty is not limited by the Federal Constitution." The powers of the Federal Government extended to diplomatic and military affairs as well as to certain economic matters, such as posts, customs, weights and measures and such other matters in which concerted action was deemed necessary

with a view to achieving national unity. The executive power was vested in a Federal Council consisting of seven members elected by the Federal Assembly.

The legislative power was vested in a Federal Assembly, divided into two Chambers; the Council of States equally representing the Cantons, and the National Council representing the population. The judicial power was vested in the Federal Tribunal, but it had no jurisdiction to declare laws unconstitutional. The Constitution guaranteed the sovereignty of the territories of the Cantons and authorised the Federal Government to intervene in Cantonal affairs without awaiting a request from the Cantonal authority in case of internal disturbance or threatened conflict between several Cantons.

The Constitution of 1874

The Constitution of 1848 remained in force for twenty-six years. In the meantime, the tendency towards greater centralisation became powerful, although the Federalists still advocated certain social and municipal privileges of the Cantons. The Radicalists, on the other hand, persisted in their demands for the abolition of such rights and privileges. They pleaded for certain inalienable rights and liberties for all the Swiss people alike under the protection of a unified and centralised law. They also desired for the nationalisation of railways under federal ownership, and that legislation should be referred to the referendum of the entire Swiss population, not as inhabitants of Cantons but as a single and unified nation.

The Radical movement carried with it a considerable majority of the public opinion necessitating thereby the revision of the Constitution of 1848. The Federal Assembly drew up a new Constitution and referred it to the people for their approval. It was adopted in April by a vote of 340,000 and 14½ Cantons against 198,000 and 7½ Cantons.

The new Constitution, which became operative on May 29, 1874, is now the working Constitution of Switzerland. It gave to the Federal Government centralized control over military matters and the initiative in unifying certain matters of commercial law. Since 1874, the Constitution has been amended a number of times. These amendments have still further centralised the powers of the Federal Government, have imposed upon the new government new tasks in the realm of economic regulation and social in-

surannce, and have increased the direct participation of the people in the process of legislation. In 1935, complete revision of the Constitution by popular initiative was requested by those groups who advocated strengthening the powers of the Cantons, and those who believed in the principle of occupational representation and its evolution into the cooperative state. But it was rejected by the people.

SUGGESTED READINGS

Bonjour, Officer and Potter, *A Short History of Switzerland*

Kahn, Hans, *Nationalism and Liberty: the Swiss Example*

Seigfried, Andre, *Switzerland, A Democratic Way of Life.*

Solaveytchick, George *Switzerland in Perspective.*

CHAPTER II

Basic Features of the Swiss Confederation

The Republic of Switzerland, known by the formal title of Swiss Confederation, is composed of twenty-three "Sovereign Cantons", namely, Zurich, Berne, Uri, Schwys, Unterwalden (Upper and Lower), Glarus, Zug, Fribourg, Soleure, Basle (City and Rural), Schaffhauserrv, Appenzell (both Rhodes), St. Gall, Grisons, Aargau, Thurgau, Ticino, Vaud, Valais, Neuchatel, Geneva and Jura.[1] Three Cantons, Unterwalden, Basle[2] and Appenzell are further split up into half Cantons. Each half Canton is entirely independent of its twin and differs from a whole Canton only in two respects. A half Canton sends only one member to the Council of States, the Chamber representing the constituent units, instead of two as the full Cantons are entitled to. Secondly, a half Canton is entitled to cast a half vote on all questions relating to constitutional amendment,[3] whether full revision or partial revision. The subdivision into half Cantons was necessitated because of religious, historical or other local causes.

Federalism

Switzerland's polity is federal, although Article I of the Constitution describes it as the Swiss Confederation. But it is a misnomer to call it a Confederation, in spite of the constitutional use of the term. A confederation implies a loose league of sovereign and independent States without a strong central authority and it has chances of dissolution. The Swiss Confederation, on the other hand, came into being as the Preamble to the Constitution asserts, "with the intent of strengthening the alliance of the Confederates and of maintaining and furthering the unity, strength and honour of the Swiss nation...." The Preamble further adds that in order to achieve the solidarity of the Swiss nation a "federal Constitution" has been adopted. Even if it be conceded that the Preamble to the Constitution has no

juristic meaning and value, still it clarifies the intention of the Father-framers, the kind of polity they established and the express will of the people of Switzerland and the Cantons who adopted it at a referendum. The Cantons of Switzerland agreed to modify, like the original thirteen States of the United States, their erstwhile sovereignty in such a way as to grant adequate authority for national purposes to the Central Government of the 'Confederation''. The powers of the Central Government and the aim of the 'Confederation' find their expression in Article 2 of the Constitution. The aim of the 'Confederation', it says "is to preserve the outward independence of the fatherland, to maintain internal peace and order, to protect the freedom and the rights of the confederates and to promote their common prosperity." For the fulfilment of the aims of the 'Confederation' the subject matters to which the authority of the Central Government extends are: foreign affairs, questions of peace and war, conclusion of alliances and treaties, management and control of currency, communications, commerce, weights and measures, naturalisation and expatriation, higher education and research, conservation of natural resources, and all other fiscal matters concerning the prosperity of Switzerland.

Federation as a principle, is the combination of unity and diversity and it is the only answer in countries with deep-seated racial, cultural, religious or linguistic differences. It harmonises local autonomy with national unity and, thus, provides an equilibrium between the centripetal and centrifugal forces. The Central Government is assigned functions which are of national importance and general concern whereas matters of local interest that differ in different parts and sections of the country are left to the people of those areas for solution. In this way, a federal government presents a happy blending of cen-

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1. Some of the French-speaking citizens of the Bernese Jura wished to be separated from the German-speaking Bernese of the rest of the Canton. A Cantonal initiative of Berne was rejected in 1959, but the demand for separation remained unabated and Jura was created a separate full Canton.

2. There had been a demand for the unity of Basle. It was refused in 1948 but it succeeded in 1960. A Constitutional Commission consisting of representatives of two Cantons was appointed to draft a new unified Constitution.

3. The constitutional position of half a canton in found in Article 123.

tralization and decentralization.

The parallelism between the Constitution of Switzerland and that of the United States is close. Both have a federal polity envisaging dual governments of divided powers conferred by their respective Constitutions and which cannot be changed by either acting independently. The Swiss Constitution expressly declares that the Cantons ''are sovereign insofar as their sovereignty is not limited by the Federal Constitution and, as such, exercise all rights which are not entrusted to the federal power.''[4] The Constitution of the United States ordains that the powers ''not delegated to the United States by the Constitution, nor prohibited to it by the states are reserved to the states respectively or to the people.''[5] In each case, the constituent units of the federation have transferred specific powers to the federal government and reserved all residual powers for themselves. In both instances, in any case of conflict, over which authority has been transferred to the Central Government, the federal authority is supreme and its will prevails. That is the spirit of federalism which aims to give prestige and strength to the national government. If the constituent units toy with it, federalism in its essence disappears.

There are, however, two major differences between the Swiss and the American systems. In the first place, the Constitution, both in Switzerland and in the United States, is supreme, but the means of protecting that supremacy in Switzerland are juridically imperfect. Switzerland does not have judicial review of the constitutionality of federal legislation. Her legislative branch is supreme; its own interpretation of its constitutional powers is binding and final. Secondly, in the United States the federal administration is usually in a position to administer its laws. In Switzerland the obligation to carry out federal legislation frequently devolves upon the Cantonal Government. It has no organization of its own and possesses scanty means to have its laws enforced. All depends upon the goodwill and co-operation of the Cantonal Governments. Of Course, it goes to their credit that they have never left the National Government to hold the baby.

In the course of time, however, the growth of federal power became more and more pronounced. As the need for national unity increased

and as problems calling for governmental regulation or assistance emerged, they overstepped Cantonal boundaries and assumed nationwide importance. Among these were military training, banking, patents, transportation, traffic in arms and alcoholic beverages, production and marketing of grains and railroads and radios both of which were nationalised. Agriculture, manufacturing and the tourist traffic were subsidised, industry was protected, import quotas were fixed, unemployment relief and compulsory insurance were initiated. When the Federal Government took to direct taxes and excise duties, it offered Cantons share in the new revenues which hitherto were the exclusive monopoly of the Cantons.

Four important factors have contributed to the process of centralisation; war, economic depression, the demand for ever increasing social services, and the mechanical and technological revolution in transport and industry. These factors are not peculiar to Switzerland. They are as much in the Swiss as in other federations. But the fact that Switzerland remains surrounded by three powerful neighbours, viz., France, Italy and Germany, accelerated the pace of centralisation. In 1914 and especially in 1939 the Federal Assembly granted the Government exceptional and unlimited powers to protect the security, integrity and neutrality of the country, and to safeguard its credit, economic interests and food supply. These plenary powers involved restriction on the liberties and the rights of the Swiss to a staggering extent, but the people readily accepted them as necessary for preserving their independence and sovereignty. Both pro-Nazi and Communist organisations were suppressed. In August 1935, Professor Prozig of the Berne University was dismissed, because he had taken, as a leader of the Swiss National Socialist Party, oath of allegiance to Hitler. In October 1936, the Federal Council suppressed by law an irredentistic movement in Ticino, the Italian-speaking Canton. Likewise, the activities of the Communist Party were banned in the country and in 1935, Communist propaganda was prohibited by law. The extent of Swiss nationalism can be examined from the fact that in April 1937, the Canton of Neuchatel decided by a plebiscite, and for the first time in Switzerland's history, to suppress Communist organisations ''for their super, and anti-

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4. Article 3.
5. Tenth Amendment.

national activities."[6] After the army had been transferred to the Central Government, civil and criminal law became federal instead of Cantonal.[7] The motto: "one law and one army" was an endeavour to strengthen the cohesion of Switzerland.

These developments in the extension of the powers of the Federal Government have been viewed by many writers as alarming. When the War emergency was over or the country had been freed from the economic depression, it was expected that the range of federal action would decrease. But it has not happened so. Swiss economic life continues to be strictly controlled in its various aspects[8] and with it there is a corresponding growth of the federal bureaucracy and consequently a grumbling about its expense. "The danger of this tendency," says Andre Siegfried, "is that of the extent they suffer the encroachments of the central power the Cantons will gradually cease to be sovereign States at all and become simple district administrations carrying the behests of the Central authority." This is, however, an exaggerated view. The spirit of the Swiss Confederation, since its inception and particularly since 1848 when it became a really federal State, has always been to ensure and protect the autonomy of the Cantons, and to preserve their individual and separate entity. The Cantons remain the more genuine and more living democracies and the federative structure of the State, as Hans Huber says, "comes to complete both the idea of freedom and the idea of democracy." The Cantons are the constituent and pre-existing members of the Federal State. In fact, the Federal State was formed to unite and protect the freedom and rights of its constituent members.[9] The powers of the Cantons are original and they exercise all rights which are not delegated to the Federal Government. The Constitution guarantees to the Cantons their territory, their sovereignty, their constitutions, the liberty and rights of their people and the constitutional rights of citizens, and the rights and powers conferred by the people on the authorities. Article 16 of the Constitution authorises the Federal Executive to take any necessary measures, within the limits of its powers, to enforce these guarantees.

Although the sovereignty of the Cantons has steadily diminished in favour of the Confederation, nonetheless it is from the Cantons that the Confederation draws its authority and derives its constitutional usages. The Cantons are the original parts of the federal system of government and they retain their essential prerogatives. Maintenance of internal peace and security is their concern. Construction of public works[10] and highways,[11] provision for a system of public education, care of the social dependants, control of elections and local government are all their responsibility. It is only by being a citizen of a Canton that one acquires the citizenship of Switzerland[12] and Cantonal laws still determine many of the citizen's civil rights. Many affairs of the Central Government are managed by Cantonal Governments. Civil and criminal laws, federal subjects, are administered by the courts which are exclusively Cantonal. The Federal Government simply makes military regulations and appoints superior officers, but enforcement of those regulations, raising of certain contingents for the national army and provision of the personal equipment of each soldier, are the concern of the Cantons.[13] The Federal Tribunal has no officers of its own. It depends upon Cantonal Governments for the execution of its judgments.

To sum up, the Swiss Constitution expressly recognises the juridical personality of the Cantons in the composition of all federal organs. The Council of States represents the Cantons on the basis of equality and corresponds to the American Senate. The National Council represents the people in proportion to the number of electors in each Canton with the proviso that each Canton, no matter how small, shall have at least one deputy. The personality of the Cantons is also

6. As quoted in Ramesh Chandra Ghosh, the Government of the Swiss Republic (1953), p. 53 Geneva banned the Communist Party on 13th June, 1937. Vaud did the same by plebiscite on January 30, 1938, by 34,603 votes against 12,700 votes, *Ibid.*, fn.

7. Article 64 (1) and Article 64 bis (1)

8. Article 32 bis.

9. Article 2 .

10. Article 23, however, provides that the Central Government "is entitled in the interest of Switzerland, or a considerable part of it, to order public works at its own expense or to encourage such works by granting subsidies."

11. Article 36 bis (6). While recognising "the sovereignty" of the Cantons over national highways Article 36 bis (1 to 5) empowers the Confederation to build and maintain national highways.

12. Article 43.

13. Article 20 and Article 21 (2).

recognised in the process of amending the Federal Constitution. No change in the Constitutions can be considered legally adopted unless it is approved by a majority of votes of the citizens and also by a majority of the Cantons.

A Comparatively Longer Document

The Swiss Constitution is rather a lengthy document, much longer than the Constitution of the United States on which it is generally modelled. It goes into a good many details dealing with matters as fishing and hunting, qualifications of the members of the liberal professions, sickness and burial of the indigent, cattle diseases, gambling houses, and lotteries. All these matters in reality bleong to the sphere of ordinary rather than to that of constitutional legislation. Behind this plethora of details was perhaps the desire for sharp division of authority between the Cantons and the Federal Government.

Spirit of Republicanism

All through the Swiss Constitution there is in evidence a strong spirit of republicanism. This is, in fact, the very breath of the Swiss way of life. Article 6 of the Constitution requires the Confederation to guarantee the Cantonal Constitutions, provided that the latter ensure the exercise of political rights according to republican (representative or democratic) forms. The meaning of this provision becomes more clear when it is read along with Article 4. It says: "All Swiss citizens are equal before the law. In Switzerland, there shall be neither subjects, nor privileges of place, birth, person or family." This provision, according to Christopher Hughes, "is now a rule of law and incontestably the most active rule of law of the whole Constitution."[14] The founders of modern Switzerland were animated "by the desire to emancipate the individual from the shackles of the aristocratic, mercantilistic and clerical traditions which had for centuries limited"[15] the individual's freedom. They, accordingly, abolished all aristocratic and oligarchic privileges and guaranteed to the Swiss people equality before law. Every Swiss, man or woman, who has reached the age of twenty years and who is not excluded from the rights of active citizenship, has the right to determine his government, and the acceptance of the Constitution by the majority of the people, and its amendment at any time on popular demand.

There are, thus, in Switzerland no subjects, nor any privileges of rank, birth, person or family. All political institutions of the country—Federal, Cantonal and Communal—are elective in character, and the direct participation of the people in the affairs of government, and for making changes in the Constitution are the basic principles of the nation's political practices. The principle of republicanism and direct sovereignty of the nation is, indeed, the bulwark of Swiss democracy and the people have accepted it in a religious spirit.

Civil Rights

Inasmuch as the Swiss Federal State owed its creation largely to the liberal movement in the 1830's and 1840's the framers of the Federal Constitution were careful to include a number of provisions designed to protect the Swiss citizen against future arbitrary action on the part of the Cantons. Although the Constitution does not contain a formal Bill of Rights, nevertheless some two dozen Articles scattered throughout the document deal with the rights of individuals. These rights are elaborated in great detail. Not only are they defined as well as asserted, but in many cases the corresponding duties of the individual are also set forth.

The rights of the Swiss citizens, both guaranteed by the Federal Constitution and others guaranteed by his Cantonal Constitution, are protected by courts against infringement by any Cantonal authority. This protection can include an appeal to the Federal Tribunal[16] which is the highest Court in the land. In practice, such appeals are numerous, especially those concerned with a violation of the general right of equality before the law.

Citizenship in Switzerland has a three-fold basis: Communal, Cantonal and Federal. A person cannot be a Swiss citizen without being a citizen of a Canton and a person cannot be a Cantonal citizen without being a citizen of a Commune. The Constitution does not define citizenship. It simply provides that every citizen of a Canton is a Swiss citizen. Cantonal Constitutions pass responsibility to the lower level by providing that every citizen must also be a citizen of a Commune.

In practice, communal citizenship, and thus Swiss citizenship, follows a modified rule of *Jus*

14.   Hughes, C., *The Federal Constitution of Switzerland*. pp. 6-7.
15.   Rappard, D.E., *The Government of Switerland*, pp. 108-09.
16.. Article 113 (1) (3).

Sanguinis. A child born of Swiss parents is, *ipso facto,* a citizen of his father's Commune of origin. A Swiss woman marrying a Swiss from another Commune loses the citizenship of her original Commune and becomes a citizen of her husband's Commune of origin. A child born of alien parents shall be a Swiss citizen by birth if its mother was born a Swiss citizen and if both its parents were resident in Switzerland at the time of its birth. The child shall acquire the citizenship of its mother's Commune of origin. Switzerland does not recognise the principle of *jus soli* when a child born of alien parents automatically becomes the citizen of a State on the soil of which it is born.

Swiss citizenship can also be acquired by naturalisation. Originally, the procedure to be followed and the fee to be paid varied from Canton to Canton and from Commune to Commune within the same Canton. This led to a scandalous abuse, especially during World War I, when anyone could purchase citizenship and this brought federal intervention. Article 44 now provides that Federal legislation "shall specify the conditions for the acquisition or loss of Swiss citizenship". The Federal law of 1920 standardized the classification of persons barred from acquiring citizenship and prescribed the minimum period of twelve years of residence before an alien could submit a petition for communal citizenship. Federal authorities were also given the power to disapprove any individual grant of citizenship.

In principle Swiss citizenship is inalienable. Article 44 (1) prescribes that no Swiss citizen "may be expelled from the territory of the Confederation or of his Canton of origin." It was only during World War II that an emergency law empowered the Government the right to deprive of their citizenship Swiss citizens having two or three nationalities if that fact could be construed to be a danger to the neutrality of Switzerland. A Law of 1952 also provides that second generation Swiss born abroad do not automatically become citizens of Switzerland. A Swiss woman who marries a foreigner may lose her citizenship unless she makes a declaration before marriage that she wishes to retain it. But these instances are just exceptions to the rule.

In general every Swiss citizen can settle in any place in the country. But the freedom of movement is hedged by various limitations and makes the scope of this right much less complete as compared with many other countries, for in-

stance, in the United States. The Canton in which an individual may wish to settle can demand that he should produce a "certificate of origin" or some other document authenticating his identity from his Commune of origin. The Commune may refuse to issue such a certificate or some similar identifying document, or another Commune may decline to release it, under certain conditions such as the non-payment of particular taxes.

Even an individual in possession of a certificate of origin may be refused permission to settle in cases where the person in question had been deprived of his civil rights as a consequence of criminal judgment of a Court. Some other Canton may withdraw the right to reside in cases where an individual may have been "repeatedly sentenced for grave misdemeanour" or has "become a permanent burden upon public charity" and to whom the Canton or Commune of origin refused adequate assistance after having been officially requested to render it. In no case, however, is the Canton of origin permitted to refuse a Swiss the right to return.

In view of the right of Cantons to withdraw the privilege to reside from those who permanently depend upon public charity, the responsibility for the case of indigent Swiss citizens rests ultimately on the Cantons of their origin. Since quite a number of Swiss reside outside the Cantons of their origin, it is provided that the cost of relief shall be shared between the place of origin and the place of domicile according to a proportion based upon the length of time the pauper has resided outside the Canton of origin.

According to Article 4, "All Swiss are equal before the law." This is further amplified in the same Article by the statement that "In Switzerland there are neither subjects nor privileges of rank, birth, person or family." Article 60 adds, "All Cantons are bound to afford all Swiss citizens the same treatment as their own citizens in the fields of legislation and of judicial proceedings." Article 58 guarantees that no person may be deprived of his "constitutional judge; therefore no extraordinary courts of law may be set up." The same Article abolished ecclesiastical jurisdiction. In the eyes of the framers of the Constitution, these provisions were necessary to eliminate the creation of *ad hoc* courts such as those used for the persecution of the Liberals during the Sonderbund War and to keep ecclesiastical courts out of civil affairs. The provision regarding the constitutional judge" is now "only used against arbitrariness in sending people to

one tribunal rather than to another or in refusing jurisdiction."[17] Personal claims against a "solvent debtor" must be brought before the tribunal of the debtor's place of domicile and, as such, his property may not be seized or attached for personal claims outside the Canton in which he has his domicile. Imprisonment for civil debts is not permitted. The Constitution prohibits corporal punishment and the death penalty for political crime. A provision of the 1874 Constitution abolished the death penalty for other crimes, but it was reintroduced in 1878 as a result of constitutional amendment. The Federal Criminal Code 1942, reestablishes the prohibition on capital punishment except for serious crimes committed in times of war and during active military service.

Freedom of the press is guaranteed by Article 55. The original Article provided that Cantonal legislatures may enact measures "for the repression of abuses" and the Federal legislature "has the right to prescribe penalties in order to suppress abuses directed against itself or its authorities." These provisions have been abrogated as a result of the operation of the Swiss Criminal Code.

The citizens are also guaranteed the freedom of association and petition. The freedom of association has been interpreted to include the formation of organised groups for religious, political, social, and economic purposes and it includes the right to assembly as well. This right is subject, however, to the provision that neither the purpose of the association nor the means it employs are in any way "illegal or dangerous for the State." The Constitution provides that Cantonal laws shall lay down the measures required to repress the misuse of this right. As regards the right to petition, it should be noted that the competent Swiss officials make an effort to take most petitions seriously and redress grievances. But the right itself has lost a great deal of importance as a result of the adoption of the Constitutional initiative.

To safeguard against all possibilities of religious conflicts which for long had distracted Switzerland, the Constitution suggests various provisions. Freedom of belief and conscience are inviolable. No one can be forced to participate in a religious association, to attend religious teaching or to perform a religious act, nor he be subjected to penalties of any sort because of his religious education of children until they have completed their sixteenth year. Nor can his civil or political rights be abridged by any ecclesiastical or religious prescriptions. At the same time, no person can refuse to fulfil, on the ground of religious beliefs, any obligation which citizenship may demand. Moreover, no person can be compelled to pay taxes the proceeds of which go to finance a religious body to which he does not belong.

Article 50 guarantees the free exercise of the act of worship within the limits set by public order or morality. The Cantons and the Confederation may take appropriate measures for the preservation of public order and peace among the members of the different religious communities, as well as against encroachment by religious authorities on the rights of citizens and the State. Disputes of public or private law which may arise out of the creation of new religious communities or out of the splitting of existing communities may be brought before the competent authorities by lodging a complaint. Ecclesiastical jurisdiction has been abolished.

The Constitution also guarantees the right to marriage and it is placed under the protection of the Federal Government. This right cannot be limited for religious or economic reasons, nor on account of previous conduct or of other police considerations. A marriage which has been celebrated in a Canton or abroad according to the local legislation is recognised as valid within the whole territory of Switzerland. Through her marriage, the woman acquires the citizenship of her husband. Children born before marriage "shall be legitimized by the subsequent marriage of their parents". No bride-admission fee or nay other similar tax can be levied.

All Cantons are "bound to afford" all citizens the same treatment as their own citizens in the fields of legislation and of judicial proceedings. All transfer taxes on the moving of property inside Switzerland and all pre-emption rights of citizens of one Canton against citizens of other Cantons have been abolished. Federal legislation fixes the limits within which a Swiss citizen can be deprived of his political rights. Federal legislation lays down the necessary provisions concerning the extradition of the accused from one Canton to another. Extradition may not be made compulsory for political and press offences.

The Constitution guarantees the right of ownership. The Confederation and the Cantons,

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17. Hughes. C., *The Federal Constitution of Switzerland*, p. 7.

to the extent allowed by their constitutional powers, can, however, by legislation and for reasons of public interest make provision for expropriation and restriction on ownership. In cases of expropriation and restriction of ownership fair compensation, equivalent to expropriation, shall be paid.[18]

Democracy and Switzerland

"Among modern democracies", writes James Bryce in the opening Chapter on the government of Switzerland, "which are true democracies, Switzerland has the highest claim to be studied. It is the oldest, for it contains communities in which popular government dates further back than it does anywhere else in the world; and it has pushed democratic doctrines further and worked them out more consistently than any other European States."[19] The principle of Swiss democracy is to be communal before being Cantonal, and to be cantonal before being federal. The basis of political authority is that of local autonomy and the popular will is formed from the bottom upward. Switzerland is a land of small communities, rural and urban, and Commune had been from the earliest time a potent factor in accustoming the people to control their own affairs. It is still the political unit of the nation and the focus of its public life. It is a means of educating citizens in public affairs and instilling in them the sense of civil duty. Both the Commune and the Canton appear to them the living realities of a direct or quasi-direct consultation of the people in all matters which concern their immediate administrative problems.

This democratic sense runs all through the federal Constitution and it may be safely said that Switzerland and democracy have now become almost synonymous. In spite of the tendency towards centralization, the introduction of the constitutional initiative in 1891, proportional representation for the election of the National Council in 1919, and of the optional referendunm on international treaties in 1921, sufficiently prove that the democratic purpose of the people which had created the present Swiss Republic in 1848 still remains intact. Rappard is of the opinion that the forms of democracy "have undoubtedly undergone a change under the impact of irresistible economic influences, but the spirit has remained the same."[20]

The Swiss faith in democracy as a political principle is most characteristically revealed in the people's extensive use of the instruments of direct popular government. The most ancient of these is *Landsgemeinde* or open town meeting in which every male adult can speak, make his own laws and elect officers. This over five hundred years old tradition of government still obtains in the five *Landsgemeinde* Cantons: Glarus, Appenzell Outer Rhodes, Appenzell Inner Rhodes, Obwalden and Nidwalden. In all other Cantons a representative republican form of government exists where a frequent use is made of the modern instruments of direct democracy, namely, the popular referendum and the popular initiative. The use of these instruments is also made for matters affecting the Confederation and international treaties.

A Dynamic Constitution

The Swiss Constitution is a living document and it presents a singular example of adaptability within the extent of a written Constitution. The Constitution has been so amended from time to time as to represent the popular aspirations consistent with the exigencies of time. The policy of nationalisation and the advancement of various state projects are clear indications of the country's drift towards the Welfare State. In fact, the emphasis in Switzerland, immediately after the Constitution of 1874 came into operation, had been on the protection of the individual rather than on the will to emancipate him. He has been protected against industrial exploitation by labour legislation in 1877, 1908 and 1920, against epidemics and other dangers to his health by various sanitary measures in 1897, 1905 and 1913 as well as against himself by the sundry forms of temperance and anti-alcoholic legislation in 1885, 1908 and 1930 and by anti-gambling measures in 1920. Article 35 prohibits the running of gambling houses and the Federal Government may also take appropriate measures concerning lotteries. Uniform laws on the employment of children in the factories and on the working hours of adult persons have been enacted and regulations are strictly enforced to protect the workers against the operation of unhealthy and dangerous industries. The protection of employees is legally ensured and adequate steps have been taken on the binding effect of collective labour and other

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18. Article 22 ter.
19. Bryce, J., *Modern Democracies*, Vol. I, p. 367
20. Rappard, D.E., *The Government of Switzerland*, p. 111.

arrangements, which the Federal Government may deem necessary and expedient, between association of employers and employees with a view to furthering peaceful labour relations. Measures have been taken to encourage construction of houses and providing the opportunity for owning a dwelling or house. In order to prevent abuses in the field of rents and housing necessary legislation has been enacted. Laws have been made to regulate unemployment insurance which is obligatory and exceptions thereof have been laid down. Measures have also been adopted to promote an adequate old age, survivors' and disability insurance scheme. The Constitution empowers the Federal Government, within the limits of its constitutional powers, to have due regard to the needs of the family and legislate in the field of family compensation funds and institute maternity insurance.

But the great change was necessitated by the economic depression of 1930 when the workers, the farmers, and the middle-class all demanded State intervention to extricate them from the baneful results of their economic frustration, and to introduce schemes for their economic security. In order to protect her political independence and to save the country from the subversive elements either from the Right or the Left, and to safeguard her traditional neutrality during the two World Wars some restrictions were imposed on the liberty of speech and association of the citizens. The Swiss people have, however, always shown their love of personal liberty and whenever the Government has unduly interfered with it, they have consistently rejected at the polls even the most reasonable protective measures. In 1884, 1896, 1903, 1922, 1923, 1920. 1935, 1937, 1939 referenda on Bills intended to protect the community at the expense of the freedom of the individual gave expression to the liberal attitude of the people and the way in which they protected their most cherished liberties.

Switzerland's Neutrality

Switzerland has been a neutral country for more than four centuries. At the Paris Peace Conference in 1815, Swiss neutrality was recognised by Europe's great powers. After the First World War recognition of the neutrality of 1815 was renewed under Article 435 of the Treaty of Versailles of 1919. It found a basis in international law by the declaration of the Council of the League of Nations of May 14, 1938. With explicit reference to its neutrality Switzerland was granted the right not to take part in sanctions of the League of Nations.

The right of neutrality is the outcome of a process which has taken centuries to develop. It developed out of common law and is partly based upon common law even today. Despite Switzerland's affirmation to permanent neutrality, it does not find mention in any Article of the Constitution, except in Article 85 which deals with the competence of the Federal Assembly. But this Article, too, simply enumerates neutrality by providing that the two Chambers of the Federal Assembly may take measures "for the external security as well neutrality of Switzerland, declaration of war and peace." But it does constitutionalise neutrality of Switzerland and its recognition by international law enhances the stature of Switzerland as a peace-loving country which performs this humanitarian duty as an integral part of its policy of neutrality.

The Swiss population comprises groups from German, French and Italian spheres of cultures. Neutrality has played a decisive part in reconciling different mentalities and international interests. It became a uniting element, strengthening national unity. Neutrality protected Switzerland from disaster in two World Wars. Majority of the Swiss regard neutrality as an important factor in their national survival. They even rejected at a referendum, by a huge majority of the votes polled, the proposal for Switzerland joining the United Nations and in this process not even one of the cantons voted in favour of the proposal which had been passed earlier in 1981 by both the Houses of the Federal Assembly and had the full support of all major political parties.

Amendment of the Constitution

The Swiss Constitution is rigid and the procedure adopted to amend it is complicated. But it is by no means so difficult to put it in practice as in the United States. The method of revision is precisely stated in Chapter III of the Constitution of 1874. The revision of the Constitution may mean either a total revision or a partial revision. The former refers to the substitution of a new Constitution for the old one and the latter is only in relation to a specific provision of the Constitution.

The Swiss Constitution introduces the instruments of Constitutional Referendum and the Constitutional Initiative in the process of amending the Constitution. The Constitutional Referen-

dum implies submission to popular vote all constitutional amendments for their final approval or disapproval. There are two aspects of popular vote. One is that all constitutional amendments must be ratified by a majority of the Swiss citizens, and by a majority of the Cantons. If the necessary majority cannot be obtained at both the levels, then, the amendment cannot become operative. Secondly, the constitutional initiative empowers the people themselves to propose either a total or partial revision of the Constitution.

The procedure prescribed for amending the Constitution is as follows:

(1) As said above, constitutional amendments may be total or partial. The Federal Legislature may initiate either type by the ordinary process of legislative action. The Federal Council may also draw up a proposal which is then submitted to the two Houses, the Council of States and the National Council, for independent deliberation or one of the two Houses may start the process. If both the Houses agree, it is submitted to the people, known as the compulsory constitutional referendum, for their verdict on the next convenient date. If a majority of the citizens voting at a referendum and majority of the Cantons approve it, then, the revised Federal Constitution or the revised part of it, as the case may be, is deemed to have been adopted. In determining the will of the Cantons, each Canton possesses one vote and each half Canton half a vote. The result of the popular vote in each Canton is considered to be the vote of that Canton.

If, however, only one House of the Federal Assembly agrees to the proposed total revision of the Constitution and the other House does not consent or if 100,000 Swiss citizens entitled to vote demand the total revision of the Constitution, the question whether such a revision should take place or not must be submitted in both cases to the vote of the Swiss people at a referendum. If the people at a referendum approve the total revision of the Constitution by a majority vote, new elections to both the Council of States and the National Council are held. Approval of the Cantons is not required at this juncture. After the elections had been held, the newly elected Council of States and the National Council proceed to consider the proposed revision. If both the Councils approve it, the revision of the Constitution is submitted to the vote of the people at a referendum. If it has been approved by the majority of the Swiss citizens voting and the majority of the

Cantons, the revision comes into force.

Partial revision of the Constitution may be carried out either by means of a popular initiative, known as constitutional initiative, or in accordance with the forms laid down for federal legislation as analysed above. The popular initiative consists of a request, presented by 100,000 Swiss citizens entitled to vote, aiming at the introduction, setting aside or modification of specified Articles of the Constitution. If by means of a popular initiative several different provisions are to be modified or introduced into the Constitution, each one must be of a separate initiative request.

A constitutional initiative request may consist of a general proposal or take the form of a complete draft. A request in general terms for revision is just an indication of a desire by at least 100,000 Swiss citizens entitled to vote urging the need for a particular amendment which they deem necessary and expedient. A specific request, on the other hand, is a complete draft of the proposed amendment. If the request for amendment consists of a general proposal, both the Councils of the Federal Assembly should agree to it and if they approve, they shall prepare a partial revision in accordance with and in conformity to the lines of the proposal and submit their draft amendment to the people for adoption or rejection. If the Council of States and the National Council do not approve the revision, the question is submitted to the decision of the people. If the majority of the Swiss citizens entitled to vote decide in the affirmative (the Cantons are not counted in this procedure) the Federal Assembly shall undertake the revision in conformity with the decision of the people and submit it to a popular and Cantonal referendum.

If the proposal for a partial revision is in the form of a complete draft and if it meets with the approval of both the Councils of the Federal Assembly, it is submitted to the people and the Cantons for adoption or rejection. If the Councils disagree and do not approve the draft, they may prepare their own draft or recommend the rejection together with the draft proposed by the initiative to the decision of the people and the Cantons.

The procedure for partial revision on the initiative of the people may be summarised as follows:

1. If the demand for partial revision is unformulated, i.e., it is couched in general terms, the Federal Assembly, if it approves it, frames

the amendment and, then, submits it for the ratification of the people and the Cantons;

2. If the Federal Assembly does not approve the amendment, then,

(i) the question whether there shall be a partial revision or not is submitted to the people for their decision. No reference need be made to the Cantons.

(ii) If majority of the citizens vote in favour of the revision, the exising Federal Assembly, although it had already expressed its disapproval of the proposed revision, is required to draft the amendment in conformity to the popularly initiated proposal and submit it to a referendum of the people and the Cantons;

3. If it is a formulated proposal, the Federal Assembly is first required to approve it and, then, it is referred to a referendum of the people and the Cantons. If the Federal Assembly does not approve of the revision, it may recommend to a referendum:

(i) that the proposed revision, may be rejected or

(ii) may frame its own counter-proposals and submit them along with the original popularly initiated proposal for the decision of the people and the Cantons.

The constitutional popular initiative was introduced at the federal level in 1891, subject to a petition by 50,000 eligible voters.[21] It has actually been employed for 67 times from the date of its introduction to 1976 and accepted for 18 times only. The compulsory constitutional referendum for the same period had been used for 102 times out of which the eligible voters accepted it on 82 occasions. The number of amendments to the Constitution are quite numerous and a few partial revisions have significantly altered the constituent parts of the Constitution. The vast majority of them have extended the competence of the Federal Government in various dimensions, particularly in restricting the freedom of trade and industry. Other amendments impose upon Swiss citizens the exacting standards of morality in matters of drink, gambling, etc.

The notable feature of the Swiss Constitution is its development through formal constitutional amendments alone. There is no growth through judicial decisions and precedents, because of the absence of the system of judicial review. The Federal Tribunal cannot declare *ultra vires* a law of the Federal Assembly. The Swiss theory is that the sovereign power should remain in the hands of the people or their representatives in the legislature. An initiative proposal to invest the Federal Tribunal with power to review legislation was rejected at a referendum in 1939. Hans Huber, who himself was a judge of the Federal Tribunal, remarked that the Swiss people "saw in the judicial examination of constitutional law an in-fringement of democratic principles."[22]

Another fact to be noted is that it is "easier for the Swiss people to amend their fundamental law than their ordinary statutes against the will of a hostile Parliament."[23] This is due to the reason that the Swiss people have no power of initiative in the matter of ordinary legislation. They can, on a petition of 50,000 citizens, demand a referendum on any federal law or decree, but they can never "directly provoke the adoption, repeal or amendment of a law by the Federal authorities." The proposals for constitutional amendments in Switzerland have been made by the people frequently.

Swiss and American Constitutions Compared

A.B. Keith[24] has pointed out the following differences between the Swiss and the American Constitutions:

(1) The executive is vested in President in the United States and a Federal Council in Switzerland. It is a single executive in the former whereas it is collegial in the latter.

(2) In the United States the President is chosen by the Electoral College composed of elected representatives from each State, whilst in Switzerland the members of the Federal Council are elected by the Federal Assembly, In both countries the election has been intended to be indirect but it has become in reality a direct election in the United States.

(3) The Upper House or the Council of States in Switzerland has not the same weight in the constitution as the Senate in the United States since the consent of the latter is necessary before the President can make treaties or appoint public officers Senate in the United States is the strongest Upper Chamber in the world. The House of Representatives has, therefore, been eclipsed by

21. In 1977 the number was increased from 50,000 to 100,000.
22. Huber, H., *How Switzerland is Governed*, p. 10
23. Rappard, W.E., *The Government of Switzerland*, p. 60.
24. Keith, A.B., *Constitutional Law*, pp. 28. 28-29.

the Senate. This is a unique feature of the American legislative system and, indeed, of a representative system of government. In Switzerland no distinction is made between the Upper and the Lower Chambers; both possess identical powers. This is again a peculiar feature of bicameralism in Switzerland. Bicameralism assigns to the Upper Chamber a role different from the Lower Chamber because one must not be the replica of the other. But Swiss bicameralism defies this basic principle of Second Chambers.

(4) Party government, and consequuent wirepulling exist in an exaggerated form in the United States, whilst in Switzerland it is almost entirely absent. This result, it would seem, follows from the manner in which the executives are appointed in the two countries, as well as from the fact that in the one case the executive is vested in a President, who appoints the various public officers, and in the other case in a Council. Switzerland, unlike other democracies, has not in any true sense a party government. There is the absence of party machinery and party-lines are rarely drawn. There are no party leaders as well and merit alone is the criterion for election to the Federal Council. Nor is there any opportunity for any one to extend patronage and distribute spoils.

(5) the States in the United States are forbidden absolutely to enter into treaties; the Cantons have a limited power. Cantons in Switzerland have a constitutional sanction to conclude treaties with each other or with foreign States concerning matters of public economy, neighbourly relations and police provided such treaties contain nothing contrary to the Confederation or to the rights of the other Cantons. All such treaties are subject to the approval of the Federal Council. If the Federal Council does not approve or announce

other Canton raises an objection to them an appeal is lodged with the Federal Assembly for annulling the same.

(6) In Switzerland acceptance or rejection of a constitutional amendment must compulsorily be referred to the people. The Swiss voters also possess the right of constitutional initiative. In the United States neither of the two exists. In Switzerland, therefore, it is much easier to alter the Constitution than it is to change the Constitution in the United States.

(7) Laws of the Federal authority in Switzerland may be submitted on demand to a referendum, but not so in the United States. The national legislative referendum is applicable to federal laws, except budget and decrees, and since 1921 to international treaties. Within ninety days of the publication of a measure in the Federal Assembly either 50,000 citizens or eight Cantons may demand its submission to a referendum and the verdict of the people decides the fate of a measure.

(8) The Swiss federal judiciary cannot rule invalid a federal law, while, the United States Supreme Court often decides against federal legislation. In the United States supremacy of the judiciary is an accomplished fact whereas in Switzerland the Federal Assembly is supreme and the Constitution makes it so.

Today the Swiss political system has lost much of its originality. Direct democracy in the Cantons has become mostly unoperational. Referendum and intiative have become both irrelevant and ineffective. The Federal Concil has been reduced to the status and position of a parliamentary cabinet where the Socialists and other radicals often work as opposition.

SUGGESTED READINGS

Bonjour, E., *The Real Democracy in Europe: the Example of Switzerland.*

Huber, Hans, *How Switzerland is governed?*

CHAPTER III

The Cantonal and Local Government

The Communes and the Cantons

The principle of Swiss democracy, as said before, is "to be communal before being cantonal and to be cantonal before being federal." Switzerland is a union of highly developed autonomous communities within the federal State, and in the political life of the Swiss citizen the Canton looms larger than the federal State. The Commune is essentially the initial cell of Swiss democracy. It is the first basis of the administrative fabric, and a place which educates citizens in public affairs and instils in them a sense of civic duty. Then, come the Cantons, constituents of the Confederation.

"In the eyes of the citizen," writes Andre Siegfried, "the Canton is the living reality much more than the Confederation which may well appear to him as little more than a cold administrative mechanism. Each citizen feels himself a Swiss as a matter of course, but before being Swiss he is a native of Zurich or Glarus or Valais." He is the citizen of a Canton before being a Swiss citizen. Although, the present trend toward the nationalisation of political power and political loyalty have reduced their historic individuality and Cantonal feeling is slowly diminishing, yet the Constitution still recognises their sovereignty in so far as it "is not limited by the Federal Constitution, and as such, they exercise all rights which are not transferred to the federal power."[1] Cantons are still in fact the real centres of the political life of the nation. "It is to his Canton and to his city or village," writes Rappard, that a Swiss citizen "pays most of his direct taxes. It is to vote for and against cantonal and communal measures, for or against candidates to cantonal or communal office, that he is most frequently called to the polls. It was, until a generation ago, exclusively, and it still is mainly, on cantonal issues that political parties were and are formed and that many of the most important political battles are won and lost. Most constitutional changes were....wrought in the Cantons

before they become ripe for consideration by the federal legislature."[2] We, accordingly, give precedence to Cantonal and Communal political institutions before we actually consider those of the Federal Government. Really Swiss politics are only half understood without a knowledge of local institutions.

Constitutional Position of the Cantons

The Cantons twenty-three in number with three divided into half Cantons with their own separate governments—are very unequal in size and population. Their rights and powers correspond generally to those of the States in the American Union and the Australian Federal Commonwealth. Article 3 of the Swiss Constitution definitely specifies that residuary powers belong to the Cantons and that they are 'sovereign' within their sphere of jurisdiction. To the Federal Government are assigned specified powers. Each Canton possesses its own constitution and its own machinery of government—executive, legislative and judicial organs, a fiscal system and a civil service. And the Cantons control all forms of local self-government.

The Constitutions of the Cantons and half Cantons must comply with the provisions of the Federal Constitution. The Confederation guarantees the Cantonal Constitutions, provided that they: (a) do not contain anything contrary to the provisions of the Federal Constitution; (b) provide for the exercise of political rights in conformity with Republican representative or democratic forms of government; and (c) have been accepted by the people and can be amended on the demand of the absolute majority of the citizens. Within these limitations the Cantons are free to construct their constitutions and alter them as they please. In the beginning, the Cantonal Constitutions had been amended quite frequently and in some cases entailed a total revision. The net result of these amendments was that all the Constitutions, more or less, prescribe identical political institutions, except the four half Cantons

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1. Article 3.
2. Rappard, W. E., *The Government of Switzerland*, op cit., p. 31.

and one full Canton, five in all, where there is pure democracy.

Two Types of Cantons

Cantons are of two types—those ruled by primary, and those ruled by representative assemblies. To the first category belong the five pure democracies of Obwalden, Nidwalden, Appenzell Interior, Appenzell Exterior and Glarus. The first two are half-Cantons and they collectively make the Canton of Unterwalden. The third and the fourth, too, are half-Cantons making together the Cannton of Appenzell. Glarus is a full Canton. The origin of this curious institution of a half-Canton usually goes back to the simple fact that internal dissensions could not be settled except by territorial division. Obwalden and Nidwalden dissolved their common Landsgemeinde as early as 1432. Appennzell fell apart in 1592 as an outcome of the Reformation, which resulted in a half-catholic half-protestant Canton. The remaining twenty Cantons are representative democracies.

The Landsgemeinde

The Canton of Glarus and the four half-Cantons into which Appenzell and Unterwalden are divided still centre political authority in their over five hundred years old *Landsgemeinde* or annual assembly of all citizens which makes laws and elects officers, executive and administrative. In other words, the people directly exercise their superior power in an annual open air meeting, instead of through elected representatives.

The open-air meeting, called a *Landsgemeinde*, is held annually on a Sunday morning in April or May in the public square of the capital city or in a nearby meadow. Attendance is compulsory for all adult male citizens, but in practice all do not attend. The meeting is presided over by the head of the Cantonal Government in an atmosphere marked by solemnity, prayers, hymns and sometimes collective oaths. No turbulence and unusual activity or practice is ever in evidence. The proceedings are orderly and dignified and are usually witnessed by childern from other parts of Switzerland.

The *Landsgemeinde* elects by show of hands the Head of the Government, members of the Executive Council, the Cantonal representatives in the Council of States, judges and officials. The tradition is to re-elect the incumbents so lopg as they wish. The meeting further approves the accounts, votes the budget, and other legislative bills submitted to it. The *Landsgemeinde* has also the power to change the Cantonal Constitution.

The constitutional structure of a Canton consists of a Parliament, Landrat or the Cantonal Council, and an executive body, Regierungsrat or Council of State. The Landrat or the Cantonal Council is elected for a period of four years not by the *Landsgemeinde* but by separate electoral districts. This Cantonal Council is, in fact, a subsidiary legislature and attends to all the details that cannot be brought before the people in the open meeting, passes ordinances, votes the smaller appropriations, examines the accounts, and elects the minor officials. It also prepares the legislative work to be presented to the *Landsgemeinde*. This procedure is adopted obviously to prevent hasty and ill-considered action by the large public meeting. At one time the Cantonal Council tried to draw the whole control of legislative affairs into their own hands and no question could be brought in the *Landsgemeinde* without their approval. But after a good deal of struggle the people reasserted their right of private initiative. It is now the rule that one or more citizens can in some form propose any measure, provided notice had been given to the Cantonal authorities beforehand.

The Regierungsrat, or the Administrative Council, is usually composed of seven members elected by the *Landsgemeinde*. This is the Cantonal Executive Council and is presided over by the *Landammann* or the Head of the Government. The *Landamman* also presides over the *Landsgemeinde*.

REPRESENTATIVE CANTONS

In all other Cantons representative Republican form of government prevails.

The Great Council

The legislative power and the supervision of administration is vested in a unicameral representative assembly of the Canton, variously named Great Council or Cantonal Council. All Cantonal legislatures are unicameral as a matter of tradition. As the instruments of initiative and referendum provide for popular control over legislation consequently no need is felt for the check provided by a second Chamber.

The membership of the Cantonal legislatures tends to be large in comparison with the size of the population it represents. In some Cantons the number is fixed by the Constitution. For example, the Constitution of Zurich calls for as many as 180 representatives. Generally speaking,

the proportion between inhabitants and representative varies ranging from 1 to 250 to 1 to 4,000. The term of office of the legislators also varies. In most Cantons, it is four years; in the remainder it is from one to six years. The general tendency, however, is towards longer terms, because they are reluctant to go in for election so frequently. There must be at least one annual session to pass the budget. In some Cantons the legislature may be dissolved by popular vote. But with the general introduction of referendum the necessity of dissolving the legislature does no longer exist. Legislators in the Cantons receive no fixed salaries, but only a nominal sum per diem.

The powers of the Cantonal legislature include control and supervision of administration; control over the annual budget, loans, and taxations; power to declare a state of emergency and to call up Cantonal troops if necessary; to grant amnesty and pardon; ratification of inter-Cantonal treaties; election of superior judges in most of the Cantons and of the members of Cantonal authorities dealing with education, church affairs and banking.

Referendum and Initiative

Every representative Canton provides for Constitutional Initiative and Compulsory Constitutional Referendum. That is to say, every Canton is required by the Federal Constitution to submit all changes in its Constitution for the acceptance or rejection by the people.[3] The Constitution can also be amended whenever the absolute majority of citizens demand it.[4] All Cantons go further and have the legislative referendum also and an assortment of other devices, varying from Canton to Canton, such as budget referendum, or a compulsory legislative referendum for laws entailing expenditure beyond a certain limit. Initiative on ordinary legislation is permitted. The effect of the operation of the popular instruments is that the citizens are called to the polls from four to eight, or even more times a year, and each time they are required to vote several issues.

Cantonal Executive Power

Each Canton is governed by a collegial executive body known as the Government Council in German-speaking Switzerland, and Council of State in the French part. The collegial system of executive is in harmony with the Swiss tradition and is a universal institution throughout Switzerland, both in the Cantons and the Federal Government. It is usually composed of five or seven members, but Berne and Appenzell and Interior Rhodes have nine and Nidwalden has eleven. The executive is a representative body of the political parties in the Canton. Sometimes deliberate effort is made to give the parties proportional representation. Broadly speaking, the executive council is a "business board" with little political colour. The councillors are elected for a term from one to five years; in most Cantons the term is four years.

The Chairman of the Council *Landammann,* is rarely elected for more than one year at a time, and is not immediately eligible for re-election. In some Cantons the Chairmen are elected by the Canton legislatures, in others by their colleagues and in the rest by the people. They do not enjoy any special power or authority. They are just like others in the Council.

The Councillors are usually re-elected and the Swiss tradition is that good men ought to continue in office so long as their health and ambitions permit. Consequently, although their terms are short, it is often looked upon as a life job. Their work is just like that of the Federal Councillors, divided into various departments and a councillor is usually the head of one department. They must appear and report to the State legislature on the Cantonal administration, take part in its debates, propose measures and draft when required by the legislature to do so. They also follow the federal example of not resigning even if the legislature does not support their plans.

In spite of the obvious subordination of the executive to the Cantonal legislature, it must be admitted that the position and the knowledge which the Councillors possess secure for them great influence with the Great or Cantonal Council. It has the strength which experience acquires by permanence in office and, as such the Executive Council supplies the chief impulse to the legislature.

COMMUNES AND DISTRICTS

The Communes

There are now 3,118 Communes in Switzerland and they vary in size and population. They have the right of self-government within the limits prescribed by the Cantonal Constitu-

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3. Article 6.
4. *Ibid.*

tions and the statutory laws of the Cantons concerned. In matters assigned to them, for example, education, public health, poor relief, water supply, police, etc., they have complete autonomy and in their administration they possess the same structure as the Cantons. The general direction of local affairs, the decision of all matters connected thereto and the appointment of the principal officers of the Communes are vested in the assembly of all adult citizens of the Commune. For the conduct of current business and for the execution of the communal law, the assembly of all the people elects a Council. In most of the French parts of Switzerland and particularly in the large Communes, the assembly of the people does not transact business directly. On the other hand, they elect a Communal Council which transacts business on behalf of the assembly of the people. The French Communes, therefore have two Councils: a large one which deals with questions of general policy and all matters of importance; second, a smaller executive body with the Mayor at its head and entrusted with the duty of the execution of communal laws. The decisions of the bigger Council, which may be called a municipal Parliament, are sometimes subject to referendum.

The Districts

The District is an intermediate division between the Canton and the Commune. But it does not constitute, except in a few places, a political community like the Commune. The District is merely an administrative unit. The chief district official is elected by the people and at some places he is assisted by a council with advisory functions. The district official represents the Cantonal Government in the district and, with the assistance of his subordinates, carries out its orders, executes the laws and acts as a link between the Canton and the Commune.

Swiss local government presents some significant features unknown elsewhere. Every Swiss citizen must be a citizen of some Commune before he can acquire the citizenship of a Canton

and Switzerland. No foreigner can be naturalized in Switzerland who has not previously been declared acceptable as a member by a Commune. Secondly, the home Commune, as it is called, is ultimately responsible for him and his family. "The Federal Constitution assumes that, in case of their absolute indigence, this Commune must support them, wherever they happen to be living although it may of course oblige them to return to their political home."[5] Then, every Commune has an estate distinct from the one to which all residents contribute by taxation. The management of such an estate is reserved to the members of the Commune and not residents of the Commune. The law distinguishes between the local Commune, in which every citizen has an equal right to vote and is liable to equal taxation after three months of residence, and the Commune of origin or home Commune.[6] Then, the more important municipalities undertake and perform many economic activities which may be characterised as a socialistic tendency. The growth of this kind of municipal socialism in Switzerland has now become an important characteristic of Swiss political life in general though no socialist party has marked a conspicuous place for itself in the country.

While summing up the nature and importance of local self- government in Switzerland, James Bryce maintained that the Commune is not only the basis of the administrative fabric "but also the training which the people have received from practice in it has been a chief cause of their success in working republican institutions. Nowhere in Europe has it been so fully left to the hands of the people. The Swiss themselves lay stress upon it, as a means of educating the citizens in public work, as instilling the sense of civic duty, and as enabling governmental action to be used for the benefit of the community without either sacrificing local initiative or working the action of the central authority too strong and too pervasive."[7]

SUGGESTED READINGS

Brooks, R.G. *The Government and Politics of Switzerland*   Sanser Hall Georges, *Political Institutions of Switzerland*

Rappord W.E., *The Government of Switzerland*

5. Rappard, W. E., *The Government of Switzerland*, p. 53.
6. *Ibid*.
7. Bryce, J., *Modern Democracies*, Vol. I, p. 375.

The Frame of National Government—
The Federal Executive

Organisation of the Executive

The supreme directing and executive authority of the Confederation is exercised by a Commission of seven men[1] known as Bundesrat or Federal Council located at Berne. This Commission of seven men or Federal Council is chosen by the Federal Assembly for a term of four years (until 1931, for 3 years) from among all the Swiss citizens who are eligible to be elected to the National Council of the Federal Assembly. One of the members of the Federal Council is annually elected by the Assembly to serve as its Chairman and is designated President of the Confederation, while another is chosen as Vice-President.[2]

The term of office of the Federal Council coincides with the tenure of the National Council.[3] It is elected at the beginning of each National Council and is completely renewed after every General Election. Vacancies arising within the normal period of four years are filled at the next meeting of the Assembly for the unexpired term of office.[4] Although it is not required by the Constitution, the Federal Councillors are almost always chosen from among the members of the Assembly. When so chosen, they must resign their seats in the Legislature. The Constitution, however, prescribes that "no more than one person from each Canton may be chosen for the Federal Council."[5] Custom, on the other hand, insists one Councillor shall always come from Berne, another from Zurich and one from Vaud. This was, however, broken in the years from 1875 to 1881 and again from 1944 to 1947. The normal arrangement being that the Federal Council is composed of four German-speaking members,

two from French-speaking part, and one member from Ticino, the Italian-speaking Canton. The wisdom of this distribution has been proved by long experience, because all the three language groups and both confessions are more or less fairly represented.

There have several times been proposals for direct election of the Federal Council by the people and there has twice been a referendum on the subject in 1900 and 1942. But it had been unsuccessful both times. Lowell thought that popular election of the Federal Councillors would intensify party rivalry extending its "influence over the whole range of policies, and produce a radical change in the character of public life." The national conventions which would come into existence for the nomination of the candidates, "would put an end to the low development of party which renders the permanent, business-like, non-partisan character of the Federal Council possible, which makes it their places permanently even when their policy does not prevail. The Councillors would become the standard-bearers of the different groups, and could hardly maintain the mediating attitude that has made their position unique among the governments of the world."[6] The proposal for direct election has each time been made to secure representation on the Council for an excluded party or section of the country. It may, therefore, be said, as Hughes remarks, "that the threat of proposing a constitutional initiative for direct election is the section behind the custom of having all main parties represented on the Federal Council."[7] This may be illustrated from the party representation in the Federal Council. In 1943 there were 3 Liberals, 2 Catholics, 1 Farmer and 1 Socialist. In 1951, 3

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1. Article 95.
2. Article 98.
3. Article 96 (2).
4. Article 96 (3).
5. Article 9617.
6. Lowell, A. L., *Government and Parties in Continental Europe*, Vol. II, p. 320.
7. Hughes, C., *The Federal Government of Switzerland*, p. 108.

Radical Liberals, 2 Catholic Conservatives, 1 Social Democrat and 1 Peasant and Middle Class were chosen. The nature of representation remains more or less similar since then.

Federal Council not a Partisan Body

The Federal Council, says Bryce, "stands outside party, is not chosen to do party work, does not determine party policy, yet is not wholly without some party colour."[8] The Councillors are chosen neither from the parliamentary majority as in Britain, nor are they political leaders of different parties or groups, as it was in France, who coalesced to form a government. They are a heterogeneous group of politicians belonging to four different parties who are chosen for their capacity as administrators. Speakers or tacticians are not needed in the Swiss Executive. No matter how well-qualified on other counts, no one can expect to be elected to the Federal Council unless which, above all others, the Swiss demand of those who hold public office—modesty. In his previous Cantonal and national service, he must have left an image of a person dedicated to his work without thought of personal recognition. The office must seek the candidates, not the candidate the office. It is administrative skill, mental grasp, good sense, tact and temper, the sum total of the virtuous qualities that recommend a candidate for selection. According to Dicey two ideas underlie the institutions of Switzerland. The first is, the universal acceptance of the sovereignty of the people, and the second is, that politics is a matter of business with the Swiss people.[9] It is this second idea which guides the nation in the selection of their administrators and get their affairs managed by men of capacity.

Moreover, the Federal Council is not an independent or co-ordinate branch of government. It is essentially a business body subordinate to the Federal Assembly. It is not expected to frame and control the policy of the government. Its duty consists in conducting the administration and giving advice on legislation. Policy making is the function of the Federal Assembly and the Federal Councillors are there to carry out its behest. They are, indeed, the servants of the policy-making and policy-initiating body—the Federal Assembly—and, accordingly, they can-

not be partisans. All differences among themselves, though they are chosen from different parties, are ironed out by a spirit of compromise as public opinion in Switzerland expects every one to subordinate his own feelings to the public good. Lowell rightly remarked that the influence of the Federal Council "depends to a great extent on the confidence in its impartiality, and hence its position is fortified by anything that tends, to strengthen and perpetuate its non-partisan character."[10]

Long Tenure of the Councillors

The obvious result is that the Federal Council is unique in its stability. It is virtually a permanent body, though chosen afresh every four years.

The old members are always re-elected as long as they care to serve. If the National Council is dissolved earlier than the end of its normal four-year term, the first business of the new Assembly is to elect the Federal Council and in practice it means re-electing the old members without any consideration of the change in the complexion of the National Council. The non-partisan character of the Council and the fact that the Councillors are irremovable from office further contribute to their lengthy tenure. The average period of service is more than ten years, but persons like Signor Guiseppe, Motta, a Federal Councillor from Ticino, have held office from 1911 to 1940. Dr. Phillippe Etter served for 23 years, Dr. Karl Koblet for 14 years, Dr. Max Petipierre for 10 years and Dr. Rodolphe Rubattal for 8 years.[11]

Two important reasons may be assigned for this lengthy tenure. One, of course, is that to the Swiss it seems as irrational for the State to lose a valuable administrator on account of a difference of opinion. Dicey likens the Swiss Federal Council to a Board of Directors of a joint stock company, and adds that there is no more reason for altering its composition if it is doing its work efficiently in the general interests than there is to alter the membership of such a board under similar circumstances. Second, when a Councillor dies or resigns, the range of candidates for the place is quite limited, for, in practice, Councillors are almost invariably selected from the members

8.   Bryce, J., *Modern Democracies*. Vol. I, p. 394.
9.   Dicey, A. V., *Law of the Constitution*, pp. 608-09.
10. Lowell, A. L., *Government and Parties in Continental Europe*, pp. 202-03.
11. Dr. Josef Escher succeeded Dr. Errico Celio in 1950 on his appointment as Swiss Minister in Rome, Herr von Steiger and Herr Nobles retired because of their age and were succeeded by Dr. H. Feldmann and Prof. M. Weber on December 3, 1951. From 1848 to 1978 there had been 86 Councillors and the average length of tenure had been 11 years.

of the Federal Assembly which is by no means a numerous body. Moreover, the Constitution ordains that no more than one member from a single Canton may be chosen, and by usage the Cantons of Berne, Zurich and Vaud must be represented. This limitation narrows the choice. Finally, the office itself does not carry a fabulous salary and other amenities are also meagre. The Federal Councillor now draws a salary of 110,000 Swiss francs per annum. It is certainly an improvement over what it was in 1848 and even 1959, but a large number of Federal Councillors remain men of the people. It is told of a Federal Councillor that when he was asked why he travelled third class, he replied, "Because there isn't a fourth." The Swiss people are frugal and simple in habits and they do not want public offices to become glamorous. Their call to a public office is duty and patriotic devotion. They let those continue in office who are dedicated.

Organisation of Federal Administration

The work of federal administration is divided into seven Departments, equivalent to the number of the Federal Councillors. The Departments are designated as: Political; Finance and Customs; Interior; Justice and Police; Public Economy; Posts and Railways; and Military Affairs. The allocation of Departments is made among the Councillors themselves by mutual arrangement. Each Councillar presides over a Department and as his tenure of office is pretty lengthy, he retains for practical reasons of convenience and economy, the same Department continuously. The assignment is, however, nominally made afresh every year. At one time there was a complaint that actual changes in the allotment were too frequent. It is no longer the case now and the complaint is that changes are not made often enough.

Although the business of the Federal Council is divided into different Departments and one of the members is at the head of each Department, yet the Constitution ordains that "decisions are taken by the Federal Council as a body."[12] This provision gives to the Federal Council a corporate personality and makes it corporately responsible. It acts as a collegiate body and its decisions always come from that body as a whole. The Constitution further prescribes that "in order to make deliberation valid, at least four members of the Federal Council must be present."[13] The Law of 1914 on the organization of Federal Administration also provides that the deliberations of the Federal Council shall be in private, that decisions shall normally be by count of hands, that there must be at least three votes, and a majority of the Councillors present, on the majority side, and that the President has a casting vote.[14] All this means that the Federal Council must meet at least once a week and its deliberations are secret. Four members of the Council constitute a quorum and decisions are taken on a majority basis, but all decisions must be supported by at least three members.

There has been some criticism on the corporate responsibility of the Federal Council, and it has long been said that "there are seven Federal Councillors, but no Federal Council." It is true that members of four different parties can hardly hammer out a common policy. Then, the Councillors are not obliged to stand by each other, or even to pretend to hold out the same opinions and there have been occasions when members of the Council have argued against each other in the Federal Assembly, when sharply divided on policy. Decision, moreover, is by a majority vote. But since the deliberations of the Federal Council are secret, and former Councillors are reluctant to recount their experiences, it is difficult to state definitely how much diversity of opinion ordinarily exists. It seems quite evident, however, that members of the Council do not carry their party principles too far. This is partly due to the Swiss habit of compromise and submission to the majority. But, as Hughes remarks, "the loneliness of the very high office and the greatness of responsibility can hardly fail to engender a corporate spirit; the essential element for obtaining genuine agreements—secrecy of discussion—is after all present."[15] The Councillors also know it that the final decision of all the most important questions rests with the Federal Assembly; the sovereign body whose servants they all are. The most routine decisions in the ordinary transaction of business are made by the Councillor competent in the matter and then placed before the Council for usual ratification. Thus, as a member of a collegiate body, since the Federal Council governs collectively, he shares responsibility to the

12.   Article 103.
13.   Article 100.
14.   Articles 4, 6 and 7 of the Law of 1914.
15.   Hughes, C., *The Federal Constitution of Switzerland*, p. 116.

public for the Council's actions. "The subordination of the individual member to the will of the government", remarks Erich Gruner, "may go so far that he is forced to advocate publicly solutions to controversial problems which he rejects personally."[16]

The President

The officer, whose constitutional title is the "President of the Confederation", is one of the seven Councillors and is chosen, as also the Vice-President, by the Federal Assembly from among the members of the Federal Council for a term of one year. Swiss democracy insists upon the principle of rotation and the Constitution expressly provides that the retiring President cannot be elected either as President or as Vice-President for the following year, and the same member cannot be Vice-President for two consecutive years. Usage, however, requires that the Vice-President succeeds the President and the two offices rotate among the members of the Federal Council according to seniority. New Federal Councillors serve beneath all their seniors before filling the Presidency and those who have filled the office go to the bottom of the list. It means that a Councillor can become a President for more than one term though not consecutively. M. Guiseppe Motta was five times President, Herr Muller was president in 1899, 1907 and 1913, and Dr. Phillipe Etter in 1939, 1942, 1947 and 1953. Dr. Max Petipierre had three terms.

Although the President of the Confederation holds an office of some dignity and enjoys some precedence over his colleagues, yet his precedence over the rest is merely a formal precedence. He is in no sense the chief executive. He is not even *primus inter pares*, as he becomes one like others after the expiry of a year. Nor is he the chief administrator as he has no more power than his colleagues and is no more responsible than other Councillors are for the governance of the country. All decisions emanate from the Federal Council as a single authority. The President is simply a Chairman of the Federal Council and presides over its meetings. As Chairman only, he exercises a casting vote and that, too, in case of a tie. Such official authority as he may exercise comes to him as a member of the Council and as head of one of the seven administrative departments. He gets a salary equal to each of his other colleagues,[17] except an additional allowance of 5,000 francs for meeting entertainment costs for the year of his office. Switzerland has no palatial Government House for its President and he is not even provided with an official car. There is no grandeur and as the Presidency confers a more or less nominal honour, Swiss citizens are apt to foreget who their President is "just now" although they are likely to know by name the majority of the members of the Federal Council.

If such are the powers and authority of the Swiss President, then, it is generally asked where is the need for such an office? The answer is simple. There are certain durties, such as receiving potentates and ministers of other countries, which are impossible for seven men to perform simultaneously. Besides, there are some ceremonial national duties which must necessarily be performed by some one. The functions of the President are laid down in the Law on the Organization of Federal Administration of 1914 and it gives him certain very limited emergency powers, general supervisory powers, and the responsibility for the Federal Chancellery. It, also, states that "the President represents the Confederation at home and abroad." Formerly, by virtue of the system known as the 'Presidential Department' the President of the Confederation was also head of the Foreign Office. But as the President changed annually the Foreign Department also circulated among the members of the Federal Council. The result was that there was no continuity of direction in the management of a branch of public business, which perhaps, more than any other, requires permanence. Under the influence of Councillor Numar Droz the experiment of disassociating the Presidency from the Foreign Department was tried during the years 1887-94. It was again tried in 1915-17, and was permanently adopted in 1920. At present, a Federal Councillor may well remain in the Department to which he was first appointed until he retires, may it be a Foreign Department or any other Department.

Functions of the Federal Council

Article 95 of the Constitution designates the Federal Council as "the supreme executive and governing authority of the confederation." As the supreme Executive of Switzerland, the Federal Council is entrusted with most of the

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16. Gruner, Erich, *Modern Switzerland*, p. 342.
17. Those who are above 55 years of age are entitled to, after 10 years in office, a pension which varies between forty and sixty per cent of salary, according to their tenure of office.

duties that its counterparts have in other countries. In Switzerland, however, much of the responsibility is shared with other organs of Government. Article 102 contains a long list of the principal functions and duties of the Federal Council:

1. It conducts the affairs of the Confederation in accordance with federal laws and decrees.

2. The Federal Council must ensure due observance of the Constitution, the laws and decrees of the Confederation, and Federal Treaties. For the observance of international treaties, the Federal Government does not appoint its own officers. They are, as a rule, executed by the Cantonal authorities. The Federal Council is empowered to intervene and take necessary action, either on its own initiative or in response to an appeal against a grievance, if Cantonal Governments do not co-operate in the proper execution of federal laws, decrees and international treaties, unless the appeal is of the type which should go to the Federal Tribunal as provided in Article 113. In the classes of cases reserved for the Federal Tribunal, the Federal Council is entitled to take measures on its own initiative to secure the observance of the Constitution, "both to prevent the unlawful action and perhaps to remedy it, but without prejudice to an eventual appeal to the Tribunal."[18]

The Federal Council has exercised this authority with great tact and discretion by permitting elasticity in interpretation. Even where there is a sufficient cause of trouble with a Canton, its methods of compulsion and use of force are more consistent with the Gandhian technique. The subsidies given to the Canton are withheld and troops are sent "who accomplish their mission without bloodshed; for they do not pillage, burn or kill, but peaceably quartered there at the expense of the Canton, and literally eat it into submission. This is certainly a novel way of enforcing obedience to the law, but with the frugal Swiss it is very effective."[19]

3. According to a constitutional provision the Cantons must have their Constitutions and alterations sanctioned ('guaranteed') by the Federal Assembly. That is to say, the Federal Assembly has to pass an arrete granting or refusing the guarantee. It is the duty of the Federal Council to supervise the 'guarantee' of Cantonal Constitu-

tions. The guarantee is granted provided that the Cantonal Constitution contains nothing contrary to the provisions of the Federal Constitution; that the Cantonal institutions are representative or democratic, and that such political institutions have the consent of the people.

4. The Constitution empowers both the Houses of the Federal Assembly, to each member of either House, to each Canton and half-Canton and the Federal Council to initiate legislation. In practice, however, it is the Federal Council which really initiates major portion of the legislation to be enacted. Whenever the Federal Council feels that some new legislative measure is expedient to be enacted or the prevailing laws need some amendment for the proper and efficient conduct of government's business or when it feels that the popular demand for a new law widely exists, it drafts the desired measure, with the help of its expert staff, and submits it to the Federal Assembly. When a proposal originates at the instance of a member, the Federal Assembly passes a resolution requesting the Federal Council "to address itself to the subject and prepare a bill." It also frequently advises either House of the Assembly or a Canton whenever asked to give advice on the form or substance of a measure. The Federal Assembly receives the recommendations of the Federal Council accompanying the draft bill with respect and hesitates to enact it when the report of the Federal Council is unfavourable. The Federal Council, thus, really initiates legislation and the Federal Assembly only amends it and that, too, when deemed necessary.

The legislative responsibilities of the Federal Council do not end here. As a general rule, a Councillor is assigned to guide the bill all the way through the legislative process. The bill is examined in the Committee in his presence and he gives his advice and comments. When it goes to either House of the Federal Assembly, the Councillor is there to introduce the bill, to explain its objects and purposes, and to defend it if necessary and in general acts "as its shepherd before the legislative wolves."[20] The result is, in the words of Professor Rappard, "one is forced to admit that the most responsible and influential work is that not of the so-called legislature, but of the executive."[21]

5. Deputies of both the Houses of the Fed-

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18. Hughes, C., The *Federal Government of Switzerland*, p. 112.
19. Lowell, A. L. , *Government and Parties in Continental Europe*, Vol. II, p. 197.
20. Codding, G. A., *The Federal Government of Switzerland*, p. 93.
21. Rappard, W. E., *The Government of Switzerland*, p.84.

eral Assembly are given the right of interpellation. It is the duty of a member of the Federal Council to reply either immediately or at a later session. After the reply has been made, the Deputy, who initiated the interpellation, is given the opportunity to declare whether he was satisfied or not with the reply. If he is not satisfied, he can have recourse to motion or postulate. If the motion passes, the Council need not resign. Since 1946, the National Council has also made use of the "question hour". A deputy may question members of the Federal Council on any subject concerning the Federal administration.

6. As a result of the growing legislation and increasingly complex nature of governmental activities the Federal Assembly delegates to the Federal Council a great deal of discretion in the administration of Federal laws. The Federal Council issues rules and regulations thereunder which have the force of laws. Such rules and regulations are subject to the legislative referendum. There has been a steady increase in the power of issuing ordinances even in normal times. In times of emergency, the ordinance legislative power practically replaces normal legislation. It has become a custom at such times for the Federal Assembly to grant the Federal Council "full powers" to issue any ordinance it sees fit for the protection of Switzerland's neutrality and economic stability. In 1914 and 1939 the Federal Assembly conferred powers on the Federal Council which even permitted it to deviate from the Constitution.

7. The Federal Council examines the laws and ordinances of the Cantons that are required to be submitted for its approval. It also supervises the branches of Cantonal administration where such supervision is incumbent upon it.

8. It looks into the execution of judgments of the Federal Tribunal and of agreements and arbitration awards upon disputes between Cantons. The execution of the decisions of the courts and of many provisions of the Constitution, and of much federal legislation is left to the Cantons. If the Cantons fail to carry out these obligations, then, in the last resort the appeal is made to the Federal Council.

9. All federal appointments, except those entrusted to the Federal Assembly, the Federal Tribunal or any other authority, are made by the Federal Council. The Federal Council in practice delegates its right of appointment in very many cases to the various branches of administration and other independent authorities.

10. The Constitution debars Cantons from concluding among themselves separate alliances and all treaties of a political nature.[22] The Cantons may, however, conclude agreements among themselves concerning matters of legislation, justice and administration, provided such agreements are brought to the notice of the federal authority, which is entitled to prevent the execution of the agreements if they contain anything contrary to the Confederation or to the rights of other Cantons.[23] The Cantons also retain the right to conclude treaties with foreign States concerning matters of public economy, neighbourly relations and police provided such treaties contain nothing contrary to the Confederation or to the rights of other Cantons.[24]

The Constitution empowers the Federal Council to examine the agreements of the Cantons among themselves and with foreign States and sanction them if they are in accordance with the Constitution and the law otherwise the Federal Council can appeal to the Federal Assembly for annulling the same. All official intercourse between the foreign governments or their representatives takes place through the agency of the Federal Council.[25]

11. The Federal Council conducts the foreign relations of Switzerland, safeguards the extenal interests of the Confederation, ensures the external safety of the country, and maintenance of her independence and her neutrality. The Federal Council also negotiates treaties and ratifies them after approval of the Federal Assembly. It is incharge of external affairs generally.

12. It looks after the internal security of the Confederation, and the maintenance of peace and order. Actually, the maintenance of internal peace and order is the concern of the Cantonal governments. If internal order breaks down, then only federal intervention takes place. The Federal Assembly determines the measures to be taken[26] and the Federal Council looks after their implementation. What is presumably meant is that the Federal Council asks for an arrete, which the

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22.   Article 7(1).
23.   Article 7(2).
24.   Article 9.
25.   Article 10(1).
26.   Article 13(2).

Federal Assembly passes and the Federal Council carries out.

13. In the case of emergency, when the Federal Assembly is not in session, the Federal Council is empowered to call out troops and employ them as it may think fit. But it must convene a session of the Federal Assembly immediately, if the number of troops called out exceeds two thousand men or if they remain mobilised for more than three weeks.

14. The Federal Council is entrusted with the charge of the military affairs of the Confederation and of all branches of the federal administration. Article 13 of the Constitution provides that the Confederation may not maintain standing army. But Cantons can maintain a standing armed force, with the consent of the federal authorities, of not more than 300 men, not including police forces.[27] But the Confederation has the right to dispose of the army (consisting of troops of the Cantons and all Swiss who are subject to military service) as well as of the war materials provided for it and in time of danger, the Confederation has also the right to dispose directly and exclusively of all men not incorporated into the federal army as well as of all other military resources of the Cantons."[28]

15. It examines the laws and decrees of the Cantons which require its approval and supervises such branches of Cantonal administration as are placed under its control. For instance, the organisation, management and supervision of primary education is a Cantonal concern, but such education must be compulsory and, in public schools, free of charge. Adherents of all religions and beliefs can attend public schools without being affected in any way in their freedom of creed. Article 27 of the Constitution authorises federal authorities to take appropriate measures against Cantons which fail to meet these requirements. Article 31 guarantees the freedom of trade and industry through the territory of the Confederation. But Cantonal regulations concerning the exercise of trade and industry and the taxes on such activities remain unaffected. However, such regulations shall not depart from the principle of freedom of trade and industry where the Federal Constitution provides otherwise.

16. It administers the Federal finances and prepares the budget and submits accounts of federal receipts and expenditure.

17. The Federal Council supervises the official conduct of all officers and employees of the Federal administration.

18. The Federal Council gives an account of its work to the Federal Assembly in each ordinary session, presents to it a report on the internal conditions in the country and foreign relations of the Confederation, and recommends for its consideration such measures which it thinks useful for promoting the general welfare. It also submits special reports when the Federal Assembly or either of its House demands.

19. Finally, the Federal Council has some powers of a judicial nature. It hears appeals of private individuals against decisions of the various Departments and against decision of the Federal Railway Administration. It has also appellate jurisdiction over decisions of the Cantonal governments in cases relating to discrimination in elementary schools, differences arising out of treaties relating to trade, patents, military taxation, question about occupation and settlement, consumption taxes, customs, Cantonal elections, gratuitous equipment of the militia.

Executive Subordination to the Legislature

The powers of the Federal Council are enormous. But in terms of law it is the servant of the Federal Assembly. This is essentially due to the theory of the Swiss Constitution that the executive is not an independent or co-ordinate branch of government. The Federal Assembly elects the Federal Councillors and their term of office coincides with that of the National Council. When the National Council is dissolved for total revision of the Constitution under Article 120, the Federal Council must also be re-elected for the remainder of the legislative period. The President and the Vice-President are also the nominees of the Assembly.

The functions of the Federal Council are only supervisory. The policy emanates originally and finally from the Federal Assembly. Article 71 of the Constitution contains the statement that the Assembly exercises the "supreme power of the Confederation." And it is really so. The Federal Council has no initiative of its own, and when it exercises the prerogatives relating to foreign affairs, to the armed forces, or to the ordinary conduct of public administration there must be either previous authority of the Federal Assembly for all those acts or subsequent ratification. The Federal Assembly's practice of grant-

27. Article 19.
28. Article 20.

ing full powers in an emergency to the Federal Council definitely suggests that the Assembly can claim back the powers it effectively delegates. The Assembly, moreover, frequently issues directions in the form of resolutions or motions indicating the manner in which the Council's functions shall be discharged. The Council is also required to submit annual report to the Assembly. The report is debated, department by department, and finally sanctioned. The Council may also be required to make special report when the Federal Assembly or one section thereof demands it. The Councillors are not members of the Federal Assembly and yet they attend all plenary legislative sessions, answer questions, give explanations and join in debates. If the Federal Assembly disagrees with them or reverses their decisions in legislative or executive matters, the Councillors do not accept it a political affront and resign. On the contrary, they submit to the will of the Federal Assembly as the final authority and try loyally to carry out its directions. The Council, as Prof Dicey puts it, "is expected to carry out and does carry out, the policy of the Assembly, and ultimately the policy of the nation, just as a good man of business, is expected to carry out the order of his employer."[29] Lowell expresses the same idea a little more cogently. It is, he says, "a general maxim of public life in Switzerland that an official gives his advice, but like a lawyer or an architect, he does not feel obliged to throw up his position because his advice is not followed." He may not resign even when the personal policy of a Councillor has been rejected by the people. The resignation of Herr Welti, who resigned in 1891, when his railway nationalisation policy having been accepted by the Assembly was afterwards rejected by the people at the referendum, was declared as "unconstitutional."[30]

Not a Parliamentary Type of Government

It follows, then, that the Swiss Federal Council is not a parliamentary cabinet. In reality it is highly misleading to name the Council a Cabinet, as some do. The term Cabinet implies a degree of party solidarity which the Swiss body does not possess. Party solidarity necessitates political homogeneity as team work demands oneness of purpose and aim. The ministers, who

make the Cabinet, are the real functionaries, they belong to the parliamentary majority party, and are chosen to carry out party pledges. They are responsible to the legislature, individually and collectively, for all their official acts and remain in office so long as they retain its confidence which, for all intents and purposes, means the confidence of the people who elected them in majority. The Swiss Council, no doubt, is elected by the Federal Assembly, but the Councillors are not required by the Constitution to be members of the Assembly, and if they are, as they generally are, before their nomination as Federal Councillors, they must resign their seats therefrom. They become Councillors not because they belong to the parliamentary majority party or are the leaders of the political parties, but in their capacity as administrators and in conformity with Swiss democratic sense that they represent all interests, people and territories. It is true that they appear in both the Houses of the Federal Assembly, take an active part in debates, answer to questions put to them by members and have the right to voice proposals concerning the subject-matter under discussion,[31] yet they do not profess or advocate a policy. They simply participate in the debates of both sections of the Federal Assembly in a consultative capacity and have the simple right to express opinion and voice proposals concerning the subject-matter under discussion. It is for the Assembly to pay any heed to such proposals or not, or even to reject them summarily. Nor do the Federal Councillors vote on matters for decision before the Assembly because they have no *locus standi* in the organisation and membership of either House of the Assembly.

The law, no doubt, demands that the Federal Council should hold regular meetings once a week, its deliberations should be in private and decisions reached by majority vote,[32] and the Constitution insists that decisions shall be under the name and by the authority of the Federal Council.[33] Nonetheless the Federal Council is not a homogeneous whole and differences of opinion among the Councillors are permitted and allowed to become known. They occasionally speak on opposite sides in the legislature, although it goes to the credit of Swiss democracy that such differ-

29. Dicey, A. V., *The Law of the Constitution,* p. 611. Also refer to Bryce, *Modern Democracies,* Vol. I, p.446.
30. Encyclopaedia Britannica, 11th ed., p. 211. After the First World War, the number of such resignations has increased. Ghose, R. C., *The Government of the Swiss Republic,* p. 92.
31. Article 101.
32. Article 4, 6, 7. Organisation of Federal Administration and Law, 1914.
33. Article 100.

ences rarely cause trouble. But this is not the way of Cabinet government. Differences of any kind are not permitted in the ministerial ranks.

The Constitution also permits the Federal Council to recommend to the Federal Assembly for its consideration such legislative measures and decrees as it may think useful for promoting general welfare.[34] It is also very common for the Assembly to pass a resolution and request the Federal Council to prepare a Bill on some subject, and in fact all measures not introduced by the Federal Council are, as a rule, referred to it before they are sent to a Committee or taken up for debate. In this way, the Council exerts a great influence in shaping the actual legislation. Still, it does not give to the Federal Council a legal legislative leadership. Its role remains only advisory and here lies the fundamental difference.

But the real difference between a cabinet and Swiss Federal Council hinges upon their relationship with the legislature. A cabinet is created by the legislature and it exists on its confidence. In Switzerland the relations between the two are based upon an entirely different principle. While the connection between the Federal Council and the Federal Assembly is quite close and in many aspects akin to what it is between the cabinet and the legislature under a parliamentary system of government, yet the Federal Council neither leads nor controls the Assembly. The Assembly is the master and it possesses the supreme power in the Confederation; the Federal Council is just its subordinate authority. The Constitution does not make the executive an independent or co-ordinate department of Government. The Federal Council is not responsible to the Assembly in the same way as a cabinet is to the legislature. Moreover, resignation of a Councillor is not likely to bring a crisis. The Federal Councillors must not resign collectively or individually when their measures are rejected· or their policies reversed by the Assembly. They continue in office no matter what the Assembly does to their Bills or executive orders. This is so, because the Federal Councillors do not initiate or control the policy and they are not collectively pledged to pursue it. They have no policy of their own. Nor can the Federal Council possess the power to dissolve the Federal Assembly or one of its Houses. Herein lies the real secret of the Federal Council's position.

Not even a Presidential System

If the Swiss Federal Council is not akin to

a parliamentary Cabinet, it is not even the presidential type of executive. There is, indeed, no semblance between the two. The Federal Council is not like the executive in the United States, a separate branch of government. The American Presidency is a single executive and the Constitution assigns to the President independent and exclusive powers with a policy of his own. The President is, in brief, both an executive and the executive. Congress cannot encroach upon his constitutional rights, nor can it limit his actions. The only contact between the executive and the legislature is through the Presidential messages, otherwise neither he nor the members of his 'Cabinet' have any access to either House of Congress. The Secretaries, who are the administrative heads of the different Departments of Government and are said to make the President's Cabinet, are appointed by him and they remain in office so long as he wishes them to continue. It is for the President to decide when and how to consult them. It is, again, for the President to determine whether to accept their advice or not. They are the advisers of the President and they really make his 'family'. The office of the President does not depend upon Congress. He is popularly elected for a term of four years and his office goes by calendar. In fact, the Swiss Confederation has no President as the Cantons have no Governors in the real sense of the terms. The collegial system is the traditional form of Government and the only one in use in Switzerland.

The Swiss Federal Council is not a separate branch of government with an independent policy of its own. It has been given no veto upon laws to prevent encroachment upon its rights. Nor is it completely divorced from the legislature. The connection between the Federal Council and the Assembly is close and intimate. In fact, the Federal Council is very often described as the "Executive Committee of the Swiss Parliament." Whatever it be, it remains a fact that the Federal Council is not an independent authority at all, for its administrative acts are supervised, controlled or reversed by the Federal Assembly, the supreme authority of the Confederation.

Plural Executive

To sum up, the Swiss Federal executive is neither Parliamentary nor Presidential. It is unique by itself inasmuch as that it is collegial body of seven members who serve as the coun-

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34.   Article 10: . Section 4.

try's supreme executive and governing authority. The framers of the Constitution rejected the American precedent of a single elected exponent of the country's executive power. They were not unconscious of the advantages of unity and continuity of action inherent in an elected President, But, as they said: "The Committee entrusted with the task of framing the Constitution could not think of proposing the creation of an office so contrary to the ideas and habits of the Swiss people who might see therein evidence of a monarchical or dictatorial tendency. In Switzerland one attached to councils....Our democratic feeling revolts against any exclusive personal preeminence."[35]

The Constitution in 1848, accordingly, entrusted the supreme directing and executive power in the Confederation to a Federal Council consisting of seven members, and the relevant provisions are still in force today. Having created a collegial executive, it was made to include the important features of both the parliamentary and presidential systems of government. The Swiss executive is the mixture of the two and the architects of the Constitution were original in giving to their country an absolutely new mechanism of government which combined the merits and excluded the defects of both the parliamentary and presidential systems. James Bryce correctly remarked that the Federal Council is not Cabinet like that of Britain and the countries which have initiated her Cabinet system, "for it does not lead the legislature, and is not displaceable thereby. Neither is it independent of the legislature, like the executive of the United States and of other republics which have borrowed therefrom the so-called 'Presidential system,' and though it has some of the features of both these schemes, it differs from both in having no distinctly partisan character."

This is surely the unique feature of the Swiss Constitution. In no other modern republic is executive power entrusted to a council instead of to an individual, and in no other free country has the working executive so little to do with politics. The Swiss Federal Council, to quote Bryce again, "stands outside party, is not chosen to do party work, does not determine party policy, yet is not wholly without some party colour." The practice now accepted and followed, since the election of 1959, is that the composition of the Federal Council should reflect as far as pos-

sible the strength of all the major political parties in order to ensure executive leadership and highly efficient government.

Advantages of the Collegial Executive

The constitutional position and the work of the collegiate executive are really admirable, for it has some of the chief merits of the Cabinet system without the disadvantages. In Switzerland there is the same mutual confidence and co-operation between the legislature and the executive as it is obtainable under the Parliamentary system of government. But a Cabinet should advantageously belong to one single majority party in the legislature or to a combination of two or more parties who agree to work out a common political programme. The Swiss Federal Council, on the other hand, is representative of all the opinions and areas in the country, and still it is pledged to no political programme. Such a representative executive does not leave an opportunity for the opposition to grow and exist. When all the interests and opinions are given their due share of influence in the conduct of public affairs, it really means a democracy; a government of all by all and for all—a real government by consent. Then, the Federal Council is a reputed non-partisan body and its role is not only to advise and influence the Federal Assembly, but also to mediate, "should need arise, between contending parties, adjusting difficulties and arranging compromises in a spirit of conciliation."[36] This is not difficult in Switzerland because public opinion expects of every Swiss to subordinate his own feelings to the public good and, as such personal ambition in Switzerland has played smaller part than in any other free country. Lowell, accordingly, says that the Federal Council "may almost be regarded as a mainspring and is certainly the balance-wheel of the national government."[37]

Another advantage of the Swiss collegiate executive is its permanence and stability. As it is not dependent on the vote of the legislature for its life, the executive is stable, more or less permanent and certain to follow a coherent and consistent administrative policy. Moreover, the Swiss system enables proved administrative talent to be kept in the service of the nation, no matter what personal opinion they may hold on particular issues. Such a homogeneity in diversity, stability and continuity are inconceivable under a Parliamentary system of government.

35. As quoted in R. C. Brooks, *The Government of Switzerland*, p. 76.
36. Bryce, J., *Modern Democracies*, Vol. I, p. 398.
37. Lowell, A. L., *Government and Parties in Continental Europe*, Vol. I, p. 398.

Bryce has cogently said, "It (the Federal Council) provides a body which is able not only to influence and advise the ruling Assembly without lessening its responsibility to the citizens, but which, because it is non-partisan, can mediate, should need arise, between contending parties, adjusting difficulties and arranging compromises in a spirit of conciliation. It enables proved administrative talent to be kept in the service of the nation, irrespective of the personal opinions of the councillors upon the particular issues which may for the moment divide parties....It secures continuity in policy and permits traditions to be formed."

Finally, the Swiss system secures continuity in policy and permits traditions to be formed. When the members are appointed singly and at considerable intervals, it lifts the body above the transient impulses that stir in the people. There are no partisan commotions and flaring up of emotions. Both of these are really invaluable traditions in the life of a democratic nation and such traditions cement continuity in policy. It is often contended that continuity and traditions have the tendency to make administration "groovy", but this is hardly a danger in Switzerland where every citizen is imbued with a public spirit and where Councillors are always accessible, and in constant touch with the Assembly.

Growth in Its Powers

According to law the Federal Council is the Servant of the Federal Assembly, but in reality it is exactly not so. The Federal Council, observes James Bryce, "exerts in practice almost as much authority as do English, and more than do some French Cabinets so that it may be said to lead as well as follow."[38] A lengthy tenure of office adds to the Councillor's official prestige, administrative skill and political judgment. The mere fact that the Federal Assembly transfers to the Council most of the legislative initiative and very often seeks its advice on all measures offer to the Councillors vast opportunities to determine the tenor and direction of public policy.[39] The nature of modern legislation, which requires considerable technical knowledge, has further helped to transfer the legislative initiative into the hands of an expert body like the Federal Council.

With the help of its expert staff the Federal Council drafts bills and presents to the Federal Assembly, along with a well- reasoned report presenting the purpose of the proposed legislation and giving the reasons why it should not be enacted. Even in the case where the Federal Council drafts bills on the direction of the Assembly, it usually does not enact the draft law when the Council's report is unfavourable. Moreover, the Council enjoys the delegation of legislative powers and the rules and regulations framed thereunder are as valid as the law itself. Emergency powers of the Council are as significant as its ordinance making power. One of the most sweeping grant of power to any democratic executive whose country was not actually engaged in war was given in 1939 to the Federal Council.[40] It was passed in the form of an urgent federal arrete, not subject to the legislative referendum, only one day after the Federal Council made the request. The powers given to the Council by the Assembly went very far to suspending the Constitution altogether, made the government almost the sole legislature and did much to check the interplay of democratic institutions, specially of the referendum.

A steady growth in the powers of the Federal Council had been the course of Swiss constitutional history. Since the introduction of proportional representation, the Federal Assembly has ceased to be dominated by one or two political parties. It is increasingly turning out to be an arena of political higgling and haggling between a large number of parties with the consequent result that the Assembly does not today enjoy its past prestige and power. The Assembly's loss is the Federal Council's gain. Moreover, in the process of centralisation in Switzerland the authority of all the central institutions has considerably extended, but by comparison with the Federal Assembly the Federal Council has become more powerful and independent.

The contemporary tendency all the world over for strengthening the executive power has also helped to disturb the Swiss balance of power. Practically irremovable, and difficult to control by reason of the great technical complexity of its tasks, the Federal Council has, according to Andre Seigfried "gradually come to wield a quasi-absolute power". The two World Wars and the economic depression of 1930, were the most important of all the causes which have contrib-

38. Bryce, J., *Modern Democracies*, Vol. I, p. 397.
39. Refer to W. E. Rappard, *The Federal Government of Switzerland*,, pp. 82-85.
40. Codding, G.A. *The Federal Government of Switzerland*, p. 95.

uted to the growth of the powers of the Federal Council. In their efforts to maintain Switzerland's traditional neutrality and to protect the country's economy during and after the Wars, the Federal Assembly delegated "blanket" authority over matters, hitherto regulated directly by statute, to the Federal Council. In pursuance of these powers, the Council issued ordinances vitally affecting personal liberties and properties of the people. It also issued decrees relating to private law in the name of public security or necessity. The power of issuing ordinances, though it is a normal feature in the Continental countries, was hitherto unknown in Switzerland. Adopted as a measure of national expediency or exigency, it came to stay in Switzerland and has now assumed a normal character of the Federal Council's executive authority. Is this new development not antagonistic to the traditional Swiss principle of legislative supremacy? The system of direct democracy, has probably given the most fatal blow to the supreme power of the Assembly. On many occasions legislative measures passed by the Assembly by a heavy majority have been rejected by the people. Even with regard to ordinary legislation the Federal Council in the words of Bryce, "is a guide as well as an instrument, and often suggests as well as drafts measures." When the supreme authority receives suggestions and accepts them, and allows the same suggesting authority to draft the legislative measure, it really does not remain supreme, though legally it may continue to be so.

THE FEDERAL ADMINISTRATION

Administrative Departments

The Federal administration is divided into seven Departments each headed by a Federal Councillor. By virtue of the law on the organization of Federal Administration of 1914, the Departments are: (1) The Political Department; (2) Department of the Interior; (3) Department of Justice and Police; (4) Military Department; (5) Department of Finance and Customs; (6) Public Economy; and (7) Traffic and Power. The Departments are allocated by the Federal Council itself among its members. Every Federal Councillor is also Deputy for another Department.

The functions assigned to Departments are constantly changing and the Law of 1914 is not a convenient document for determining the jurisdiction of each Department. Moreover, Article 23 of the 1914 Law gives the Federal Council power to determine what subject matters are to be delegated to the Departments "to deal with on their own, and provides for appeals to the Federal Council itself against such departmental decisions in certain circumstances."[41]

The Political Department embraces some political responsibilities, but it is essentially a foreign office and deals with foreign relations of the Confederation. Before 1914, this Department was known as the Presidential Department and it always went to the President of the Confederation. But this required an annual change, with the change of President and, accordingly, there was no continuity or direction which is so essential in the conduct of foreign affairs. Now the Political Department goes to one of the Councillors and it continues under him so long as he remains a member of the Federal Council, no matter whether he happens at the same time to be the President of the Confederation or not. Ernst Noles, the President for 1949, held charge of the Department of Finance and Customs while Dr. Max Petitpierre was in charge of the Political Department from 1945 to 1951 and continued to hold the same for another four-year term after his re-election. Since neutrality is an essential condition of Switzerland's domestic peace, the task of the Political Department is really arduous. The choice of the people in selecting a person who should shoulder this responsibility has been remarkable and it has fallen on such men as Ador (1917). Mota (1920-40), and Petitpierre.

"Neutrality has no value," writes Andre Seigfried, "unless the independence it represents is defended by force of arms." Neutrality, thus, includes the defence of Switzerland's own independence by force of arms, if necessary, and the Swiss guard themselves with vigilance and suspicion against any possible aggression from her neighbours. Military Department is, accordingly, the next most important. The Confederation is not authorised to maintain a standing army,[42] and standing army here means a mercenary army.[43] The Swiss army consists of conscripts, very small cadre of regular officers, and some maintenance troops. All Swiss youngmen of an adequate physical standard must do military service, except certain officials while in office and the clergy

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41. Hughes, C., *The Federal Constitution of Switzerland,* p. 117.
42. Article 13.
43. Hughes, C., *The Federal Constitution of Switzerland,* p. 147.

of recognised denominations. Cantons are also permitted to maintain military contingents. The Federal Government exercises control over federal army, war material, organisation of the army and military education.

The functions of the Interior Department are miscellaneous and more or less similar to its counterpart in the United States. It is assigned the function of carrying out the Federal Government's policies with regard to education, public works, conservation, and public health. Of the remaining Departments, the Departments of Posts and Railways and Public Economy require a little consideration. The Confederation owns and manages the postal, telephonic, telegraphic, wireless and railway system. The Railways Administration is a separate entity though it functions under the control of the Department of Posts and Railways. It enjoys a considerable degree of autonomy and, *inter alia*, has a separate budget. The Department of Public Economy is concerned with industry, agriculture, and social insurance. It helps in the exploitation of natural resources and devises measures for accelerating Switzerland's productivity.

The Civil Service

The personnel of the Swiss Civil Service is not numerous as in other countries in spite of the increase in the Federal Government's activities and a general tendency towards centralization. This is primarily due to the fact that the Federal authorities do not maintain their officers in the Cantons. All federal measures are put into execution by the local authorities. Apart from the employees of the post office, the railways and certain exceptional branches of administration there are no federal officials.

The two World Wars, however, have considerably added to the number of the civil servants. The magnitude of the increase can be examined from these figures. In 1939, the total number of the civil servants was 10,842 and in 1945 it increased to 29,630. After the War some reduction was brought about and the next year the number fell to 26,131. A further reduction by 8,000 was effected in the following years. In 1959 the central administration employed only about 17,554. Nonetheless, extension in the powers of the Federal Government is generally deemed in Switzerland as an encroachment on the autonomy

of the Cantons. The growth of bureaucracy and the creation of bureaucratic mentality in administration "must tend in the long run," remarks Andre Seigfried, "to compromise the spirit of a regime which is founded on cantonal autonomy and popular delegation, that is to say, a regime which is founded on confidence in men rather than on administrative mechanism from which the human element tends to be more and more excluded."

The Federal civil servants, except a very few of the most important which lie in the gift of the National Assembly, and others appointed by the Federal Tribunal or other Federal authorities as the Federal Railway Administration, are appointed by the Federal Council and are dismissed by it for any dereliction of duty. Appointments to the higher posts are made usually for a term of four years subject to reappointment, which is just a mere formality. These appointments may, therefore, be described as permanent. There is nothing resembling the American Spoils System in Switzerland. Very rarely is any one dismissed for political reasons; nor do such reasons play great part in appointments. Moreover, meagreness of salaries does not make jobs worth struggling for in Switzerland, and public opinion, too, would reprehend any attempt to appoint incompetent men for party reasons. The retirement age is sixty-five years.

The Federal Chancellory

The Federal Chancellory at the head of which is the Chancellor of the Confederation, is responsible for the secretarial business of the Federal Assembly and of the Federal Council.[44] The Chancellory is under the superintendence of the President of the Confederation, and the ultimate superintendence of the Federal Assembly. The Chancellor is elected by the Assembly in a joint session[45] for four years, but in practice he continues in office until he retires. The election has fairly political flavour, and regard is paid to the alterations of languages and confessions. The Vice-Chancellors are appointed by the Federal Council, and "one of them usually acquires a sort of moral claim to the office of Chancellor before the place falls vacant."[46]

The personality of the Chancellor is not important, for his duties are chiefly formal and mechanical. The office, however, is of consider-

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44.   Article 105.
45.   Articles 92 and 85, Section 4.
46.   Hughes. C., *The Federal Constitution of Switzerland*, p. 109.

able dignity and confers upon its holder a sort of honorary headship of the Federal Civil Services. "There is no British equivalent—but the functions have a faint similarity with those of the clerk of the County Council, while the prestige is not entirely unlike that of the Speaker of the House of Commons. His duties include:

(i) The clerkship of the Federal Council; and

(ii) The office of clerk-at-the-table of the two Houses and of the Federal Assembly in a joint session; his Deputy acts for him in the other House. His functions, as such, include the supervision of the shorthand, and the translation, and what we should call the office of the Sergeant-At-Arms;

(iii) The supervision of the publication of the legal acts of the Federal Assembly and the Federal Council;

(iv) The counter-signing of Federal Acts, and the organization of federal elections and initiative and referendum votes;

(v) Certain duties regarding organisation and methods of federal administration.

Merits of the Swiss Administration

Bryce points out two prominent merits of Swiss Government and administration in general. One is the cheapness of administration. Finances are carefully managed and current normal administrative expenses are kept appreciably down. It is true that the two World Wars meant a mounting expenditure beyond the financial capacity of Switzerland, but the people being thrifty and inquisitive, who apply to "public expenditure a vigorous standard such as that regulates a peasant household," their economy is relatively stable and the country has not to face serious financial embarrassments.

Purity, according to Bryce, is the second prominent feature of the Swiss administration. The Federal and Cantonal Governments are practically free from corruption and public scandals are rare, but when they occur "the guilty person however strong his position had been, must quit public life forthwith."

To this may be added the third, an efficient government. Professor G.J. Friedrich, an eminent student of Public Administration, goes so far as to say of Switzerland: "Except to the extent to which she was helped by the example of France and Germany, she is full proof of the contention that democracy is able to do a better job, in fact, than of other system. For there can be little question that upon close scrutiny by unbiased investigator the Swiss appear to have a more effective responsive officialdom than any other country except Sweden (and Sweden also is very democratically governed)."

CHAPTER V

The Frame of National Government—
The Federal Assembly

A Bicameral Legislature

The Federal Legislature, known as the Federal Assembly, is bicameral. Its two chambers are: Counsil des Etates, the Council of States, and Counsil National, or the National Council. The Swiss Parliament is supreme and the Constitution expressly states: "subject to the rights of the people and of the Cantons....The supreme power of the Confederation shall be exercised by the Federal Assembly."[1] The Assembly passes the law which may neither be vetoed by the President of the Confederation nor declared unconstitutional by any Swiss court. The supremacy of the Federal Assembly further means that other organs of Government are not coordinate and independent, but are subordinate to it, subject to the provisions of the Constitution. It not only legislates in legislative as well as constitutional matters, but it also chooses the members of the Executive—the Federal Council and elects the Judiciary as well as the Chancellor, who is the permanent head of the civil service. The directions of the Assembly are final and not subject to appeal. To put all this in the words of Rappard, the Federal Assembly is supreme "as long as it retains the confidence and performs the will of the electorate."[2] The electorate has the right to veto all the unpopular Bills by defeating them at a referendum and it has been done so often. "The Swiss voter," remarks Bryce, "always independent, is most independent when he had to review the action of his legislature."[3] There is, thus, no possibility in Switzerland of legislative tyranny, or tyranny of a parliamentary majority and this was fully demonstrated in 1884 in connection with the four laws, called at that time, "the four-humped camel" and characterised as "the high handed behaviour of the ruling majority of the Assembly." All these laws were rejected at a referendum.

THE COUNCIL OF STATES

Composition and Organisation

The Council of States represents the component units of the Confederation on the basis of equality and corresponds to the American Senate. Every Canton, no matter what its size or population, is entitled to two representatives, and every half-Canton one representative.[4] The total membership of the Council of States is, thus, 46—representing 23 Cantons, three divided into half Cantons.

Each Canton determines by its own laws the mode of election of the Deputies, the length of their terms of office, and the allowances paid to them. In certain Cantons Deputies are elected indirectly by their legislatures while in some others they are elected directly. In the Landsgemeinde Cantons they are elected by the Landsgemeinde. There is, accordingly, no uniform method of election, or a similar tenure of office or an equal fixed salary. The terms of office vary all the way from one to four years; three years being the most common. In St. Gallen it is one year. In two Cantons the Deputies may be recalled by the Cantonal legislatures before the expiration of their term.

The only restrictions on elections to the Council of States are contained in Articles 6, 81, and 108 of the Constitution. According to Article 6 all Cantonal elections must be democratic. Article 81 provides that members of the National Council and the Federal Council must not be at the same time members of the Council of States. Article 108 makes membership in the Council of States incompatible with membership on the Federal Tribunal.

The membership of the Council of States is usually quite stable as most Deputies are

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1. Article 71.
2. Rappard, W. E., *The Government of Switzerland*, p. 56.
3. Bryce, J., *Modern Democracies*, Vol. I, p. 436.
4. Article 80.

reelected for as long as they wish to serve. The calibre of the Deputies is pretty high and they command sufficient experience in national and Cantonal public affairs. Only those who have proved their worth in Cantonal affairs are likely to be selected and quite often they are drawn from the Cantonal Executive Councils or their legislatures.

The Council of States must meet once a year in ordinary session on a day fixed by standing orders. Provision is made in the Constitution for the calling of special session either by the Federal Council, or on the request of one-quarter of the members of the National Council or of five Cantons.[5] The Council of States elects its own Chairman and Vice-Chairman for each ordinary and extra-ordinary session. But the Constitution provides that the Chairman or Vice-Chairman may not be chosen from the Deputies of the same Canton whose representative was Chairman during the ordinary session immediately preceding.[6] The effect of this constitutional provision is that the office circulates among Cantons.[7] The Chairman presides over the meetings of the House and is largely responsible for the determination of the daily order of business to be transacted. He votes in case of a tie, but in the elections of the members of the Federal Council, its President and Vice-President, Judges of the Federal Tribunal, the members of the Federal Insurance Court and the Commander-in-Chief the Chairman votes in the same manner as other members of the Council of States.

The attendance of an absolute majority of the total number of the Deputies (46) is necessary for the valid transaction of business,[8] that is, 24 members, and all questions are decided by an absolute majority of those voting.[9] The Deputies vote without instructions from their Cantons,[10] and this constitutional provision implies that the members of the Council of States do not represent separate Cantonal interests and they cannot be armed with definite instructions as to how they should vote on particular issues. "The programme which the Article implies," observes Christopher Hughes, "is that members should

vote from their consciences and not from instructions"[11] of either the Cantonal legislatures or of their parties or other associations.

The Council of States, A Weaker Chamber

The Council of States possesses equal rights and powers with the National Council. All legislative measures may be introduced in either of the two Houses and must be approved by both the Houses to become laws. In case of disagreement and when second deliberation too has yielded no results, the differences are submitted to a Joint Conference Committee. If the Joint Conference Committee fails in its efforts to reach an agreement, the bill in question is dropped. Neither of the two Houses enjoys priority even in regard to financial matters. The framers of the Constitution had really attempted to make the Council of States a close second to the American Senate, and occupy the same position of precedence in the framework of the national government. But the Council has failed, for several reasons, to fulfil the expectations of its makers. Its history has, in fact, been almost the reverse of the American Senate. The latter was in the beginning inferior, both in influence and public esteem to the House of Representatives. It was only in the second generation of statesmen that the Senate assumed its present dominating role. The Swiss Council of States, on the other hand, began its career with high hopes and great reputation, but gradually it receded into the background and men of energy and ambition began preferring to sit in the National Council. The Swiss Council of States, unlike the Senate, is given no special functions and the tenure of office of the Deputies being not uniform and in some cases even subject to recall, it provided little attraction for promising youngmen who looked on it as only a stepping stone to the National Council. Nor does it provide an element of continuity from which traditions might flow. When both the Councils possess equal powers and identical functions, the one which represents the people and is elected for a fixed period is sure to attract statesmen of reputation and add to its prestige and stature. It becomes the pivot of political authority and the

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5. Article 86.
6. Article 82.
7. The position of the half-Cantons is not clear.
8. Article 87. It means that 24 out of 46 Deputies must be present. It is the duty of the Chairman of the Council to ensure this if necessary by roll-call.
9. Article 88. An absolute majority in Switzerland means 'more than half', *i.e.*, of those voting, of those present, of the whole Council. Hughes, C., *The Federal Constitution of Switzerland*, p. 99.
10. Article 91.
11. Hughes, C., *The Federal Constitution of Switzerland*, p. 104.

centre of weighted power. It is not surprising, therefore, if the Council of States enjoys less authority and influence than the National Council.

But it does not mean that the Council of States commands a distinctly subordinate position like other Upper Chambers in countries having Parliamentary type of government. It enjoys equal powers, constitutional, legislative and financial, with the other Chamber. Laws may originate in either of the two and must pass through both the Councils and therefore the Councils must agree between themselves which shall have 'priority' in any particular business. Annual business, such as the budget, goes one year to one Council first, the next year to the other Council first. The Council of States is not a submissive body. It often disagrees with measures passed by the National Council and not only insists on the disagreement, of course a rare event in the Swiss political life, but it also persists which means dropping of the bill. The National Council has no veto over its powers, legislative and financial.

The Council of States has, thus, preserved its distinct entity. Its deliberations are, as might be expected from its smaller size, more dispassionate and more detailed than those of the National Council. In particular, the members of the official committees appointed by the Council of States take a pride in the thoroughness of their reports. Talent also flows in the Council of States. Most of them are highly educated. Almost half of the membership of the Council in 1960 had been recipients of doctorates. Moreover, of late years there has been a tendency to make the terms of office of the members of the Council of States uniform, four years as that in the case of the National Council. Yet, the National Council is ultimately the more powerful. The obvious reason, and an important one for the weakness of the Council of States is that the House gets through its business, because of its small membership— 46 only—more rapidly than the National Council. The result is that "often having nothing to do, it has acquired an undeserved reputation for idleness."

THE NATIONAL COUNCIL

Composition and Organisation

The important and influential Chamber,

then, is the National Council, a representative House of the Swiss people. The composition and organization of the National Council, unlike the Council of States, are regulated entirely by the Federal Constitution.[12] Since 1963, it has a fixed membership of 200. The Deputies are elected directly by secret ballot and since 1910 by proportional representation.[13] Every Swiss citizen, man or woman, who has completed his or her twentieth year and who has not been deprived of his or her political rights by the legislation of the Confederation or of the Canton where he or she is the resident has the right to participate in federal elections and other federal polls,[14] as the referendum. But the right to be eligible for membership of the National Council extends to lay Swiss citizens only. The Constitution excludes clergies from becoming members of the National Council.[15] Each Canton or half-Canton, as the case may be, forms an electoral constituency.[16] Prior to the 1962 Amendment, the National Council was composed of Deputies "chosen in the ratio of one member for each 24,000 souls of the total population." An additional seat was allotted for any fraction over 12,000. As a result of the 1962 Amendment this procedure is no longer necessary. Article 72 (2) now provides that the seats shall be distributed among the Cantons and the half-Cantons in proportion to their resident population, each Canton and half-Canton being entitled to one seat at least. Detailed provisions in this respect have been laid down by a federal law.

The National Council is elected for four years. It is not subject to dissolution, except for total revision of the Constitution when one House differs from the other.[17] Qualifications for membership are the same as required for voting. But all clergy, executive and principal administrative servants of the Confederation, members of the Council of States, and the Federal Councillors are especially excluded and are not eligible for election.

The House elects its own Chairman and Vice-Chairman for each ordinary or extraordinary session, neither being eligible for the same office in the next consecutive regular session. The word "session" is interpreted as meaning the annual session provided in Article 86. The Chairman of the National Council is, thus, elected for

12. Article 73.
13. Before 1919 elections were by a single member constituencies with a second election if an absolute majority was not obtained at the first.
14. Article 74. Manhood suffrage was introduced in Switzerland as early as 1848.
15. Article 75.
16. Article 73.
17. Article 120(2)

one year. And the system of compulsory rotation of office, consistent with the Swiss tradition, is designed to guard against concentration of power in one man. It is also intended that the office should not be concentrated in any one party or Canton or linguistic group. The Chairman does not have extensive powers. He has a casting vote which he exercises in case of a tie according to the established usages of the House. But when the House assembles for purposes of election of the Federal Council, the Federal Court, the Chancellor and the General of the Federal army the Chairman votes in the same way as other members.

Sessions and Debates

The National Council meets in regular sessions at the beginning of December and has generally four sittings.[18] The sessions are very short lasting only about three weeks apiece. The Federal Council may summon an extraordinary session should an emergency arise.[19] The House meets at 8 a.m. in summer and at 9 a.m., in winter, every day except Saturday and Sunday. Attendance is regular and punctural and a member absenting himself without strong reasons is deemed neglectful of his duty. The House devotes itself strictly to the dispatch of business and the normal Swiss Deputy shows just the qualities that are associated with the Swiss character. A Swiss Deputy is 'solid, shrewd, unemotional or at any rate indisposed to reveal his emotions. He takes a practical commonsense and what may be called middle-class view of questions.'' The Swiss Federal Assembly is, therefore, the most business-like body in the world doing its work quietly. The debates are orderly and there are few set speeches. Rhetoric is almost unknown and the usual cheers and cries of approval or dissent are rarely heard. Obstruction is unknown and divisions are much less frequent. ''The sessions of the National Council,'' writes Andre Siegfried, ''are more like meettings of an administrative body affecting only indirectly those who are not immediately concerned—but what an efficient administration!'' Deputies may speak in any of the four national languages and every public document is published in German, French and Italian, three official languages. There are no official stenographers and the debates are scantily reported even in the leading newspapers. Occasionally, the Council may order the verbatim reporting and publication of important discussions.

The Constitution provides that both the Councils conduct business only when an absolute majority of their respective members is present, that is, 101 in the case of the National Council. All decisions are made by a majority of those voting with the exception of the approval of ''urgent'' arretes (decrees) which require the approval of a majority of all the members. But if 50,000 Swiss citizens entitled to vote or eight Cantons request a popular vote, the decrees put immediately into effect shall lose their validity one year after their adoption by the Federal Assembly if they have not been approved by the people during that period; in that case they may not be renewed.[20]

No Official Opposition

The role of political parties in the Swiss legislature is far inferior to that prevailing in Britain and other democratic countries. This is due to two reasons. Firstly, the National Council cannot displace the Federal Councillors. Secondly, even in the legislative sphere, the supremacy of the Federal Assembly is qualified by the ultimate sovereign power of the people and they can at a referendum negative the decisions of the Federal Assembly. There is neither any Treasury Bench nor one for Opposition, since neither exists. The Federal Councillors are not members of the legislature, though they can appear in any House of the Federal Assembly. But it does not entitle them to vote. When business relating to a particular Department is considered by either of the Councils, the Federal Councillor who heads the Department concerned attends, answers questions, gives explanations and joins in its debates. All this, however, does not give to the Federal Councillor the position and influence of a minister as under the parliamentary government. The

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18. Article 86 provides that both Councils meet at least once a year for an ordinary session on a day to be determined by their rules of procedure. ''The practice is to count all the sittings of the Assembly in one year as a single session adjourned.'' The date of assembling for the ordinary session is fixed by law. The law on the Relations between the Councils of 9th October, 1908 fixes the 1st Monday in December as the start of the first part of the ordinary session and the first Monday in June as the start of the second part. The Councils also regularly hold ordinary sittings in March and September.

19. Article 86 provides that both the Councils shall be convened for an extraordinary session by decision of the Federal Councilor on request from one-quarter of the members of the National Council or from five Cantons. Once only in 1891 both the Councils were convened on demand of a quarter of the members of the National Council.

20. Article 80 bis (2).

Federal Councillors are assigned seats on a dias right and left of the Chairman of the House. And as they are not members of the House, they cannot be leaders of a parliamentary majority party, no matter what personal influence they otherwise may wield. When there is no ministerial party there can be no Opposition. The Swiss people do not exhibit hostility. Nor do they make regular campaigns of it. They view legislation by its practical utility, no matter whether their own party or others sponsor it. The proof of such an attitude can best be illustrated from the fact that Deputies belonging to the same party do not necessarily sit together. They usually sit by Cantons irrespective of their party labels.

Joint Sittings

Both the Councils sit separately to transact their ordinary business, but they meet in a joint session for three definite purposes:—

(1) to elect the Federal Council, the Federal court, the Federal Insurance Tribunal, the President of the Federal Council as also the Vice President who are both President and Vice President of the Confederation, the President and Vice-President of the Federal Court and of the Federal Insurance Tribunal, the Chancellor of the Confederation and the Commander-in-Chief of the Army;

(2) to exercise the federal power of pardon,[21] and

(3) to resolve conflicts of jurisdiction between the major federal organs.

When the two Councils sit together, the Chairman of the National Council presides and decisions are reached by a majority of all the Deputies voting together.[22]

LEGISLATIVE PROCEDURE

The Constitution gives the right to introduce legislation to both the Houses of the Federal Assembly—the Council of States and the National Council—to each member of both the Houses, to each Canton and half-Canton, and the Federal Council. In practice, it is the Federal Council which initiates as well as introduces major portion of the legislation. When the Federal Council feels that some new legislation is necessary or the prevailing laws need amendments, for the efficient and proper functioning of the government, or when it feels that there is a popular demand for a new law, it proceeds on its own initiative to draft a Bill with the help of its expert staff. The draft-laws, together with the Federal Council's report suggesting its own views on the proposed legislation, are submitted to the two Houses of Assembly for their consideration.

It the Federal Assembly itself or members of either House decide upon the need of some legislation, it requests the Federal Council to act through procedures known as the "motion" and the "postulate". A motion is a command of the Assembly to the Federal Council to act and such a command must be the result of the agreement of both the Houses. The postulate is of lesser gravity, but leads towards the same objective. Instead of "commanding" the Federal Council to submit a draft law, a postulate merely "invites" the Federal Council to act. It may originate in any of the two Houses and does not require the agreement of both. Immediately on receipt of the "motion" or "postulate" the Federal Council proceeds to draft the Bill on the lines proposed and presents the same with its report to the Federal Assembly. The Federal Council may also recommend in its report rejection of the proposed legislation. The Federal Council usually gives utmost consideration to motions and postulates, but it does not mean that it must necessarily comply with them as directed. "Motions are deemed to lapse when the signatories cease to be members of the Council, or if the motion is not discussed at all within two years, or is not answered by the Federal Council within four years.[23] Postulates have even shorter life span if not taken up by the Federal Council.[24]

Since both Houses of the Assembly have coequal powers and neither is superior to the other the Federal Council submits its Bills and messages to the Chairmen of the Council of States and the National Council at their first session. The Chairmen decide among themselves which House will be the first to deal with each piece of business. Unless the Federal Council has designated a bill as "urgent" the division of business must be sanctioned by each House. In case of

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21. The difference between pardon and amnesty is that : (1) the former is an individual one whereas amnesty is a mass measure, and (2) the amnesty is in advance of sentence whereas pardon is subsequent to punishment. Hughes, C., *The Federal Government of Switzerland*, p. 95.

22. Article 92.

23. Hughes, C., *The Federal Government of Switzerland*, p.156.

24. *Ibid.*

"urgent" bills, the decision of the two Chairmen is binding. The bills are ordinarily sent to the appropriate committees immediately after the allotment of the business. The committees may hold their meetings in any part of the country and generally they carry their work in the interval between the sessions of the Assembly. The committees receive the secretarial assistance of the Federal Chancellory and may summon any official of the Federal Government for evidence, explanation and clarification. The committees seldom change the sense of the draft laws, but they often do make suggestions for amending the proposed laws. Minority reports frequently accompany the majority reports.

There are three stages in the discussion of a bill in each House. After receiving the report of the Committee, the House to which it is allotted first debates "entering upon the matter". If it is agreed upon, then, the House proceeds to discuss the bill clause by clause. After it has been fully discussed the bill is voted upon as a whole. If it is approved the bill is then sent to the other House wherein the same procedure is followed. "In exceptional cases, and in the event the draft bill is capable of being broken up logically each Houses simultaneously may take different Sections of the same bill for debate. As soon as each Section is approved by one House it is sent immediately to the other for consideration."[25]

When the bill has been passed by both the Houses, the Federal Chancery prepares the official text which is signed by the Chairmen and Secretaries of both the Houses. The text is then submitted to the Federal Council for publication and execution. It comes into effect, unless challenged by referendum, on the date fixed in the original bill, or if no date is mentioned within five days after publication.

Deadlock between the Councils

The possibilities of a serious deadlock between the Council of States and the National Council are rare indeed. But it does happen, the Law on the Relations between Councils, 1902, as amended in 1939, sets forth the procedure to be followed. If the second House disagrees with the decision of the first, the bill is sent to the former for another deliberation. Only the points of difference are discussed, unless the changes are of such a nature as to necessitate a debate on the bill as a whole. This procedure continues until agreement is reached, or "until the two bodies agree to disagree." In that event, the points of difference are submitted to a Joint Conference Committee presided over by a member of the House which had originally rejected the bill or expressed disagreement thereon. If the Joint Conference Committee fails to reach an acceptable alternative, or if their proposals are refused, the bill in question is dropped.

POWERS OF THE FEDERAL ASSEMBLY

Competence of the Assembly

There are few constitutional limitations on the powers of the Federal Assembly within its own sphere of jurisdiction. Article 84 distinctly specifies that the National Council and the Council of States "shall deal with all matters which the present Constitution places within the competence of the Confederation and have not been attributed to another Federal authority." The framers of the Constitution did not deem it necessary to impose specific limitations on the powers of the Federal Assembly, as the power of the people can be invoked at a referendum to overrule the Assembly. Moreover, in a small country, like Switzerland, where the strength of the legislative bodies is small and the politicians are judged by the traditionally strict standard of honesty, the need for constitutional limitation does not arise as "public opinion would at once check any attempt by the Councils to extend their powers beyond the limits the Constitution prescribes."

Another peculiarity of the Swiss legislature is that both the Chambers are coordinate in all respects of their powers and functions. Legislative measures can be initiated in either Chamber and neither possesses the power to veto the other. The Federal Councillors, though members of neither Chamber, are required to appear and answer questions put to them equally in both. For certain purposes, like the selection of the Federal Councillors, its President and Vice-President, for decisions on conflict of jurisdiction between the Federal authorities, and for the granting of pardon, etc., the two Chambers sit together and vote as one Chamber. Besides, the Constitution can be amended, subject to certain other provisions, by the equal participation and agreement of the National Council and the Council of States. Finally, the makers of the Swiss Constitution did not pay much attention to the orthodox doctrine of the

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25.   Codding, G. A., *The Federal Government of Switzerland*, p. 83.

Separation of Powers. They vested the Federal Assembly with all kinds of authority, legislative, executive and judicial. In Switzerland there is a government by Assembly.

Legislative Powers

Federal Assembly is competent to enact all laws and decrees dealing with matters which the Constitution assigns to federal authorities, and make laws dealing with the organization and mode of the election of the federal authorities. It determines and enacts necessary measures to ensure the due observance of the Federal Constitution; the guarantees of Cantonal Constitutions and the territory of the Cantons, the fulfilment of Federal obligations; adopts measures ensuring the external safety of the country, her independence and neutrality; the internal safety of Switzerland, and the maintenance of peace and good order; enacts the annual budget of the Confederation, approves State accounts and decrees authorising loans. Finally, the Federal Assembly can demand all kind of information, which it deems necessary, on the administration of the Confederation and directs questions to the Federal Councillors. The Federal Council presents an annual report to the Assembly upon the internal conditions and foreign relations of the Confederation. It may also be required to make special report whenever either House of the Federal Assembly demands.

The Swiss Constitution provides that all laws passed and resolutions adopted by the Federal Assembly must be submitted to the people for their acceptance or rejection, if a demand to that effect is made within 90 days by 50,000 Swiss citizens or eight Cantons. provided it has not been declared urgent by the Federal Assembly. If a referendum is held and a majority of the people vote against the law, it becomes void. Before 1930, Federal decrees which were not general in character and which were declared urgent could not be submitted to referendum. The amendment of January 22, 1939 restricted the application of the urgency clause to only such decrees as were passed by a majority of all members of each of the two Chambers and had their duration definitely fixed.[26] Article 89 was amended again in 1949 and the present position is that 50,000 voters or 8 Cantons may demand referendum on a federal decree declared urgent. Such a decree will become inoperative one year after its adoption by the Federal Assembly, if it

is not approved by the people within this period. Such a decree cannot be re-enacted.

The Federal Assembly is the judge and determines what laws or resolutions are urgent. Dr. Zellweger accuses the Federal Assembly of not using this discretion impartially in order to prevent popular action upon its measures. Two points may, however, be noted in this connection. First, the referendum for ordinary laws in the Confederation is optional or facultative. Second, there does not exist popular initiative on legislative measures in the Confederation.

Executive Powers

The Council of States and the National Council, at their joint sitting, elect the seven members of the Federal Council, its President and Vice-President, appoint judges of the Federal Court, the members of the Federal Insurance Court and the Commander-in-Chief. The right of election or confirmation in respect of other officers may be vested in the Assembly by federal legislation. The Federal Assembly supervises the activities of the civil service, and even decides administrative disputes and conflicts of jurisdiction between federal officials. It determines salaries and allowances of members of Federal Department and of the Federal Chancery, as also the establishment of permanent federal offices and the salaries in connection therewith.

The control of the federal army, too, is vested in the Assembly. It declares war and concludes peace, ratifies alliances and treaties. All treaties concluded by the Cantons between themselves or with foreign States must be confirmed by the Federal Assembly, provided that such Cantonal treaties are submitted to it only on appeal either by the Federal Council or another Canton. If the Cantons fail to execute federal laws or obligations, the Federal Assembly decides on the nature of intervention against the offending Canton or Cantons.

The amended Article 89 provides that international treaties which are of unspecified nature and cannot be denounced; provide for adherence to an international organisation; entail a multilateral unification of the Law must be submitted to the people for approval or rejection if 50,000 Swiss citizens entitled to vote or eight Cantons demand. This provision can also be extended to other treaties by a decision of both Houses of the Federal Assembly. Adherence to collective security or to supranational bodies

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26. Article 89 bis (1).

must necessarily be submitted to the vote of the people and the Cantons. It is a compulsory referendum and not on demand.

Judicial Functions

The Federal Assembly grants pardon in joint session whereas amnesty is granted by two Chambers separately. It also hears appeals against the decisions of the Federal Council relating to administrative disputes

Constitutional Amendment

The method and procedure of amending the Constitution has already been discussed.[27] When both the Chambers agree to revise the Constitution either wholly or partly, the proposed revision is submitted to the people for their acceptance or rejection. In case one of the Chambers does not agree to the proposed revision, the matter is then referred to the people for their decision whether they need such a revision or not. If the majority of people vote for revision new elections of the Federal Assembly are held to effect the revision. After having passed through the Federal Assembly, it is submitted at the referendum of the people and the Cantons.

The Swiss Constitution also provides for constitutional initiative and here, too, the Assembly plays its due part, though the final arbiters are the people.

THE DECLINE OF LEGISLATIVE SUPREMACY

The Constitution vests the supreme authority of the Confederation in the Federal Assembly subject to the rights of the people and of the Cantons. It is both a legislative and a Constituent Assembly and its laws can neither be vetoed by the President of the Confederation nor can these be declared unconstitutional by any Swiss court. Its supremacy is further established by the fact that other organs of the Federal Government are subordinate to its authority. The performance of the Federal Assembly is also impressive and the Swiss people, throughout its career, have not shown any real discontent over its working. It provides a national forum for the expression of differing points of views, it works quietly and without undue haste, and its cost is not excessive. Much contrary to the expectations of the constitution-makers, the history of bicameralism is eminently admirable. The two Houses have shown more harmony and the friction has been rare. In fact, seldom does one House seriously attempt to overthrow the decisions of the other on matters of national importance. And both have attracted highly talented statesmen and election to either of the two Houses is deemed a great honour.

It cannot, however, be denied that there has been a steady decline in the prestige of the Federal Assembly as a body. This is due to important reasons. In the first place, the process of direct legislation has considerably contributed towards the decline of its legislative supremacy. When Deputies know that ultimately authority vests in the people to accept or reject the laws they make, they take very little interest in the performance of their legislative duties. There is neither initiative nor the ambition to venture it. If the measure passed by the Federal Assembly succeeds at a referendum, the credit for it goes to the people and not to the legislature. If it does not succeed, the blame goes to the legislature. Such a feeling of frustration reduces the sense of responsibility and the legislature, as Bryce says, may be disposed to pass "measures its judgment disapproves, counting on the people to reject them, or may fear to pass laws it thinks needed lest it should receive a buffet from the popular vote." The history of popular voting discloses a marked tendency to reject measures that are in any way radical. The Swiss have also rejected all those laws that are too comprehensive, or complicated, or mean to effect too much at once. They know that they have the right of constitutional initiative and if need be they have the means to see the Constitution amended. This tendency also creates, amongst the legislators a condition of doubt or indecision, if not a feeling of helplessness.

Another reason for the weakness of the Assembly lies in the fact that down to the present day it has remained an assembly of notables, a non-professional parliament. Erich Gruner says, "In initiation of the expression 'militia army' the Federal Assembly is usually called a 'militia parliament.' Switzerland still cherishes the illusion that parliamentary work is not so demanding as to exclude the exercise of an ordinary occupation, and that the individual parliamentarian can continue to make living from his usual occupation despite the loss of time involved". During recent years there has been a shift towards a full-time parliamentary job, but this has not been accompanied by an adequate parliamentary salary. Swiss parliamentarians do not have offices, as-

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27.   Chapter II.

sistants, or secretaries to assist them in the performance of their duties. "Thus the work style of members of parliament," Gruner explains, "is characterised by chronic lack of time and by conflict between occupational and parliamentary demands."

The result is that the Assembly has tried to shift its responsibility and the lead is taken by the Federal Council. The Federal Council has now become the director of legislative process. It not only introduces legislation but initiates it too. The Council derives its authority from Article 102, Sec. 4, of the Constitution which reads: "It (Federal Council) shall submit to the Federal Assembly drafts of laws and decrees and shall give its opinion on proposals submitted to it by the Councils or the Cantons." The bulk of the legislation, therefore, originates from the Federal Council. Wherever the Federal Assembly makes a request to the Federal Council to initiate legislation on the special subject, it drafts the bill with the help of the expert staff at its disposal and forwards it on to the Assembly along with a well-reasoned report presenting the purport of the proposed legislation and giving the reasons why it should or should not be enacted. Even in the cases where the Assembly has requested the Federal Council to draft a piece of legislation, it usually does not enact the draft law when the Council's report is unfavourable.[28]

The members of the Federal Council also pilot bills in the Federal Assembly through all the stages of the legislative process. The Federal Councillor, who is assigned the bill, gives his advice and comments in the Committee and his role is significant there. "It is not necessary," remarks Prof. Rappard, "to have attended many such meetings to understand why the principal actors are rarely the legislative members."[29] On the floor of the House of the Assembly which gets the priority to discuss it, the Federal Councillor again explains, elaborates, elucidates and defends or opposes, if necessary, the bill. The Federal

Assembly has, thus, as Codding remarks, "been reduced, to a certain extent, to the position of an advisory body with the electorate exercising the real decision-making power." If a system of legislative initiative should also be adopted, as is being suggested, he further remarks, "there is little doubt that the prestige of the legislature would be even further lowered.[30]

In the opinion of Erich Gruner the Federal Assembly is wedged between the Federal Council, for which it can create difficulties but which it cannot overthrow, and a sovereign (the voters) who by means of the ballot (optional referendum and constitutional initiative) can question the policies of the elected authorities, or, on the contrary, can accelerate them." Answering to the question "Is the Swiss parliament weak?" Hughes says, "In the continuous process of legislation and administration its influence (of the Federal Assembly) is rather that of a source of light which makes a plant grow in a particular direction than that of a gardener who lops off a branch."[31] Hughes had in mind the classical parliamentary function—elections, control of administration, budget making and legislation. But the Federal Assembly makes up some of the deficiencies by the vigorous use of motions, postulates and interpellations. Since 1946 question hour has been introduced in the National Council and a Deputy can question a member of the Federal Council on any subject concerning the federal administration. It keeps the Councillors on their toes. Erich Gruner, accordingly, concludes: "If one may characterise the British parliament as a debating parliament and the American parliament as a cooperating one, the Swiss parliament merits the adjective threatening."[32] But the threats do not and cannot take a concrete shape to have the desired impact. The authority of the Federal Assembly is *de jure* "the supreme authority of the Confederation", when it was created and today even, but it is in fact the weakest link of the Swiss Government.

SUGGESTED READINGS

Coddling G.A., *Federal Government in Switzerland.*

Hugges, C., *The Parliament of Switzerland.*

Lowell, A.L., *Government and Parties in Continental Europe.*

Wheare, K.C. *Federal Government.*

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28. Codding, G. A., *The Federal Government of Switzerland,* p. 92.
29. Rappard, W. E., *The Government of Switzerland,* p. 85.
30. Codding, G. A., *The Federal Government of Switzerland,* p. 92.
31. Hughes, C., *The Parliament of Switzerland,* p. 165.
32. Gruner, Erich, *Modern Switzerland,* p. 352.

The Frame of National Government— The Federal Court

The Federal Court

The creation of a Federal Court was the chief institutional innovation of the 1874 constitutional revision. The Constitution of 1848 provided for the administration of justice in the Federal sphere, but it had no jurisdiction over conflicts of law between the Confederation and the Cantons or between the Cantons themselves. Such cases were heard and decided by the Federal Assembly. Even cases relating to the rights of the citizens could not be heard by the Federal Court unless they were referred to it by the Federal Council or the Federal Assembly. The Federal Court had no fixed location for the transaction of business and it lacked qualified professional personnel. A more serious weakness was its lack of authority. All this was changed by the Constitution of 1874. Article 106 says, "There shall be Federal Court for the administration of justice in so far as this is within the Federal competence." The Court, as at present constituted, first assembled in 1875 and "since then its jurisdiction has been enlarged several times chiefly at the expense of the Federal Council"[1]

The members of the Federal Court and their substitutes are elected by the Federal Assembly "which shall ensure that the three official languages of the Confederation be represented."[2] The organisation of the Federal Court and of its divisions, the number of its members and its substitutes, the duration of their term of office and their salary are determined by law of the Federal Assembly.[3] The Constitution does not prescribe any qualifications for the members of the Federal Court and their substitutes. It only says that any Swiss citizen who is eligible to the National Council may be appointed to the Federal Court.[4] The Constitution, however, imposes two restrictions.[5] (1) the members of the Federal Assembly and of the Federal Council and the officials appointed by these authorities may not at the same time be members of the Federal Court; and (2) members of the Federal Court may not hold another office, be it in the service of the Confederation or in the Cantons, nor any other profession or industry.[6]

Despite the absence of prescribed qualifications for the members of the Federal Court and their substitutes, due care is taken to select men of legal learning and ability. While predilection may sometimes be present in the appointments made by the Assembly, "it is not alleged that they not injured the quality of the bench, any more than the occasional action of like influences tells on the general confidence felt in England and (as respect the Federal Courts) in the United States in the highest courts of those countries."

The Law on Judicial Organisation of 1948, determines the organization of the Federal Court. It fixes the number of judges between 26 and 28; which is actually 26. There are also 11 to 13 substitutes. The actual number is 12. The term for which the judges of the court are elected is six years. But, as in the case of Federal Councillors, the judges may be, and often they are, re-elected. This practice of re-election has resulted practically into a life-tenure, thus, removing the danger to the independence of the judiciary which "might otherwise inhere in the brevity of the judges' legal term and in the influences which affect their original election."[7] In practice, judges resign in the year in which they become seventy. The Court has its own President and

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1. Hughes, C., *The Federal Constitution of Switzerland*, p. 119.
2. Article 107 (1).
3. *Ibid.*, Section 2.
4. Article 108.
5. *Ibid.*
6. Before 1874 membership of the Federal Court was not incompatible with that of the Federal Assembly nor with following any other employment, and in fact was normally combined with one or both of these.
7. Shortwell, J. T., (Ed.), *Government of Continental Europe*, p. 354.

Vice-President elected for two years. They are not, however, immediately re-eligible.

The Federal Court is the only national Court. There are no inferior Federal Courts, except the assizes in which the country is divided for criminal cases. The reason is that the bulk of judicial work continues to be discharged by the Cantonal Courts. Nor has the Federal Court, as in the United States, a staff of its own all over the country for the execution of its decisions. Execution of judgments in Switzerland is the function of the Federal Council with an authority to act through Cantonal officials. Such a distinct organization gives to the Swiss Federal court a peculiar position among the federal judicial systems.

Jurisdiction

The jurisdiction of the Federal Court extends over civil and criminal cases and questions of public law. The Court has no power of interpreting the Constitution and declaring a federal law invalid. In other words, the Federal Court cannot question the validity of laws passed by the Federal Assembly. It can, however, inquire into the constitutionality of Cantonal laws and actions of Cantonal executives and sometimes Federal executives. But Prof. Hans Huber, at one time a Judge of the Federal Court, is of the opinion that the court will make an effort to interpret federal laws whose meaning is not clear in such a manner as to honour the intent of the Constitution.[8]

(i) Civil Jurisdiction

The Federal Court adjudicates civil disputes between the Confederation and the Cantons and between the Confederation and Corporations or private persons if the object of the dispute is of such importance ''as shall be determined by federal legislation and if those corporations or persons are plaintiffs.'' Similarly, the Court decides between the Cantons themselves, and between the Cantons and Corporations or private persons if the object of the dispute is of such importance ''as shall be determined by the federal legislation and if one of the parties so requires.'' The Court, further, decides disputes concerning loss of nationality (Statelessness) and disputes between Communes of different Cantons concerning questions of citizenship.[9] The Federal Court is also bound to adjudicate other cases if both parties agree to refer them to it and if the

subject of the dispute is of such importance as shall be determined by federal legislation.[10]

The Civil jurisdiction of the Court expressly conferred by the Constitution has further been extended by virtue of the provision of Article 114 which authorises the Confederation to place ''other matters'' within the competence of the Court. The same Article confers on the Court powers to ensure the uniform application of laws relating to commerce and the transactions affecting movable property (law of contract and torts including commercial law of bills of exchange), suits for debts and bankruptcy, protection of copyrights and industrial inventions, including designs and models. Article 64 confers a general power on the Confederation to legislate in any fields of civil law. This all-embracing power conferred on the Confederation, *ipso facto*, enlarges the civil jurisdiction of the Federal Court.

(ii) Criminal Jurisdiction

On the criminal side, the court has original and exclusive jurisdiction in:

(a) Cases of high treason against the Confederation, revolt and violence against the federal authorities;

(b) Crimes and offences against the Law of Nations;

(c) Political crimes and offences which are either the cause or consequence of disorders and disturbances necessitating armed federal intervention;

(d) Offences committed by officials appointed by a Federal authority when brought before the Court by that authority.

The Constitution provides that the Federal Court shall pass judgment on the aforesaid criminal cases with the assistance of a jury to give a verdict on facts.

The Court also has original jurisdiction over other serious crimes such as counterfeiting and voting frauds. Cases of original jurisdiction, however, make up a very small proportion of the work load of the Federal Court.

Article 64 bis. empowers the Confederation to legislate in the field of criminal law. In criminal cases, as stated before, the Court holds assizes from time to time at fixed centers in which the country is divided for this purpose. In these assizes a section of court consisting of three judges, sits with a jury chosen by lot from the

8. See W.C. Rice's *Law Among States in Federacy*, p. 117.
9. Article 110.
10. Article 111.

neighbouring villages. Concurrence of five-sixths of the jury is necessary to convict an accused person.

The court sits in four chambers for exercising its criminal jurisdiction: The Federal Criminal Court; the Court of Accusation—this prepares business for the Federal Criminal Court and decides if there is *prima facie* case, and decides as to the place of criminal jurisdiction, *i.e.*, in which Canton. Then there is the Court of Cessation, and, finally, is the extraordinary Court of cessation of seven judges.

(iii) Constitutional Jurisdiction

The Federal Court has a limited constitutional jurisdiction. It adjudicates:

(1) conflicts of competence between the federal authorities on one side and authorities of the Cantons on the other side;

(2) disputes between Cantons in the field of the constitutional rights of citizens as well as individual complaints concerning the violation of inter-Cantonal agreements and international treaties.

In all the aforesaid disputes, the Federal Court applies the laws and generally binding decrees adopted by the Federal Assembly as well as the international treaties approved by the Federal Assembly.

The provision relating to the constitutional rights of citizens has been constructed by statute to include rights guaranteed by Cantonal as well as by Federal Constitutions. In all such cases of conflict of competence it is the duty of the Federal Court to uphold the Federal Constitution against the Cantonal, and the Cantonal Constitution against ordinary laws and decrees of the Cantons. The Federal Court can invalidate Cantonal laws and it can enquire into the constitutionality of actions of Canton executive officials. In practice, there are a great number of such appeals brought before the Federal Court each year, and the great majority of such appeals concern the guarantees of equality before the law as provided in Article 4 of the Constitution.

Comparison with the United States

The nature of the Swiss Federal Judiciary was discussed in Chapter II, and it was pointed out that it differs materially from the Federal Judiciary in the United States. The Swiss Federal Court though a national court, stands alone. It has not, like the American Supreme Court, subordinate courts spread over the whole country. Nor has it its separate officials to execute its judg-

ments. The Court relies upon the Federal Council, acting through the Cantonal governments, for the enforcement of its decisions. But the real difference is between the powers of the two. The Federal Court is bound by an express provision of the Constitution to apply every law passed by the Federal Assembly. Article 113 provides that in cases of conflicts of competence between the federal authorities and Cantons, disputes between Cantons in the field of public law and complaints concerning the violations of the constitutional rights of citizens as well as individual complaints concerning the violations of concordants and international treaties, the Federal Court shall apply the laws and generally binding decrees adopted by the Federal Assembly. The Swiss Federal Court has, accordingly, no power to ascertain the constitutionality of Federal Statutes and such decrees of the Federal Assembly as are of general application. The Constitution has reserved for the Federal Assembly the right to interpret the Constitution and all laws passed thereunder. The Federal Assembly can put its own construction on every law which it has passed without the interference of any judicial authority to correct it. This is unpalatable to American lawyers who hold that the powers of legislature cannot go beyond those which the Constitution has conferred upon it. There cannot be security, the voice of America further contends, for the due observance of the Constitution, if its interpretation is left to be determined by the legislature which might have infringed its provisions. It would be tantamount to make the violating body the judge in its own case.

The Continental theory, on the other hand, subordinates the judiciary to the executive and the legislature. Some of the eminent Swiss Jurists regard the American system as more rational, still Switzerland has clung to the Continental tradition and there is no apparent likelihood of a change. Even if it may be conceded that the power of judicial review inheres in the Federal Court, it would hardly serve as an effective instrument since the sovereign people in Switzerland have the direct means of expressing their will at a referendum. A judicial decision declaring a law unconstitutional would interfere with their cherished constitutional right of accepting or defeating legislation passed by the Supreme Court of the United States. Many important matters are beyond the competence of the Court. Moreover, whereas cases of conflict of jurisdiction between the Federal authorities and Cantonal authorities

are decided by the Federal Court, conflicts of jurisdiction between the Federal Court and the Federal Council are decided by the Assembly. The Federal Court has, therefore, no power, like the Supreme Court, to decide upon the question of its own competence. The Federal Court, in brief, since its establishment at Lausanne in 1875, has never enjoyed the prestige and independence of the American Supreme Court. "To endow it with the right of disavowing federal statutes would therefore be to impose on a much weaker Court a much heavier burden than that under the American judiciary sometimes seems to be staggering today."[11]

THE FEDERAL ADMINISTRATIVE COURT

The Constitution established a Federal Administrative Court[12] to adjudicate administrative disputes falling within the scope of the Confederation and referred to it by federal legislation. The Administrative Court also adjudicates disciplinary cases of the Federal administration referred to it by federal legislation in so far as such cases shall not be referred to a special jurisdiction. The Court applies the federal legislation and the treaties approved by the Federal Assembly. The Cantons are entitled, subject to the approval of the Federal Assembly, to refer to the Federal Administrative Court for adjudication administrative disputes falling within the scope of their competence.

The organisation of federal administrative and disciplinary jurisdiction and its procedure has been determined by federal law. In 1925, the Federal Assembly by a resolution decided that the duties of the Administrative Court were to be exercised by the Federal Court. The Administrative Court is, therefore, not a separate court like the Swiss Insurance Tribunal or like the Administrative Courts in France and other Continental countries. It is a section of the Federal Court and, accordingly, a part of the ordinary courts, except that the Administrative courts use a different type of procedure from that used in the Federal Court.

SUGGESTED READINGS

Bryce, J., *Modern Democracies, Vol. 1. Chaps. XXVII and XXXII*

Hughes, C, *The Federal Constitution of Switzerland*

Rappard, W. F., *The Government of Switzerland*

Tripp, M.L., *The Swiss and United States Federal Constitutional Systems.*

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11.   Rappard, W. E., *The Government of Switzerland,* p. 91.
12.   Article 114 bis.

CHAPTER VII

The Referendum and the Initiative

Direct Legislation

The institution of direct legislation is a distinctive feature of Swiss democracy. The method of popular legislation, *i.e.,* law-making by the citizens themselves and not by their representatives, is as old as Swiss history and it finds its fullest expression in the *Landsgemeinde,* the mass meetings of all citizens. The Landsgemeinde is still kept alive with its ancient traditions and practices in the four half-Cantons of Appenzell, Unterwalden, and in the Canton of Glarus. In the remaining Cantons the referendum and the initiative represent an effort to extend the idea of direct democracy in order to uphold the cherished conviction of the Swiss people that they are sovereign and they can assert their right by taking a direct part in the determination of the affairs of the State. Such an attitude of mind of the people has profoundly modified Swiss mechanism of government and influenced the world opinion in favour of these institutions.

"Nothing in Swiss arrangements," writes Bryce, "is more instructive to the student of democracy for it opens a window into the soul of the multitude. Their thoughts and feelings are seen directly, not refracted through the medium of elected bodies."[1] Switzerland is really speaking a type of "mixed democracy,"[2] wherein "the legislative will of the people is expressed both through legislatures and through direct popular votes in the form of the referendum and the initiative."[3] The plebiscitary rights, according to Erich Gruner, are "quasi-substitutes for parliamentary votes of no confidence, for which no provision is made in the Swiss system". Unlike the Swiss system, the American governmental system is not based on the idea of counterweights but on an equilibrium of three separate powers, the President, the Congress and the Supreme Court.

The Referendum

Literally the word referendum means

"must be referred." As a concept of Political Science, it means the process by which the verdict of the citizens eligible to vote is sought on a proposed law, fundamental or ordinary, and on which the legislature has already expressed its opinion. If it is approved by the majority of the voters voting, the law stands adopted. If it is rejected, it is given up. Referendum is really a consultation of the people on a law passed by the legislature before its final enactment. In short, voters approve or reject the legislation passed by the representative assemblies.

The referendum may be of two kinds: optional or facultative, and compulsory or obligatory. When a law, after it has passed through the legislature, is submitted to the people for their acceptance or rejection on a petition from the specified number of citizens, it is known as the optional or facultative referendum. In the case of compulsory or obligatory referendum all measures of a specified type must necessarily be referred to the people for their acceptance or rejection before they can become laws. The obligatory form is obviously more democratic, for it requires expression of popular opinion on every law. The Swiss, too, consider it preferable on practical grounds, because it "avoids the agitation necessarily involved in the effort to collect signatures to the petition for a referendum." And laws so approved by the people have a great stabilising effect as they have the impress of popular will.

Forms of the Referendum

All amendments to the Federal and Cantonal Constitutions are subject to obligatory referendum and without such a process no constitutional change becomes final. The obligatory referedum for all changes in the Federal Constitution was introduced in 1848, and this provision has been continued in the Constitution of 1874. The prevailing Constitution also included the provision that Cantonal Constitutions must be similarly adopted in order to be guaranteed by the

1. Bryce, J., *Modern Democracies,* Vol. I, p. 415.
2. Marx, M., *Foreign Governments,* p. 390.
3. *Ibid.*

Federal government.[4]

The procedure applied in the Confederation for constitutional referendum has already been discussed.[5] To recapitulate it, proposed amendments for partial or total revision of the Constitution are usually passed first by the Federal Assembly in the same way as ordinary laws. Then, they are submitted at a referendum of the citizens entitled to vote and become valid only after having been approved by a majority of the popular votes cast at a referendum, and by a majority of the Cantons. The vote of each Canton or half-Canton is determined by its popular vote.

If one of the Houses of the Federal Assembly does not agree to the proposed amendment or revision, the matter whether such an amendment is necessary or not, is referred to the people at a referendum. If the majority vote is in the affirmative, then, fresh elections of the Federal Assembly are held. The newly elected Assembly undertakes the proposed revision and after duly passing it is submitted to the referendum of the people and Cantons for their acceptance or rejection.

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The national legislative referendum is applicable to federal laws and general binding federal decrees, and since 1921 to international treaties concluded for an indeterminate duration and cannot be denounced; treaties that provide for adherence to an international organisation and those that entail a multilateral unification of the law. By a decision of both Houses of the Federal Assembly it may be made applicable to other treaties as well. Every Federal law after having been passed by the two Councils and a federal decree are published in the Federal Official Journal and sent to the Cantons to be circulated through the Communes. Within ninety days of circulation, 50,000 citizens entitled to vote or eight Cantons may demand their submission to a referendum. Similarly, 50,000 citizens or eight Cantons may demand submission of international

treaties, as specified above, to a referendum for approval or rejection. All these are examples of optional referendum. Compulsory referendum is provided in Article 89 (5) and it is applicable in case of collective security organisations or to supranational bodies. It reads: "Adherence to collective security organisations or to supranational bodies shall be submitted to the vote of the people and the Cantons." This Section of Article 89 is essentially distinct from Section 3 of the same Article which reads: "Paragraph 2 (relating to submission of federal laws and binding decress to the people for approval or rejection if 50,000 citizens entitled to vote or eight Cantons) so demand."

The Cantons have never demanded referendum. The citizens do usually demand it. The opponents of the measures excite popular interest and secure the requisite number of signatures. The signatures are now often collected by sending reply-paid cards through the post to voters, who merely need to sign and drop the card into a letter box.[6] When the number of signatures sent in has been recognised by the Federal Council to be sufficient, it publishes the law to be circulated among the people all over the country, and fixes a day for voting, not before four weeks after the publication and distribution of the law.

Meetings are held at which members of the Federal Assembly and others advocate or oppose it. Articles on the main provisions of the law appear in the press. The arrangements for voting are made by the Cantonal authorities, but ballot papers are supplied by the Federal Government. The voting is held on a Sunday and takes place on the same day over the whole country. The polling is usually quiet and orderly and complaints of bribery and impersonation are seldom heard.

All Cantons, except those ruled by *Landsgemeinde*, provide for legislative referendum. In some it is obligatory, in others it is optional; where it is optional it depends upon a petition by a specified number of citizens, the number varying from Canton to Canton, to invoke it. In still other Cantons the referendum is obligatory for important financial laws only and optional for others.

Forms of the Initiative

The referendum has purely negative effect as it merely enables the people to reject measures

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4. Article 6.
5. Chapter II, *ante*.
6. Hughes, C., *The Federal Constitution of Switzerland*, p. 101.

passed by their representatives. The advocates of direct legislation, and more particularly the Swiss, plead that the legislature ought not to have the exclusive right to originate legislation. It ought to be, it is asserted, an inherent right of the citizens to propose legislation and when ratified by the popular vote, it must become law no matter even if it has been disapproved by the legislature. Such a device of popular legislation is called initiative. By means of initiative the voter can make his influence felt in those cases where the legislature may not want to adopt a constitutional amendment or a law.

The initiative is very often erroneously likened to a petition. But both essentially differ from one another. A petition is a mere popular submission made to the legislature suggesting the need for making a particular legislation. The legislature may or may not act upon it. But the initiative is the vindication of the sovereign power of the people as it takes effect without regard to the opinion of the legislature, and even against its wishes. It involves the actual proposal, by a portion of the electorate, of a law or a similar measure which may or may not be approved subsequently by the legislature but which, in any case, is usually submitted to a referendum decision of the voters. In brief, the voters initiate legislation they desire to have no matter whether it is approved or rejected ultimately.

The initiative may also take two forms: formulative, and in general terms. When the demand is couched in general terms it is the obligation of the legislature to draft, consider and pass the laws as desired by the required number of citizens, subject to the ratification of the people. If the proposal is formulated, in the form of a bill complete in all respects, it is the duty of the legislature to consider the measure as it is and the vote has to the taken on that text.

The right of constitutional initiative exists both in the Confederation and in the Cantons. Under it a minimum of 100,000 voters may petition for an amendment to the Federal Constitution either in the form of a request in general terms or formulated in the complete and final form of a bill. If the Federal Assembly approves a proposal submitted in general terms, it, then, proceeds immediately to draw up the amendment and submit it to the popular and Cantonal vote. If, however, the Assembly votes against it, the question is referred to the people whether or not the initia-

tive proposal will be proceeded with. If it wins the majority of the popular vote, it becomes the duty of the Assembly, although it has already expressed its disapproval of the proposal, to put the amendment in form and submit it to the verdict of the people and Cantons. An unfavourable popular vote kills it.

If the initiative is formulated in specific terms, and if the Federal Assembly accepts it, the proposal is at once submitted for popular and Cantonal action in the usual manner. If the Assembly does not agree to the formulated proposal, they may either advise to reject the initiative or submit a counter-proposal along with the original one.

If the initiative contains a proposal for a complete revision of the Constitution, then the procedure is identical to the one explained previously,[7] when one Chamber of the Federal Assembly proposes the revision and the other opposes it.

Since there is no federal legislative initiative, the constitutional initiative has been used to place all kinds of matters in the Federal Constitution, for instance, the prohibition against Kosher slaughtering. The Constitutional initiative, on the other hand, has also been used for such politically significant purposes as the introduction of proportional representation and of the referendum on certain international treaties. Herman Finer says, that the "constitutional initiative (in Switzerland) is wide enough to include ordinary legislation when proposed as a constitutional amendment, and, this, which is found in some states of United States also, is a defect rather than a merit—to put ordinary laws into the Constitution."[8] There is indeed, no recognised criterion for determining whether a proposed measure is a constitutional amendment or ordinary law.

In the Cantons, however, there is legislative initiative. In all Cantons, except where laws are made in the *Landsgemeinde,* a prescribed number of citizens may either propose a new law or submit to the Cantonal legislature the principle on which they desire a new law to be based. In the latter case, the Council refers the question to the vote of the people. If the people approve it, then, the Cantonal Council prepares the law and it is submitted to the people for their acceptance or rejection. If the proposal is formulated, it goes straight to the people. But the Cantonal Council may suggest counter-proposals and refer them to

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7. Chapter II, *ante.*
8. Finer, H., *The Theory and Practice of Modern Government*, p. 561.

people for their decision along with the original popularly initiated proposal.

Working of Referendum and Initiative

The Swiss citizens are constantly being called upon, either at the Federal or Cantonal level to express their opinion either by referendum or initiative. While legislative initiatives have remained limited to the individual Cantons, the constitutional popular initiative was introduced at the federal level in 1891, subject to petition by at least 50,000 (raised to 100,000 in 1977) eligible voters. The following two tables show how often these three instruments have been employed from the date of their introduction to 1976. The tables indicate the proportion of laws and binding decrees which have been subjected to the optional referendum and those for which the referendum was compulsory. The second table also shows how many constitutional initiatives have been submitted and the distribution of acceptances and rejection by the people.

TABLE I
On Legal Level
(Optional referendum)

Absolute number of federal laws	Submitted to referenda	Accepted	Rejected
1141	78	30	4.8
Per cent 100	6.8	2.6	4.2

TABLE II
Constitutional Level

Compulsory referendum			Popular initiative		
Total	Accepted	Rejected	Total	Accepted	Rejected
102	82	20	67	18	49
% 100	80	20	100	27	78

In the Cantons the consultation of the people is more frequent. The quorum of signatures required for submission of an initiative is particularly low ranging from 1000 to 5000 signatures. But its frequency is more in the German-speaking Cantons. In the German- speaking Cantons there is more jealousy and distrust of government and more confidence in the action of the people. Hence the referendum and the initiative are peculiar German institutions. The French, on the other hand, are less democratic in the Swiss sense of the term. They are by nature more inclined to follow the lead of the Government and although

they have adopted the referendum, it is most exclusively optional and for that too, they have made little use of it.

Character of the Laws Rejected

From the above survey of the working of direct legislation in Switzerland it will be clear that the Swiss are asked to pronounce their judgment on a variety of problems including the highly technical. From the list of the measures rejected, a few inferences may be made. First, the history of popular voting reveals a marked tendency to reject measures that are in any way radical. It implies that the Swiss people by themselves are really more conservative than their representatives. But the conservatism of the people does not manifest itself so much in the Confederation as in some of the Cantons. The people also reject those laws that are too comprehensive, or complicated, or mean to effect too much at once. This tendency has one good result, for it shows that the Swiss want to understand the laws they are required to enact. Finally, the Swiss have rejected measures which involve spending of money. This tendency, which seems to be universal, applies especially to proposals, "for increasing the salaries of public officers, and in fact, the largest number of negative votes ever cast in a federal law were thrown against the Bill for pensioning officials." But whenever the government has appealed to the spirit of patriotic sacrifice, when the interest of national security seemed to justify such appeals, as it happened during the two World Wars, and in the period of economic depression, the people had readily responded to the needs of the nation and readily enhanced their personal and financial burdens.

The fact that a mere four per cent of the federal laws have been rejected by the voters at a referendum (see Table I) makes it evident that the main effect of the referendum consists in the prevention of undesirable laws. Because of the possibility that decisions of the Assembly may afterwards be submitted to a popular vote, attempts during recent times are made to obtain the consensus of interest groups concerned with a particular bill at the early stages of its initiation. It is really the interest groups, with mass support and vast financial resources, that they endanger any legislation that is a potential instigator of a referendum. But despite this preliminary processing the referendum may block the legislative impulse. "Thus, it may paralyse or sabotage vital

9.   Hughes, C., *The Federal Constitution of Switzerland*, p. 101.

measures, and thereby exercise a latent breaking power against innovations". The inevitable reforms, such as the introduction of woman suffrage and of social insurance, were delayed for decades and that federal unification, *e.g.* of the educational system, "have been choked off. Absolutely essential adjustments in the federal system of taxation have been accomplished only painfully through 60 years of provisional measures."[10]

Direct legislation, it was remarked in the beginning of the present Chapter, is almost peculiar to Switzerland and it has profoundly modified the character of the Swiss Government. Its institutions were planted in some other countries after World War I as a result of the people's reaction against representative democracy. Whatever be the degree of success there, it cannot be denied that the mechanism of direct democracy is a difficult operative ideal. It demands certain inherent qualities in the people where it is desired to be made operative. The success which popular legislation has achieved in Switzerland is due to the historical antecedents of the Swiss people, to their long practice of self- government in small communities, to social equality, and to the pervading spirit of patriotism and sense of public duty in them. Similar success cannot be expected in countries where similar conditions are not obtainable. In Switzerland direct legislation has a natural growth, or as Bryce says, it is "racy of the soil. There are institutions which like plants, flourish only on their hill side and under their own sunshine."[11]

Independence is the first quality which a Swiss citizen exhibits. Democracy without political parties is unthinkable and voting of any kind closely follows party lines. But in Switzerland party sentiments seldom dominate the minds of the Swiss citizens particularly when they are required to give their final judgment on legislation. The Swiss Constitution does not provide for the dramatic clashes of political parties and forces common in other countries. There have been instances when a displeasure at the conduct of a party created a prejudice against the measures it had put through the legislature, as it happened in 1884 when the people rejected all the four Bills due to the irritation caused among the minority parties in the Assembly. But this is a rare phenomenon in Swiss politics. The "Swiss voter, always independent, is most independent when he has to review the action of his Legislature." Each proposal is generally dealt with on its merits. Party affiliations do not count when the Swiss dislike changing their members even when they championed the measures which they have rejected. "As a general rule the Swiss tend to re-elect representatives whom they have disavowed, unless they have reason to suspect their patriotism."[12]

Another quality in the Swiss is parsimony. Like the Scotch, they are thrifty, and "in public matters positively penurious." A Swiss is averse to anything which can increase taxation and he cannot understand "why officials should be paid on a scale exceeding what he earns by his own toil." With this attitude the Swiss examine all their political problems and institutions. As a corollary, it follows that they like their administrative machinery to be simple. And through all these ages the Swiss have jealously guarded their local sovereignty and have always resented the interference of the Central Government, although there has been a marked evolution in the popular mind towards centralization.

But the quality most important "in a legislating nation as in a legislating assembly," says Bryce, "is compounded of two things: judgment and cool-headedness, the absennce of passion and presence of intelligence."[13] The Swiss are the embodiment of this quality which we may call a "good sense." They are neither an emotional nor a passionate people. They are an educated nation and "their best minds are more sagacious than imaginative." Having a long experience with the methods of direct democracy and its successful operation, the Swiss have formed the habit of voting in calm spirit. They are cautious in their judgment and the great majority of the nation have always shown resolute hostility to demagogic spirit. In 1981, for example, the Federal Assembly had voted in favour of Switzerland joining the United Nations. The motion had the full support of all the major Swiss political parties. Keeping to its policy of armed neutrality, the subject was discussed threadbare over the year and in March 1986, the proposal was finally rejected at a referendum by a high majority of 75.7 per cent of the votes polled, and not even

10. Gruner, Erich, *The Political System of Switzerland*, p. 349.
11. Bryce, J., *Modern Democracies*, Vol. I, pp. 453-54.
12. Rappard, W. E., *The Government of Switzerland*, p. 72.
13. Bryce, J., *Modern Democracies*, Vol. I, p. 435.

one of the Cantons voted in favour of it. It was a relatively very high turnout of voters at the referendum and shall, perhaps, remain unprecedented.

While comparing the working of direct legislation in other countries where it is practised in one form or the other, Dubbs says, ''Survey the countries of the world, you may find elsewhere greater political achievements, but assuredly in no country you will meet as many good citizens of independent national and sound practical judgment; nowhere so great a number of public men who succeed in fulfilling their function in minor spheres with dignity and skill; nowhere so much a proportion of persons who, outside their daily round, interest themselves so keenly in the welfare and in the difficulties of their fellow citizens.''

Compromise and tolerance are the most essential elements in the Swiss system of government. ''A people more given to absolute or inclined to engage in extreme debates over abstratct principles would find the Swiss system unworkable.''[14]

Arguments in Favour of Referendum

The principle of popular sovereignty finds its real expression in direct legislation rather than in a representative system. In a representative system genuine public opinion is unobtainable, for it is moulded and shaped by the partisan influences of the press, the platform and the propaganda. The referendum upholds the sovereignty of the people and is the surest method of discovering the real wishes of the people. It is an excellent barometer of public opinion. Moreover, a citizen knows better than his representatives what can serve him the best and enhance his interests. A law which comes direct and straight from the people carries with it fuller moral authority and commands more unquestioning obedience than a law made for them by the representatives.

The referendum minimises the importance of political parties and discourages partisan spirit. Then, it is a popular check on the vagaries of the legislature and the political machine. The frequent rejection by the people of measures passed by the legislature shows that the latter does not always know or give effect to the real will of the people. The referendum also ensures that laws opposed to the popular will have no chance of being enacted. It puts a veto in the hands of the people.

The referendum reduces the political high-handedness of the majority party. Under the representative system a law is usually what the parliamentary majority wishes it to be. It does not represent the will of the minorities. If, however, it is referred to the people before it can be finally enacted, the minorities do get an opportunity to adequately express their opinion and to muster strong their opposition, and if possible, to negative it. This is real democracy. Then, there is no time lag. Direct legislation, remarks Bryce, helps the legislature to keep in touch with the people at other times than at general election and in some respects a better touch, for it gives the voters an opportunity of declaring their views on serious issues, apart from the destructive or distorting influence of party spirit.''

When the people feel and realize that they are the real legislators, their patriotism and their sense of responsibility are fully stimulated. Realisation of this fact is also the real political education of the citizens. This is the true price of democracy. Moreover, the process of direct legislation is conservative in character. The people will seldom introduce radical changes when they know that they are the arbiters on legislation. They realise, that if need be, they themselves can easily adjust laws to fulfil their needs. They do not, accordingly, press for sweeping changes.

The Referendum is the best means of resolving deadlocks between the two Chambers of the legislature. It is, again, a check on the powers of the legislature. In Switzerland the executive does not exercise veto on legislation. Nor does one Chamber override the other. They are coequal in powers. The only check available, therefore, is the popular vote. Finally, as Bryce says, ''There must somewhere in every government be a power which can say the last word, can deliver a decision from which there is no appeal. In a democracy it is only the people who can thus put an end to controversy''.

Arguments Against Referendum

One of the chief objections against the referendum is that it has undermined the prestige of the legislative assemblies and has adversely reacted on the quality of membership. When the representatives know that ultimately their efforts may be reversed, they will take little interest

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14.   Buell, L., *Democratic Governments in Europe*, p. 583.

in the discharge of their legislative duties. Moreover, it erodes responsibility by making the people, "an anonymous shifting abstraction," responsible. If the measure succeeds at the popular vote, the credit for it goes to the people and not to the legislature. If it does not succeed, the blame goes to the legislature. The status and authority of the legislature must, accordingly, suffer and the result is that the people become less deferential towards it. "Its sense of responsibility," says Bryce, "is reduced" and it may be disposed to pass "measures its judgment disapproves, counting on the people to reject them or may fear to pass laws it thinks needed lest it should receive a buffet from the popular vote."

The man in the street is not adequately qualified to form and deliver any opinion upon many subjects of legislation particularly when legislation has become so highly technical and complicated. A simple 'Yes' or 'No' does not indicate the real will of the people and their comprehension of the legislation which they accept or reject. The making of laws or their ratification demands from the people a great moral standard and it is this moral value which is first and last for the referendum's main justification. The people may be ever so shrewd and ever so willing to do their duty in accordance with the strict code of morality, but they have not, and cannot have, the knowledge needed to enable them to judge the implications of the proposed legislation. Nor can the pamphlets distributed and speeches made by the supporters and opponents of the measure convey to them the requisite knowledge. The interests of the people are really safer in the hands of representatives chosen for their talent and mature judgment than when submitted to the hazards of the popular vote. Then, the people must accept or reject the bill, no amendments are possible. The vote must be given for the whole bill. In fact, no amendments can be possible when the legislative assembly consists of the whole public.

Another criticism and, indeed, a really cogent one, relates to the small size of the votes cast at a referendum. It is asserted that the result of the ballot does not fairly represent popular opinion, because in most cases the opponents of the measure go to the polls in larger proportion than its supporters. The number of large abstentions at referendum also proves that many a voter either cares little for his civil duties, or knows his

unfitness to perform them. Moreover, when people are frequently asked to cast their votes, they develop what may be called an "electoral fatigue." The net result is that the decision arrived at is invariably that of a minority of the citizens and it becomes difficult, under the circumstances, to know whether there is any public opinion at all on the question. Furthermore, the referendum sometimes involves unnecessary and harmful delay in passing many laws of vital national importance. All this takes away the educative value of the referendum. When citizens do not interest themselves in public affairs, direct legislation becomes a farce, pure and simple.

When a law is accepted at the referendum by a small majority, as it happened on the question of the Swiss Federal Penal Code, and on the Federal Economic Articles in 1938 and 1947 respectively with a majority of only 53 per cent in both the cases, its moral authority would suffer more than it would be the case had opinion been nearly equally divided in the representative legislature. In countries where direct legislation does not exist, a law passed by representative legislatures is accepted and no one cares to enquire what was the majority that passed it. It comes in the regular way from the usual organ of the people's will and it is accepted by the people in the usual way. But when it goes to the people for their acceptance every one is keen to know the majority that passed it. Those who opposed it carry on their opposition ceaselessly and openly, because they feel aggrieved to have been overridden by a negligible majority.

There is also no justification to hold that direct legislation lessens the evils of party system. As a matter of fact, political parties become more active when frequent votes are to be taken. The referendum accentuates political rivalry and partisan spirit, though this tendency has not been so prominent in Switzerland because of the habits of the people. The high cost per signature of securing the petition of 50,000 citizens for a challenge confines its use to corporate bodies—political parties, trade unions, pressure groups, etc., and increases their already strong influence on policies. "The vitality and influence of these non-public-law bodies," observes Christopher Hughes, "appears to a foreigner the most helpful sign in Swiss democracy, but the Swiss themselves are unanimous in deploring it; perhaps that is because they have deprived themselves of the

counter-weight of strong political parties divided on issues of policy"[15]

One obvious result of the referendum is the movement of the centre of gravity from the legislature to the executive. In the first place, the Assembly prefers to delegate legislative powers to the Federal Council than to legislate itself, "for less surface is thereby exposed to criticism: laws are drafted to avoid referendums. And secondly, the *Arretes* of the Federal Council not being exposed to challenge like those of the Assembly, in time of emergency the Federal Council has to do all the legislating."[16] The will of the people finds no adequate channels of expression and effectiveness. Direct democracy and its often acclaimed advantages disappear. An executive which is neither responsible nor responsive and is, in fact, the servant becomes the master.

Finally, "the most comprehensive but also the vaguest argument," says Bryce, "adduced against the referendum is that it retards political, social and economic progress." Sir Herny Maine developed this point in his book, *The Popular Government,* in 1885, and it particularly impressed Englishmen who had associated masses with conservatism. But this argument is not supported by Swiss experience. It is true that prejudice or undue caution has in some cases delayed the progress of economic or social reforms which the Assembly proposed, but no general harm has followed in Switzerland from that conservatism.

Arguments in Favour of the Initiative

Arguments in favour of the referendum and the initiative are more or less identical. But as the conditions of the latter's application are different, it needs, therefore, to be considered separately.

The initiative is claimed to be the necessary development of the concept of popular sovereignty. The people, it is argued, cannot really be sovereign, if they act through representatives. Howsoever politically virtuous and best intentioned the representatives may be, they must act according to the party programme and the party whip which may even lead to misrepresentation of the people's will. It is, accordingly, claimed that there is no better means of adequately and genuinely expressing their will, except by their own voice and vote. The referendum gives to the people only negative right of either accepting or rejecting the legislation on which they are required to express their opinion. But the initiative

gives them the positive right of framing laws which they feel they actually need. If the referendum "protects the people against the legislature's sins of commission so the initiative is a remedy for their omissions."

Next, if the legislatures are apathetic to the needs of the people, lag behind public opinion and primarily concern themselves to push through party programmes, then "why should a body of persons chosen by the people close the door against the people themselves allowing only such proposals as take their fancy to pass through so that the people deal with them?" A law initiated by the people, it is argued, is the expression of their experiences and the manifestation of their own will. There is spontaneity in obeying such laws and obedience to authority is *ipso facto.* Such political behaviour on the part of the citizens adds to the stature and stability of the government and all round reverence for the institutions of the country. Finally, the initiative minimises the possibility of political upheavals as there is no indefinite postponement of legislation which the people deem essential for their welfare. They act immediately and on their own initiative rather than to depend upon their representatives to feel their pulse and wait for the legislature to pass it.

Arguments Against the Initiative

But the initiative, like the referendum, reduces the authority and responsibility of the legislature. Making of laws, especially drafting of bills, is not the job of a man in the street. It is an arduous task which requires specialized knowledge and mature judgment which only experts connected with the work and members of the legislature acquire by long experience. An average man cannot and does not know the technicalities required in drafting bills. The result is that popularly initiated bills are often "crude in conception, unskilled in form marred by obscurities and omissions." The language used in such bills is usually seriously defective and liable to many interpretations. In the Cantons where the legislative initiative has been much freely used, it has not been the parent of any reforms which might not have been obtained through the legislature. The people, on the other hand, have sometimes placed unwise laws in the Statute books. "Sometimes the prudence of the Cantonal Councils," maintains Bryce, "dissuading the people from the particular plan proposed and substitut-

15. Hughes, C., *The Federal Constitution of Swizerland.* p. 102.
16. *Ibid.,* p. 101.

ing a better one, averted unfortunate results, while in the case of an ill-considered banking law the Federal authorities annulled the law as inconsistent with the Constitution. Several times the people have shown their good sense in rejecting mischievous schemes proposed by this method." The much acclaimed advantages of initiative, therefore, are actually negatived by the practical results.

Final Analysis

In Switzerland, the opinions, both of scholars and statesmen, on the value of direct legislation are most divergent. Some extol it as the most perfect institution, in theory and practice, so far devised. There are others who decry it on the ground that people are consulted on matters which they do not understand and assert that the actual working of the system has been bad. Some reformers resent the delays and checks inherent in the referendum and some voters complain of the excessive demands made on their spare time. All the same, no one in Switzerland would now be seriously in favour of giving it up. If one were to ask, writes Rappard, the man in the street in Switzerland "whether his country was on the whole satisfied with the results of her experiments with direct democracy, the answer would undoubtedly be in the affirmative, Indeed he might take exception to the term of experiments in this connection. The experimental stage is over and with it have gone as well the misgivings of the early enemies of the initiative and referendum as the blind enthusiasm of its first friends."[17]

The people as a whole value the privilege. "The people of modern democracies," writes Bonjour, "is no longer the irresponsible demos which Aristophanes pilloried with his mordent pen in the Knights—a brutal, elderly and iracible epicure, a willing prey to the basest flattery. Today it is usually clear-sighted and obedient to its best impulse when its leaders know how to enlighten it by appealing to them...."[18]. The political party which holds the majority in the Federal Assembly or Cantonal legislatures, though sometimes annoyed at the results, has never tried to withdraw it. The Radicals deem it to be a necessary feature of democracy. The Conservatives and the Clericals consider it a necessary drag on hasty legislation. The institution has, thus, become permanent, "not only because the people as a whole are not disposed to resign any function they have assumed, but also because it is entirely comfortable to their ideas and has worked in practice at least as well as a purely representative system worked before or would be likely to work now". The institutions of initiative and referendum are the pivot upon which hinges the entire Swiss system of government. If they are abolished, the present relations among the executive, the legislature and the judiciary will have to be altered and either the American or the British system of government adopted. But the ordinary Swiss looks upon representative democracy, whether Presidential or Parliamentary, as a poor substitute for the exercise of real sovereignty by the people.

The Radical Party has constantly advocated the introduction of the legislative initiative for federal laws and recently it has been joined by the Socialists. Various arguments are used and repeated for the institution of the legislative initiative and one of a more practical nature is that it would eliminate the practice of using constitutional initiative to insert into the Constitution provisions that should ordinarily be drafted as laws. Various arguments against this institution are also advanced and the most familiar argument is that "it would further reduce the importance of the Cantons and their protection against the encroachment of the Federal Government."[19] There may be practical reasons to block the introduction of legislative initiative, but as an institution of direct democracy it is highly valued. The majority of the Cantons have the institution of the legislative initiative. Some of the American States introduced non-constitutional initiative simultaneously with the referendum on the Swiss model. Twenty States of the Middle and Far West already have the right of initiative. Whatever be the verdict on the initiative, the Swiss people, as Hans Huber has said, "as a whole and in the Cantons have, by and large, given proof of great political maturity in referendum voting."

SUGGESTED READINGS

Gruner, Erich, *The Political System of Switzerland.*

Marx, M., *Foreign Governments.*

Munro, W.B. and Ayearst, M., *The Governments of Europe, pp. 725-750.*

Shotwill, J.T. and Others, *Governments of Continental Europe, pp. 351-356.*

Siegfried, Andre : *Switzerland : A Democratic Way of Life.*

17. Rappard, W. E., *The Government of Switzerland,* pp. 74-75.
18. Bonjour, E., *Real Democracy in Operation,* pp. 115-16.
19. Raphael also points out that if a majority of the voters and Cantons should be required for approval of a legislative initiative, "the only distinction still existing between constitutional and ordinary legislative measures would disappear" *The Government of Switzerland,* p. 770.

CHAPTER VIII

Political Parties and Interest Groups

Nature of Political Parties

Switzerland is a democracy, but even in democracy, the individual alone is inevitably impotent unless he joins others with similarly minded fellow-individuals to exercise his political authority. When he does so it is the emergence of a political party, which is a necessary tool of democratic government.

In spite of the inevitability of political parties in the Swiss system of government, the Swiss Constitution, like that of the United States, contains no express mention of this instrument of democracy. Political parties in Switzerland have extra-constitutional growth. There is, however, an indirect reference to political parties in the Swiss Constitution since the introduction of proportional representation for the election of the National Council. Article 73, as amended on October 13, 1918, provides: "Elections for the National Council shall be direct. They shall take place according to a system of proportional representation, each Canton or half-Canton forming an electoral district." The principle of proportionality would be meaningless if it did not refer to the parties between whose elected representatives a proportion, similar to that prevailing between their electors, was to be established.

Switzerland too, like other Continental democratic States, relies upon a variety of political parties to organize and promote national opinion. In fact, nowhere else in Europe there are more chances of having political parties than in Switzerland. The suffrage is wide and the people have to vote upon public affairs very often. Then, there are so many diversities of racial character, of religion, of speech, of forms of industry, and of conflicting economic interests. All these diversities are a breeding ground for multiplicity of parties and their frequent regrouping. But it is fortunate for Switzerland that the lines of party do not coincide with those of race and language and nowhere else "has the ship of the State been so little tossed by party oscillations." There are four major political parties and there do not exist extreme differences in their political philosophy and social composition. As the Swiss love for "order and compromise is as strong in politics as it is elsewhere" the multiple-party system has not led to the instability that is found among two of Switzerland's close neighbours.

History of Political Parties

The political history of the present Confederation begins with the overthrow of the Sonderbound to which a reference has been made earlier[1] and the adoption of the Constitution of 1848. The Constitution sealed the re-union of all the Cantons and created closer ties between them. At that time, federal affairs were dominated by two groups of politicians whose principal support came from the Protestant German Cantons and from Protestant French Cantons. These groups subsequently became known respectively as the Liberals and the Radicals. The former group, the Liberals, consisted of older men who advocated a liberal political philosophy of the traditional *laissez-faire* type, moral and cultural freedom for all, and republican political institutions. The Radicals were younger and progressive people and they were inclined towards a liberalism of more advanced type. They sought to extend political democracy through the institutions of the initiative and the referendum, and advocated a policy of economic liberty with a certain degree of State intervention. Despite their differences, the Liberals and the Radicals actively collaborated in bringing into being the Federal Constitution of 1874, and this document incorporates the philosophies of these parties and resents "centralistic, liberal, secular and democratic features."

Opposed to them was the Catholic Conservative People's Party. It consisted mainly of those elements which had formed the Sonderbund in 1846, and brought in the War of Secession in 1848. The Clericals were ultramontane in their views and were the champions of the Cantonal rights. The party paid, according to Zurcher, "only grudging allegiance to the constitutional

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1. See *ante*, Chap. 1.

settlement of 1848, into the acceptance of which it had been virtually coerced.'' This party now draws its members mainly from the Cantons where the Catholic majority is overwhelming. It is the most ardent, the most compact and the best organised of the Swiss political parties. The party still opposes certain provisions of the Federal Constitution that they regard as anti-Catholic or as anti-Clericals. It rejects all powerful State and espouses rights of the individuals in regard to family, school, and church. In general, it is hostile to centralisation.

Thus, at the advent of 1874, there were three political parties. The Liberals and the Radicals governed the country from 1848 to 1890 while the Catholic Conservatives remained in the Opposition. The Liberals commanded a large majority in the Federal Assembly and all the seven seats in the Federal Council belonged to them. An important feature of this period is that the Liberal Party's electoral strength decreased considerably whereas that of the Radicals increased enormously. In time, the Radicals commanded a decided majority both in the Council of States and the National Council, but not in the Federal Council, because of the Swiss habit of re-electing the Councillors as long as they wished to serve. With their retirement, however, they were replaced by the Radicals and by 1899, the Federal Council's membership came to include a single Liberal Member.

When the only Liberal member of the Federal Council retired in 1891, the Assembly which was then manned by the Radicals, elected in his place a representative of the Catholic Conservative Party. The Liberal Party became the Opposition. The Radical Conservative Coalition begun in 1891, continued till 1948, when a Socialist found his way. With the resignation of Dr. Weber, the Socialist member of the Council, the Socialist Party decided not to put forward another candidate, The vacated seat was given to Catholic Party. In 1954, the Federal Council was made up of three Radicals, three Catholics, and one Farmer. But the withdrawal by the Socialist Party was temporary. In 1959, it put up two candidates and secured both the seats. The Federal Council then reflected for the first time the true party strength.

After 1880, Switzerland witnessed the rise of the Swiss Social Democratic Party. The Socialists, as their name suggests, were the followers of Karl Marx. The development of industrialization, and the growth of such industrial cen-

tres as Zurich, Winterthur, and Basel together with the large immigration of German working men, offered the best opportunity for propagating the socialist doctrines, and the party grew apace. At the end of the First World War, it claimed 41 seats, and in the elections of 1935 it secured 50 seats in the National Council and, thus, became in the next four years the dominant party; the Radical Liberals and Catholic Conservatives having 48 and 42 seats respectively. In 1939 its number fell to 45 as a group of Left-Wing Radicals broke away from the party. In 1943, it again went up to 56, but fell down to 48 in 1947 and in the elections of 1951 its strength stood at 49, and in 1959 at 51.

An important feature of the party system in Switzerland is that a certain conservatism governs the development of parties and none of them is extremist. The socialist of the Swiss Socialist Democratic Party is essentially practical and not revolutionary, although in the early days of its career it believed in the collective ownership of all the means of production, in an inevitable class struggle and, consequently, in violent and unconstitutional methods. But as Switzerland is a mountainous country of small holdings and the peasantry wedded to the soil with strong patriotic sentiments, the revolutionary aspect of socialism did not have much appeal for the people. Moreover, the Communal and Cantonal public enterprise, the nationalisation of rails and roads, forests, water power, etc., made the programme of the socialists less attractive. They were, accordingly, compelled to make their programmes less militant as compared with those of the socialist parties in certain other countries. The Swiss Socialist Democratic Party, therefore, reconciled itself to the democratic and constitutional principles. The Party has now openly declared its faith in an evolutionary form of socialism.

The Socialist Democratic Party is the most highly organised political party in Switzerland and it has its branches in all the Cantons. It stands for nationalization of industries and all private monopolies, higher wages, social security, compulsory liquidation of agricultural debts, unemployment relief, recognition of the right to work, and suffrage for women.

Other Parties

With the introduction of proportional representation in national elections in 1918, many more parties emerged in. The Farmers, Workers and Middle Class Party was organised in 1918 as

a result of split from the Radicals because of dissatisfaction with the latter's agrarian policy. In 1929, the Radical conservative coalition was broadened to include a representative of the Farmers Party which claimed 31 seats in the National Council. In 1935, the Party could command only 21 seats and this number continues since then with a seat fluctuating this or that way. This fall-off was primarily due to the coming into existence of another agrarian party called the Young Farmers who secured four seats in 1935, 6 in 1943, 5 in 1947, 4 in 1951 in the National Council. The Farmers Party is intensely patriotic and vigorously favours measures for adequate national defence. Its programme is decidedly for the protection of agricultural interests and advocates a policy of advancement of agricultural interests by means of federal subventions.

Other minor parties, at present, represented in the National Council include the Independence Party formed in 1935, the Independent Social Democrats, the Nicole group which seceded from the socialists in 1939, and the Communists. The Communists, who now call themselves the Labour Party, have increased their following, but their success in the stable political conditions of Switzerland can never be phenomenal.

Features of the Swiss Party System

The Swiss party system is now more akin to the French rather than the Anglo-American system. The reasons for multiplicity of parties in Switzerland are obvious. It is a country of diversities, more Communal and Cantonal rather than federal in its political outlook and, consequently, the political parties, too, are not nationally organized. Switzerland, unlike other democracies has not in any true sense a party government. There are no nationwide elections for a national office such as that of a President. Elections to the Federal Assembly have a strong local colour. National party organizations are maintained now but really their practice is to constitute mere alliances for common nationwide purposes with otherwise independent Cantonal parties; the only exception being the Social Democratic Party.

Switzerland also disproves the contention that democratic government cannot work unless there is a definite majority party or a coalition of parties. Minority parties find representation in the Federal Council and in the Executive Councils of almost all the Cantons. This enables them to exert a direct influence on the conduct of public affairs. Thoroughly partisan administration is, therefore,

out of question in Switzerland. There is also absence of strict party control in the Federal Assembly. Party lines are rarely drawn, except on measures that have an immediate bearing on party interests or on religion. The result is that there is the absence of party machinery. There are no national committees, no elaborate system of party caucuses and general conventions. The Radicals and the Clericals, and so the Socialists, do occasionally hold their Congresses, but they can have no resemblance with party meetings in the United Kingdom, India, and other countries.

Another feature of the Swiss party system is that there are no party leaders. The absence of party leaders is partly due to the non-party executive at the Centre as well as in the Cantons, and partly because the parties are divided on local rather than on national issues. Lowell says that it would be "more accurate to say that federal representatives are chosen by the Cantonal parties." The influence of the leaders consequently finds expression in their own Cantons and their power is local rather than national. Another reason is that there is no opportunity for anyone in Switzerland to extend patronage and distribute spoils. Finally, there is neither professionalism in politics nor party funds. Administration has attained in Switzerland a stage of business-like efficiency. Demagogues do not find favour with the Swiss people. Nor do the representatives find time, during the short sittings of Swiss Parliament of ten to twelve weeks, in a year, to permit "talkers and fighters." The Federal Assembly is the most business-like body in the world and it does its work quietly. Obstruction in the conduct of business is unknown and divisions are much less frequent.

Politics is run is Switzerland more cheaply than anywhere else in the world. Money for party purposes is needed only when the party requires scientific organization, meetings to be held for nursing the constituencies and diffusing literature. All parties, including the socialists, agree on three fundamentals: Swiss independence, Swiss neutrality, and Swiss trade. They may disagree on details and on the best method of achieving the objectives, but on the importance of the three-fold goal there can be no difference of opinion. Then, there is no bid to capture the government. The defeat of a party leader in the elections is neither desired nor it is manipulated. In fact, pains are taken "to provide against such contingency." Politics, therefore, in Switzerland is unadulterated and a game of the veterans who play it in a

sportsman spirit. There is complete absence of the motive of personal profit. "It is not worth anybody's while," writes Bryce, "to spend money on party work except for some definite public purpose. Nobody in Switzerland has anything to gain for his own pocket by the victory of a party, for places are poorly paid. Federal places do not change hands after an election. Cantonal places are not important enough to deserve a costly fight, nor could the expenditure of money at an election escape notice in these small communities."

The spirit of political parties is, thus, weaker in Switzerland than in most other democracies of the world. The political organizations are less tightly knit and less actively worked. In the mountainous and agricultural regions, there are only local questions that occupy the people. In the industrial parts of the country, political parties are more active, but their issues are so diverse and their problems so numerous, because of natural diversities, that it is impossible to give a general description of Cantonal politics. The result is that the parties in the Cantons are not necessarily the same as in the Confederation. They do not always even bear the same names. The Cantonal elections are usually fought on Cantonal and not on national issues. The Swiss while electing their representatives, respect ability and trust those whom they have long known as honest and courageous. Party enthusiasm and hero worship seem foreign to their nature.

Such a party system, as is obtainable in Switzerland, has tranquillizing, stabilizing and ennobling influence. There is no incentive to party organization and chances of a party warfare are reduced to a minimum. The extreme stability of the parties is the most remarkable peculiarity of the Swiss political life. The majority parties are not obliged to make any great effort to retain their positions. The minority parties become passive by the consciousness that they have no chance of getting control of the government. Moreover, politics in Switzerland is conducted almost without regard to party leanings. When one party has the stable support of a large part of the nation and its supremacy is firmly established, its members are not rigidly compelled to stand together for all intents and purposes.

Interest Groups

Interest groups activity in Switzerland, writes Codding, "is integrated, to a great extent, into the normal political process." This is essen-

tially due to the presence of the multiple party system. Although there is no fundamental difference in the philosophy of the various Swiss political parties, but the political platform and activities of these parties do reflect the divergence of attitude and approach towards many of the major economic, social and political problems confronting the country. Interest groups, accordingly, find a party whose attitude reflects their approach to the problems and its solution and they join hands to make a common cause. If such a party does not exist, a new party, helped by the Swiss system of proportional representation, comes into existence. This is true both on the national as well as Cantonal levels.

The organisation of the Federal Assembly, brief sessions of both the Houses, and meagre salaries for the Deputies make it difficult for a professional politician to exist. Even the self-employed, such as, lawyers with private practice, hesitate to render parliamentary service. The result is that their places are taken by the Trade and Industrial union officials, and won by industrial executives all of whose salaries are assured during their parliamentary tenures. "There is also the traditional abhorrence of the Swiss voter for the professional politician. When men are drafted for political office, their backgrounds of success in private life, business, farming or labor (labour) union activity is usually the deciding issue". The nature of the system is consequently favourable to group activity.

Section 3 of Article 32 of the Constitution provides that "Interested economic organisations shall be consulted prior to the enactment of the executory legislation and may be called upon to cooperate in the application of executory legislations." The Federal Council has made it a practice to call upon interest groups that might be affected by new legislation to state their views and even help draft the new law. Testimony from the interest groups is also called for by the legislative committees which give new legislation its first close scrutiny. Interest group activity is, therefore inevitable at different stages of legislative process.

The interest groups are always active at the legislative referendum. If the law passed by the legislature conflicts with the views and interests of a particular group, it attempts to force a legislative referendum. The tendency of the Swiss voters "to reject a goodly portion of legislation when brought before them for the first time can be a powerful weapon." The constitutional in-

itiative is also valuable. Although a constitutional initiative has a very little chance of being accepted by the voters, but the reference of an issue to the people for their verdict can have tremendous publicity value for the cause of the interest group.

Four of the most powerful interest groups are the Swiss Union of Commerce and Industry, commonly called the VORORT; the Swiss Peasants Union; the Swiss Federation of Trade Unions; and the Swiss Association of Arts and Crafts. All these four major interest groups are usually represented in the Federal Assembly. There are many other interest groups, which whether or not represented in the Federal Assembly can always bring their weight in favour of or against legislation affecting their interests. Some

criticism of the existing interest groups has been voiced, but their supporters are in a great majority. Some contend that all interest groups must have their say in order to make it possible to determine what is the national interest. Others have faith that the manner of selecting legislators and the manner of selection and composition of the Federal Council, which is a collegiate body and plays an important role in the legislative mechanics, ensures that the Swiss public servant "will remain true to his political, legal and moral responsibilities". If worst comes to worst, the Swiss voter has confidence in his own ability to choose right from wrong. After all the majority has its ultimate weapons, the referendum, backed by the constitutional initiative.

SUGGESTED READINGS

Bonjour, E.: *Real Democracy in Operation, The Example of Switzerland.*

Bonjour, E., Officer, H.S., and Potter, G.R.: *A Short History of Switzerland.*

Brooks, R.C.: *Government and Politics of Switzerland.*

Bryce, J.: *Modern Democracies,* Vol. I, Chaps. XXVII—XXXII.

Buell, R.L.: *Democratic Governments in Europe,* pp. 557-84.

Codding, G.R.: *The Federal Government of Switzerland.*

Ghosh, R. C.: *The Government of the Swiss Republic.*

Hans Huber: *How Switzerland is Governed.*

Hughes, C.: *The Federal Constitution of Switzerland.*

Kahn, Hans: *Nationalism and Liberty: The Swiss Example.*

Lowell, A.L.: *Government and Parties in Continental Europe,* Vol. II, Chaps. XI, XII.

Marx, M.: *Foreign Governments.*

Munro, W.B. and Ayearst, M.: *The Governments of Europe,* pp. 725-50.

Neumann, R.G.: *European and Comparative Governments.*

Ogg, F.A., and Zink, H.: *Modern Foreign Governments.*

Rappard, W.E.: *The Government of Switzerland.*

Sauser-Hall, Georges: *The Political Institutions of Switzerland.*

Shotwell, J.T., and Others: *Governments of Continental Europe,* pp. 351-6.

Siegfried, Andre: *Switzerland: A Democratic Way of Life.*

Solaveytchik, George: *Switzerland in Perspective.*

Spiro, Herbert, J.: *Government by Constitution.*

Tripp, M.L.: *The Swiss and United States Federal Constitutional Systems.*

Wheare, K.C.: *Federal Government.*

CHAPTER IX

The Swiss Political System

Republican Legacy

The political system of Switzerland and its constituent Cantons is the product of gradual aggregation and evolution from its original communes, both rural and urban, that came into existence during the Middle Ages. The Alpine communities, living in practical isolation from each other, developed republican institutions from a very early phase in their political history. Their social and political structures represented a transition from their traditional, tribal, egalitarian and democratic features to medieval, feudalistic, patriarchal and oligarchical, characteristics. Pastoral communities preferred tribal, popular assemblies where their menfolk gathered to transact their political business periodically. Larger communes with a mix of agricultural and some industrial activities developed a class of landowning nobles and rich burghers. These communities graduated to elective Republics where the ruling aristocrats legitimized their power to govern on the basis of a semblance of popular consent obtained through pressure and even intimidation. The fact that the Swiss communes and Cantons were Republican did not mean that they were democratic in terms of their social and political system as well. In their actual working, they were entrenched oligarchies.

Rousseau was the first to idealize the city-state of Geneva in his *Social Contract* as a policy based on direct, participatory democracy forgetting its oligarchical base in the urban bourgeoisie and the absentee landowners. Since then, the Republican tradition and features of the Swiss political system have been magnified to celebrate Switzerland as a land of unprecedented 'democratic' virtues. Republicanism of the Swiss people was more a product of historical accident than a result of any popular initiative or national planning. Yet the Republican legacy is important for understanding the present character of Swiss political institutions.

The Republican legacy of Switzerland enabled the country to maintain a highly decentralized and autonomous structure for its Cantons and communes, which have experimented with their own mini-Republican institutions without any homogenising influence from any monarchical centre. We know that the Hapsburg dynasty, which ruled over the Austro-Hungarian Empire, was itself of the Swiss ethnic origin but it did not succeed in extending its overlordship over the Swiss Cantons as they jointly defended themselves from any encroachments by forming a League. The then 13 cantons united into a loose alliance and became formally independent of the Holy Roman Empire in 1648.

No addition was made to the number of Cantons till 1798. In that year, under the influence of France, the unified Helvetic Republic was formed. The ideas of the French Revolution were gradually penetrating the Swiss mountains, hills and valleys but they failed to satisfy the Swiss people, who loved their local liberties too much and could not think of sacrificing them at the altar of a centralised, national Republic. Had the Helvetic Republic survived, the Swiss people might have become a unified nation with a centralised administration on the French constitutional model. This did not happen because unlike France, the Swiss people did not constitute a homogenous linguistic nationality, nor even a compact religious community and no monarch had ever consolidated the separate, autonomous Cantons and communes into a well-ordered kingdom. Their fragmented, pluralistic and exclusivist Republican legacy precluded the emergence and stabilisation of any nation-based Republic. The Helvetic Republic formed on the French nationalistic model, therefore, could not last even for a decade.

Just five years after its creation, Napoleon Bonaparte gave a new constitution to the people of Switzerland through the Act of Mediation in 1803. Out of the lands, allied or conquered earlier, new Cantons were formed to increase their member to 19. After the defeat of Napoleon, Switzerland regained her complete sovereignty. In 1815, the Holy Alliance powers, Austria, Prussia, Russia, Great Britain and other European states, which assembled in the Congress of Vienna,

guaranteed the perpetual neutrality of Switzerland along with the inviolability of her territoy. Through a Federal Pact, 3 new Cantons were added to complete the territorial boundaries of the country. In 1848, after a short Civil War between the Catholic and Protestant Cantons, in which the latter were victorious, a new Constitution was adopted without external interference. The 22 Cantons set up a Federal Government, consisting of a Federal Council, a Federal Parliament and a Federal Tribunal. This Constitution, in turn, was superseded on 29 May, 1874 by the present Constitution. Switzerland was thus transformed from a League of Republican Cantons into a multinational Federal Republic, though technically it was still designated as a Confederation, which was a misnomer.

A Product of Historical Compromise

This functioning democracy of the Swiss Confederation disproves the thesis that the modern state should be founded on the principle of single nationality. About 19 Cantons are German-speaking, which could have become easily a part of the German nation. A section of the German speaking population was drawn towards Germany during the Nazi era but the Government suppressed this movement without much opposition. The German-speakinmg Swiss constitute 74% of the nation and are satisfied with 4 seats in a Federal Council of 7 members. The French-speaking Swiss form about 19% of the total population and have been allotted 2 seats on the federal Council. The Italian-speaking Swiss can claim a majority in only one Canton, Ticino, and constitute just 5% of the country's population and yet they permanently occupy one seat in the Federal Council.

The 'Federal Executive' thus represents a coalitional principle, in which 74% Germans are accorded only 57% share, 19% French get a weightage of 29% and 5% Italians receive a quota of 14%, thus respecting the terms of a historic compromise which is now about 150 years old. Within the same formula, the Protestants are given 4 seats (57%) and the Catholics are entitled to 3 seats (43%) in the Federal Cabinet. Further, two large Cantons, Berne and Zurich are always represented, no other Canton can claim more than one seat, and political parties should also be given proportional representation in the Federal Executive. Major parties such as Catholic Conservatives and Social Democrats usually get two seats

each while three minor parties are accorded one seat each. Except for a short duration in 1950s when the Social Democrats refused to participate in the ruling coalition, there has been no formal opposition in the Swiss Parliament. Only a small group of Communists keeps away from this coalitional arrangement.

The Swiss Federal Council is thus a visible symbol of the harmony that now exists between major linguistic, religious and political groupings in the country. The German-speaking group in Federal Parliament usually nominates two Protestant and two Catholic representatives who may belong to the Conservative, the Social Democratic and the Peasant and Middle class parties. The French-speaking group nominates two Protestant representatives who may usually belong to the Social Democratic or Radical parties. The Italian-speaking group nominates one Catholic representative who may usually belong to the Radical or some other minor party. When a vacancy occurs, only one or two candidates can be identified in accordance with the criteria fixed on the basis of language, religion and party allegiance. But the historic compromise never fails to deliver results and disequilibrium is almost always avoided.

Unlike Belgium, whose neutrality was violated by Germany in both the World Wars, the strategic situation of Switzerland was such that no invading army felt the need to enter Switzerland in order to attack a third country. Moreover, the belligerents have used the neutral status of the country to maintain some minimum contact between them through the mediation of the Swiss Government. This gave the Swiss people full opportunity to maintain their federalized political institutions and system of participatory democracy in the stable condition undisturbed by warfare around their borders. While a large nation like France suffered Nazi occupation and the ignominy of a puppet Vichy regime, resulting in the disgrace of the Third Republic and the enfeeblement of the Fourth Republic after the war, there was no such catastrophic turmoil on the Swiss territory where its liberal political institutions kept on advancing on a leisurely pace both at 'Confederal' and Cantonal levels despite linguistic and religious schisms and political party cleavages. Otherwise, a Swiss General de Gaulle could have subverted the 1874 constitutional arrangement and imposed a Ceasarist constitution

a la the Fifth Republic on Switzerland too. One may argue that England's insular separation from European convulsions and Switzerland's Alpine exclusion from the surrounding centres of catastrophic events have protected their democratic political evolution from being vitiated by any external intervention.

Class Structure and Elites

The Swiss society is quite different from other capitalist societies such as the United Kingdom, the United States, France and Canada discussed earlier in a multitude of ways. It has a different history, traditions, languages, cultures and institutions which distinguish Switzerland from all of them. But it shares two features with them: the first is that it is like them a highly industrialised society; and the second is that the largest part of the means of economic activity is there too under private control and ownership. As an advanced capitalist society, it may resemble even Japan in some respects, but it should be differentiated from under-industrialized countries such as India or Egypt, even though there too the means of production etc., are mainly under private ownership and control.

It is true, as Joseph Schumpeter pointed out, that "social structures, types and attitudes are coins that do not readily melt; once they are formed they persist, possibly for centuries; and since different structures and types display different degrees of ability to survive, we almost always find that actual group or national behaviour more or less departs from what we should expect it to be if we tried to infer from the dominant forms of the productive process."[1]

Yet the class structure and the nature of elite formation in Switzerland, despite its national peculiarities, is not very different from that of other countries of advanced capitalism. As Schonfield suggests, "there is a certain uniformity in the texture of their societies....and even more markedly in terms of their behaviour over a period of years, the similarities are striking."[2] Like other advanced capitalist countries Switzerland also has a notable 'public sector', which is mainly 'infra-structural and like them, the state there also plays a substantial role by way of regulation, control, co-ordination etc. Similarly, the state is by far the largest customer of the 'private sector', which depends upon the credits, subsidies and benefits that it dispenses.

In Switzerland, we find a vast scatter of individually or corporately owned small and medium-scale businesses, forming thousands of economic units. They constitute a distinct and important segment of the Swiss economy and profoundly influence the working of its polity as well. There is no doubt that economic trends adversely affect small and medium-sized enterprises. Consequently, many of them try to survive by becoming dependent on and subsidiary to giant corporations including the multinationals. Switzerland, being a tax haven, welcomes foreign capital. British, German and French capital is invested in mining, steel industry, tourism and other businesses including hydro-electric power. The Swiss banks retain enormous deposits from all over the world which are a great resource for the development of the national economy.

There is every reason to believe that the Swiss economy is now dominated by giant enterprises, both indigenous and foreign, in terms of management as well as the share of invested capital. Switzerland may keep out of the United Nations politically or the NATO militarily to protect its status of a neutralised state, but is has become fully integrated within the formidable capitalist complexes that have come into existence in Western Europe. The transnational character of this giant enterprise "has very large implications" for a small, multi-ethnic nation like Switzerland "not only in economic terms but in political terms as well."[3] The European Economic Community, with which this Alpine nation is informally allied in numerous ways, "is one institutional expression of this phenomenon and represents an attempt to overcome, within the context of capitalism, one of its major 'contradictions', namely the constantly more marked obsolescence of the nation-state as the basic unit of international life."[4]

There is to be found in Switzerland a relatively small class of the Swiss people with a sprinkling of aliens from other parts of Western Europe, particularly German and British, who own a markedly disproportionate share of the nation's wealth, and whose incomes are largely derived from that ownership. Taken together,

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1. Quoted in R. Bendix, *Nation-Building and Citizenship*, p.8
2. A Schorfield, *Modern Capitalism*, p.65.3.
3. See on this theme E-Mandel, "International Capitalism and 'Supra-Nationality'" in the *Socialist Register*, 1967.
4. R. Miliband, *The State in Capital Society*, p.15.

here is the class which Marxists have often designated as 'the ruling class' of a capitalist country. This point may be debatable. But it is possible to note the existence of economic elites which as proprietors and managers command many of the most vital sectors of the Swiss economy. Again, in Switzerland too, the opposite end of social scale is occupied by a working class which is mostly composed of factory, hotel and mine workers with agricultural earners forming a steadily diminishing part of the labour force.[5]

The work process in the Swiss society, as anywhere under capitalism, remains one of domination and subjection. As Professor Dahrendorf points out, privileged birth accompanied by education in elitist schools and universities ensures position of power in industry, banking and state bureaucracy. In a 'meritocratic' society like that of Switzerland, "the race is still rigged against the working-class competitors."[6] A university degree only offers a start in the post university race. But here too the race remains rigged because several other factors materially affect career patterns. One of these is the net-work of 'connections' which links members of the elite groups. In contrast, the working-class families do not have good connections. An occasional success of a working-class youth does not disrupt the class hierarchy of a capitalist system. It rather strengthens it by creating a myth of 'equal opportunity' under liberal capitalism. Aristocratic elites have been assimilated to the world of industrial, financial and commercial enterprises through a process of 'bourgeoisification.' Today, bourgeois elites exercise a much greater degree of political power and influence than any other social class or group in the working of the Swiss political system.

Switzerland has not been involved in any war since its neutralization in 1815 and yet it maintains a large army and airforce. It has a well-entrenched military elite which promotes sentiments of patriarchy, male chauvinism and conservatism in the Swiss society. Though Federal Parliament favoured franchise for the Swiss women in 1959, the male electorate rejected it in a referendum and one of the arguments advanced against giving vote to women was that they are not full citizens of the Republic as they are incapable of bearing arms in its defence. Thus they

could get voting rights only 12 years later in July,1971. The judges and bureaucrats are as status quoist in Switzerland as their colonels and brigadiers on most social and political issues. But the most significant aspect of the Swiss political system is the partial paralysis of its political parties which have almost completely surrendered their ideology and independent judgment to the requirements of a permanent, all-party coalition that governs the country as an instrument of the dominant classs. Almost continuous inclusion of two Social Democratic minters in the Government guarantees that class conflict will be effectively controlled in the interest of capitalist stabilization and liberal-democratic political equilibrium.

There is one last aspect of the process of legitimation to which reference must be made in the case of Switzerland. The most celebrated element of the Swiss Constitution is its provision for the institutions of direct democracy such as referendum and intiative and the phenomenon of an all-citizen people's assembly in one Canton and four Half-Contons. Actually, this limited experiment in the working of direct, participatory democracy has proved to be an anti-climax because the sovereign people have been even more conservative on social, economic and political issues than the political elites in Parliament. This shows the cultural hegemony of the dominant classes over the subordinate ones through the generation of a false consciousness among the masses by the elites. This legitimation cannot be attributed to the ameliorative capacities of capitalism only. Marx wrote in *Capital* that "The advance of capitalist production develops a working class, which by education, tradition, habit, looks, upon the conditions of that mode of production as self evident laws of nature.... the dull compulsion of economic relations completes the subjection of the labourer to the capitalist,"[7]

Ralph Miliband says, "Here, indeed, is 'socialisation', produced by the operation of system itself and only enhanced by the legitimation process."[8] In addition, the manipulative powers of the dominant cultural apparatus also shape the political behaviour of the masses. Moreover, classes, including the working classes tend to instil in their children the mental habits and ex-

5.   For some relevant figures, see Russtt et al, *World Handbook*, pp. 177-179.
6.   Ralph Militand, *The State in Capitalist Society*, pp. 40-41.
7.   Karl Marx, *Capital*, Vol 1, p. 737.
8.   R. Militand, *The State in Capitalist Society*, pp. 234-235.

pectations associated with their own class. They tell their children that the path to success lies not in rebellion but in conformity to the values, prejudices and ideas of the dominant class. In short, the subordinate condition of the working class is itself a major factor in its 'political socialisation.' This explains the genesis of popular conservatism in the Swiss political system of participatory democracy.

SUGGESTED READINGS

Bonjour,E., *Real Democracy in Operation, The Example of Switzerland*

Huber, Hans, *How Switzerland is Governed?*

Kahn, Hans, *Nationalism and Liberty-The Swiss Example.*

Miliband, Ralph, *The State in Capitalist Society.*

Rappard, W.E., *The Government of Switzerland.*

Sauser-Hall, Georges, *The Political Institutions of Switzerland.*

Siegfried, Andre, Switzerland: *A Democratic Way of Life.*

Tripp, M.L., *The Swiss and United States Constitutional Systems.*

Woddis, Jack, *New Theories of Revolution.*