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## The development of the Swiss Confederation's political system – historical perspective

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The 1<sup>st</sup> of August is a national holiday in Switzerland, known as the Confederation Holiday. It commemorates the alliance (*Eidgenossenschaft*) of the September 1<sup>st</sup>, 1291 between three cantons: Uri, Schwyz, and Nidwalden that became a substructure for the latter federal state.

It is worth mentioning that the notion “canton” as a term defining a member of Swiss Confederation appeared in the 15<sup>th</sup> century. While forming the Swiss country, the following terms were used: “site” (*Ort*) or “state” (*Stand*)<sup>1</sup>.

### **1. The creation of cantons and the first union**

The cantons were started by local communities (communes), which gathered people living in Alpine valleys. “They were based on some private and legal unions between the homesteaders. These unions

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<sup>1</sup> This term appeared for the first time in the written documents in treaties between the Old Swiss Confederation and the French rulers: Charles VII (1452) and Louis IX (1463 and 1470): *Cantons de la vieille Lique de la haute Allemagne* –

were made in order to solve some problems resulting from owning a household. However, in the course of time, they started to handle some issues connected with the entire local community, that is why they evolved into public and legal unions. As a result, they gave rise to the first communities on the territory of contemporary Switzerland”<sup>2</sup>.

The citizens of the above mentioned valleys were dealing with agriculture and cattle and sheep pasturage on mountain grasslands. They had very strong family bonds and sense of independence.

These factors were one of the major reason of arguments with local feudal lords. The second reason was a geographical situation of Switzerland. Some transit routes from the north to the south of Europe ran through these lands. The majority of them ran through the Alpine cols: St. Gothard's, St. Bernard's, and Simplon. The trade transit involved fees, which were a titbit for local authorities.

Among the Swiss feudal lords the most important were the following dynasties: Zährigen (lords of Freiburg in Breisagau, Fribourg, and Bern), Lenzburg (they ruled in Central Switzerland and they resided in the Lenzbourg Castle in Aargau), Kyburg (ruled the lands on the Aare River and the Zug Lake)<sup>3</sup> and Habsburg, who became the lords of Fricktal, Lucern, Unterwalden, Zug, and Swiss through some profitable marriages and inheritance. These lords established numerous towns and founded monasteries with some lands. The colonization was concentrated around these cities and monasteries.

At the beginning of the 13<sup>th</sup> century, the Habsburgs and the German emperor started to rival in order to get the proceeds from the fees charged on the transit of goods through the mountainous

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W. Oechsli, *Die Benennungen der alten Eidgenossenschaft und ihrer Glieder: erster Teil*, “Jahrbuch für schweizerische Geschichte” 1916, vol. 41, p. 77.

<sup>2</sup> I. Rycerska, *Kierunki rozwoju federacji szwajcarskiej*, [in:] *Problemy rozwoju federalizmu we współczesnym świecie*, ed. J. Jaskiernia, Kielce 2009, p. 111. [Wszystkie tłumaczenia dokonane przez T.B.]

<sup>3</sup> They were also the successors of the Lenzbourgs and Zähringens.

routes (especially the one running through the Reuss River)<sup>4</sup>. The Habsburgs manned the local administration on their territory – the office of voigt (*Vogt*) and judge (*Richter*). In turn, the emperor gave some privileges (*Freiheitsbriefe*) to the cities excluding them from the powers of the local feudal lords and subjecting them directly to the emperor. These privileges were given to Uri (1231)<sup>5</sup> and Schwyz (1240). They gave the towns a full independence from the local lords so they became subjected directly to the emperor (*Rechtsummittelbarkeit*). They became the Emperor's communities, having their own officials<sup>6</sup>, subjected directly to the Emperor's jurisdiction<sup>7</sup>. Apart from Uri, such a status was given to Solothurn, St. Gallen, Schaffhausen, and Zurich.

The first known union between the Swiss Cantons was signed in 1115 by Uri and Unterwalden in order to protect the Schwyz's rights in its argument with a monastery in Einsiedeln<sup>8</sup>. The subsequent unions between the cantons, which were aimed at protecting common business, were signed in 1243 (Bern and Fribourg)<sup>9</sup>, 1250

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<sup>4</sup> The bridge on this river allowed the free goods' transport through St. Gothard's Creek. The first notes about this route come from Albert von Stadte's chronicles (1240) – F. Güterback, *Wann wurde die Gotthardroute erschlossen?*, "Zeitschrift für schweizerische Geschichte" 1939, vol. 19, p. 122.

<sup>5</sup> "We, hereby, redeem you from the property of Graf Rudolf von Habsburg, and release you from his possessing and promise you that we will never sell you, but to call you to our Reich and protect you [...]", stated the excerpt of *Freiheitsbrief* for Uri – the original text: W. Hartmann, *Die Königlichen Freiheitsbriefe für Uri, Schwyz und Underwalden von 1231–1316*, "Archiv für Schweizerische Geschichte" 1862, vol. 13, p. 113–114. See also: W. Oechsli, *Quellenbuch zur Schweizergeschichte. Für Haus und Schule*, Zurich 1886, p. 46–47.

<sup>6</sup> G. von Below, *Die Entstehung der Schweizerischen Eidgenossenschaft*, "Zeitschrift für Schweizerische Geschichte" 1923, vol. 3, p. 181–182 and A. Baur, *Szwajcarski fenomen*, Warszawa 1992, p. 15.

<sup>7</sup> It meant the autonomy that was expanded together with the fall of authority – T. Maciejewski, *Historia powszechna ustroju i prawa*, Warszawa 2007, p. 177–178.

<sup>8</sup> J. Schollenberger, *Das Bundesstaatsrecht der Schweiz. Geschichte und System*, Berlin 1902, p. 24.

<sup>9</sup> Another union of two cantons made in 1271 – K. Meyer, *Der älteste Schweizererbunde*, "Zeitschrift für Schweizerische Geschichte" 1924, vol. 4, p. 13.

(Bern and Valais), and 1251 (Zurich, Uri, Schwyz<sup>10</sup> and Bern and Lucerne)<sup>11</sup>.

The Letter of Alliance of 1291 of Three Forest Cantons (*Waldstädte*)<sup>12</sup> included a record of “to renew by these presents the ancient form of the league”<sup>13</sup>. The former union of these cantons was dated on 1240, 1245, 1258, or 1260<sup>14</sup>. The majority of data suggests that the union was concluded in 1273. It was meant to be an answer to so called Rudolf Habsburg’s *Kaufbrief*<sup>15</sup> and its signatories (known by names) were supposed to be Burkhart Schupfer – Landamman from Uri, and the knight from Schwyz – Rudolf von Stauffacher<sup>16</sup>.

However, the Federal Charter of 1291 is considered to be the basis of the Swiss political structure (the first documented one). It was sworn in July that year. The document creating the “union”

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<sup>10</sup> Ch. Staub and E.H. Gaullieur, *Die Schweiz, ihre Geschichte, Geographie und Statistik, nebst einem Ueberblick über die Alterrthümer, Literatur, Kunst und die Industrie der zweiundzwanzig Kantone. Zweite Abtheilung: Die Malerische Schweiz*, Geneve-Basel 1857, p. 238.

<sup>11</sup> In 1252, Lucerne joined the Union with Uri, Schwyz and Unterwalden – T. von Liebenau, *Zur Bundesfeier von 1291–1891*, “Der Geschichtsfreund: Mitteilungen des Historisches Vereins Zentralschweiz” 1891, vol. 46, p. 287.

<sup>12</sup> W. Oechsl, *Die Benennungen...*, p. 54–57.

<sup>13</sup> Latin version *innovando*, German *erneuern* – both can be translated as *renovation*. See: Y. Hangartner, *Grundzüge des Schweizerischen Staatsrechts*, Zurich 1980, p. 9.

<sup>14</sup> K. Meyer, *Der Ursprung der Eidgenossenschaft*, “Zeitschrift für Schweizerische Geschichte” 1941, vol. 21, p. 289–292, 298 and 315; Sz. Wachholz, *Geneza i rozwój Związku Szwajcarskiego*, “Czasopismo Prawnicze i Ekonomiczne” 1936, p. 98; H. Conrad, *Deutsche Rechtsgeschichte. Band I: Frühzeit und Mittelalter*, Karlsruhe 1962, p. 248; Z. Czeszejko-Sochacki, *System konstytucyjny Szwajcarii*, Warszawa 2002, p. 5; U. im Hof, *Geschichte der Schweiz*, Stuttgart 2007, p. 26; E. Meyer, *Das erste Bündniss der schweizerischen Urkantone*, “Der Geschichtsfreund: Mitteilungen des Historischen Vereins Zentralschweiz” 1908, vol. 63, p. 3.

<sup>15</sup> In this document, Rudolf purchased from Anna von Kiburg and her husband Eberhard von Habsburg-Laufenburg a land property in Aarau, Arth, Kastelen, Lenzbourg, Mellingen, Nidwalden vogtei, Reinah castle, Schwyz, Sempach, Suhr, Suree, Villmergan, Willisau and Zug – K. Meyer, op.cit., p. 405–407.

<sup>16</sup> *Ibidem*, p. 423.

(Bund)<sup>17</sup> was written in Latin, and its signatories were (despite the lack of signatures) Werner II from Attinghausen, Arnold de Silingen, Conrad Ablerg, Rudolf Staufacher, Conrad Hunn, Conrad Erstfeld, and Burkard Schupfer<sup>18</sup>.

## 2. Old Swiss Confederacy (1291–1798)

The rules included into the Federal Charter of 1291 may be divided into 5 groups:

- 1) mutual guarantee of helping each other in the case of outside aggressions,
- 2) acknowledging the judges that were the citizens of the Union being formed, and had not bought their posts,
- 3) forming the institution of a mediator, who was supposed to settle disputes between the signatories,
- 4) legal rules concerning punishing for the hardest crimes: murders, arson, robbery, and theft,
- 5) enforcement of given sentences<sup>19</sup>.

This Pact was of a clearly anti-Habsburg character, especially in the part concerning the lack of acceptance of foreign judges. The Union was meant to be perpetual, unlike the ally made by Zurich, Uri, and Schwyz on October 16<sup>th</sup>, 1291, and was supposed to be in force only for three years<sup>20</sup>.

The Pact of 1291 was confirmed in 1307 during the meeting of delegates from the signatories' cantons at Four Cantons Lake

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<sup>17</sup> *Union made under an oath* – A. Baur, op.cit., p. 13; *conspiracy* – P. Sarnecki, *Zgromadzenie Federalne – Parlament Konfederacji Szwajcarskiej*, Warszawa 2003, p. 6.

<sup>18</sup> J. Wojtowicz, *Historia Szwajcarii*, Wrocław 1976, p. 40.

<sup>19</sup> The Pact's content – W. Oechsli, *Quellenbuch...*, op.cit. p. 49–50.

<sup>20</sup> J.J. von Ah, *Die Bundes-Briefe der Alten Eidgenossenschaft 1291–1513*, Einsiedeln 1891, p. 22.

on Rütli<sup>21</sup>, and it was announced after the battle of Morgarten in 1315<sup>22</sup>.

The privilege of Henry VII Luxembourger was significant for this union, and in 1309, it confirmed the existing privileges of Uri and Schwyz and subjected Unterwalden to them, what meant that the three cantons were subjected to one voigt of German Reich and the emperor's courts.

The Pact of Brunnen of December 9<sup>th</sup>, 1315 was a confirmation of the Federal Charter of 1291. The cantons affirmed the previous Union and obliged themselves not to accept the foreign authority.

The other cantons started to join the Confederation: Lucerne (1332), Zurich (1351), Glarus and Zug (1352), and Bern (1353). It needs to be highlighted that the above mentioned cantons made agreements with the Confederation's members called Luzerner-Bund, Zürcher-Bund, Glarner-Bund, Zuger-Bund, and Berner-Bund.

There was no act that would have completely regulated political status of the Old Swiss Confederacy. After all, it was not a homogenous and unitary country, but the union of independent, often differing cantons.

The second important act of the Confederation, in terms of political character, was made on the October 7<sup>th</sup>, 1370, and was called *Pfaffenbrief*. It concerned the court's laws of its members and it called the country *Eidgenossenschaft*<sup>23</sup>. The eleven articles contained, for instance, a prohibition of personal revenge and transferring claims on other people, a duty to take an oath of obedience, ensuring safety of the flow of goods through St. Gothard's Creek<sup>24</sup>.

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<sup>21</sup> So-called "Rüttlischwur" – A. Heusler, *Schweizerische Verfassungsgeschichte*, Basel 1920, p. 77–82 and J. Schollenberger, *Geschichte der schweizerischen Politik*, vol. I, Frauenfeld 1906, p. 85.

<sup>22</sup> It was the first battle for the Confederation's protection when the Habsburg's army was defeated by Switzerland.

<sup>23</sup> J. Schollenberger, op.cit., p. 25. It is worth mentioning that the members of the Confederation were defined as Swiss men (Schwyzer) and it is dated back to the Old Zurich War (1440–46). Ibidem, p. 36.

<sup>24</sup> W. Nabholz, P. Kläui, *Quellenbuch zur Verfassungsgeschichte der Schweizer-*

The next act, tightening a formal and official co-operation of the Swiss Confederation's members, was *Sempacher Brief* of July 10<sup>th</sup>, 1393 – made by Uri, Schwyz, Unterwalden, Glarus, Zurich, Lucerne, Bern, Solothurn, and Zug<sup>25</sup>. It concerned the rules of being at war by confederate cantons and its most important rules concerned not attacking each other, ensuring safety of merchants being on their territories, feuding with respect to *Sempacher Brief*.

In 1481, Fribourg and Solothurn joined the Confederation. That year, the *Tagsatzung* enacted an agreement (*Stanser Verkommnis*), which brought end to disputes between urban and rural cantons concerning limits in the number of Swiss mercenaries<sup>26</sup>. The agreement included a guarantee of its signatories of inviolability of their territories by banning attacks on each other, a duty to protect the attacked canton, a prohibition to incite people in other cantons, and a mutual help with suppressing revolts. Besides, the agreement confirmed the rules of *Pfaffenbrief* and *Sempacher Brief*, and obliged the Confederation's members to confirm the vow every three years.

In 1499, a very important event took place and it had a great impact on the position of the Confederation in the world. The Treaty of Basel ended the war between the Swiss and Swabian League and it made Switzerland independent from German Reich<sup>27</sup>.

The Swiss Confederation was constantly developing at the beginning of 16<sup>th</sup> century. In 1501, Basel and Schaffhausen became its members, and Appenzell in 1513. From then, the Old Swiss Confederacy consisted of thirteen cantons. In 1515, Switzerland was defeated in the battle of Marignana against France and its expansion ended that year.

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*ischen Eidgenossenschaft und der Kantone, von der Anfängen bis zur Gegenwart*, Aarau 1947, p. 33.

<sup>25</sup> B. Stettler, *Der Sempacher Brief von 1393: ein Verkanntes Dokument aus der ältesten Schweizergeschichte*, "Schweizerische Zeitschrift für Geschichte" 1985, vol. 35, p. 2.

<sup>26</sup> J. Wojtowicz, op.cit., p. 65.

<sup>27</sup> This independence did not refer to the cantons that had joined the Confederation after the Treaty was made, that is Appenzell, Basel, and Schaffhausen-Sz. Wachholz, op.cit., p. 99.



At the beginning of its existence, the Swiss country consisted (apart from cantons) of:

- a) “friendly sites” (*zugewandte Orte*) – they were connected with the members of the Confederation under the appropriate allies, i.e. Geneve, Graubünden, Valais;
- b) sites that were subjected to some friendly sites (*gemeine Herrschaften*) – i.e. Baden, Bellinzona, Locarno;
- c) protectorates (*Schirmherrschaften*) – i.e. Fürstenland, Thurgau, Uznach<sup>28</sup>.

The political basis of the Old Swiss Confederacy may be ordered in the following way:

- a) agreements between the cantons (*Bundesbriefe*)<sup>29</sup>;
- b) so called constitutional letters (*Verfassungsbrieft*): The Federal Charter of 1291, *Pfaffenbrief* of 1370, *Sempacher Brief* of 1393, and *Stanser Verkommnis* of 1481;
- c) agreements with friendly sites;
- d) allies with foreign countries (i.e. with the Papal States in 1510);
- e) acts of the Confederation’s Parliament (*Tagsatzung*),
- f) religious peace events: 1<sup>st</sup> Kappel’s Peace (1529), 2<sup>nd</sup> Kappel’s Peace (1531), the Peace of Baden (1656), and the Peace of Aarau (1712).

The Swiss Confederation had one common authority – the Confederation’s Parliament (*Tagsatzung*)<sup>30</sup>. It constituted of the representatives of all the Confederation’s members, who gathered once a year to deliberate, originally in a Kienholz or Einsiedeln hermitage, then

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<sup>28</sup> J. Schollenberger, op.cit., p. 64–68 and 71–79; M. Wittlibschlager, *Einführung in das schweizerische Recht*, Munich 2000, p. 1–2.

<sup>29</sup> It not always referred to all the cantons creating the Confederation – P. Sarnecki, *Zgromadzenie Parlamentarne. Parlament Konfederacji Szwajcarskiej*, Warszawa 1995, p. 5.

<sup>30</sup> It was formerly called “Tag”, then “Tagsatzung” or “Tagleitsung” – W. Oechsl, *Die Benennungen...*, op.cit., p. 94. In Polish publications it is known as “National Parliament” (P. Sarnecki), “Delegates’ Conference” (W. Linder) – M. Aleksandrowicz, *System prawny Szwajcarii. Historia i współczesność*, Białystok, 2009, p. 30.



in the leading canton (*Vorort*): Zurich or Lucerne<sup>31</sup>. Those debates were led by the mayor of a leading canton. The *Tagsatzung* delegates (each canton was represented by two people and a friendly site by one) were bound by some instructions, and the decisions were usually taken unanimously. The administrative and organizational base of the *Tagsatzung* was a canton in which the debates took place<sup>32</sup>. The major entitlements of the *Tagsatzung* were to take decisions concerning the Confederation's safety, its *Landamann* or mayor<sup>33</sup>.

The above mentioned the Treaty of Basel (1499) made Switzerland independent from the Reich, and it was officially confirmed under the Peace of Westphalia: "the city of Basel and the other Confederation's cities are in possession of freedom and exclusion from the Reich and in no other way are subjected to the Reich courts"<sup>34</sup>.

The encroachment of French army and creating Helvetic Republic is considered to be the end of the Old Swiss Confederacy era.

### 3. Helvetic Republic (1798–1802)

The French Revolution and the slogans proclaimed by it resounded in Europe, including Switzerland. It came to some disorders and massive depreciations of governments in cantons. Swiss revolutionists wanted to strengthen the federal government at the expense of cantons' rights. They were led by Frederic Cesar La Harpe and Peter Ochs. In December 1797, during the meeting with Napoleon Bonaparte, they settled that the uprising would outbreak in Switzerland and the French army would be called to help – it happened

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<sup>31</sup> Z. Czeszejko-Sochacki, op.cit., p. 7; J. Schollenberger, op.cit., p. 80 and 83; see also M. Körner, *Vorort*, [in:] "Historisches Lexicon der Schweiz" (HLS), version of March 14<sup>th</sup>, 2011, <http://www.hls-dhs-dss.ch/textes/d/D10077.php>, 10.07.2013.

<sup>32</sup> W. Oechsli, op.cit., p. 97.

<sup>33</sup> R. Joos, *Die Entstehung und rechtliche Ausgestaltung der Eidgenössischen Tagsatzung bis zur Reformation*, Schaffhausen 1925, p. 99–101; T. Maciejewski, op.cit., p. 489.

<sup>34</sup> F. Gallati, *Die formelle Exemption der Schweiz vom Deutschen Reich im Westfälischen Frieden*, "Zeitschrift für Schweizerische Geschichte" 1948, vol. 28, p. 476.

at the beginning of 1798, when the fights were launched in Waadt canton. At short notice, the French army defeated the Bern's army and occupied the entire country.

On April 10<sup>th</sup>, 1798, the deputies from 10 cantons (debating in Aarau)<sup>35</sup> voted the first constitution of the Swiss country – the Helvetic Constitution (*Helvetische Verfassung*). It changed the political structure of the country from the Confederation of Independent Cantons to integral country – the Helvetic Republic. Officially, the republic was meant to be an independent state; however, it was occupied by the French army.

“The Helvetic Republic is one and integral. It removes borders between the cantons and between them and subjected countries. [...] We were weak because of our individual weaknesses, we will be strong with everybody's strength”, stated art. 1 of the constitution<sup>36</sup>. That constitution (modeled on the French one of 1795)<sup>37</sup> reformed cantons into the national administrative units (a kind of French departments).

The position and status of the most important authorities were also based on the French pattern. The legislative authority<sup>38</sup> was supposed to be held by two-chamber Parliament: the Great Council and the Senate. The Great Council was originally constituted of 8 representatives from 22 cantons<sup>39</sup>, and Senate of four deputies from each canton and the former members of the Directory. The right to stand for election was given to men who were more than 25 years old (Great Council) or 30 years old (Senate). The sessions of these two

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<sup>35</sup> J. Wojtowicz, op.cit., p. 143 – the last *Tagsatzung* debated on December 26<sup>th</sup>, 1797.

<sup>36</sup> *Konstytucja Republiki Helwecji z 12 kwietnia 1798 roku*, [in:] P. Sarnecki, *Najstarsze konstytucje z końca XVIII i I połowy XIX wieku*, Warszawa 1997, p. 90.

<sup>37</sup> M. Aleksandrowicz, *Republika Helwecka*, [in:] *Konstytucja. Ustrój polityczny. System organów państwowych*, ed. S. Bożyk and A. Jamróż, Białystok 2010, p. 14.

<sup>38</sup> All citizens were sovereigns of authority (art. 2 of Helvetic Constitution) – *Konstytucja Republiki Helwecji z 12 kwietnia 1798 roku*, op.cit., p. 90.

<sup>39</sup> The Republic consisted of then following cantons: Valais, Lemman (Vaud), Fribourg, Bern, Solothurn, Basel, Aargau, Lucerne, Unterwalden, Uri, Bellinzona, Lugano, Recia, Sargans, Glarus, Appenzel, Thurgau, St. Gallen, Schaffhausen, Zurich, Zug, and Schwyz – art. 18 Helvetic Constitution (ibidem, p. 93–94).

chambers were supposed to be public (art. 49), and according to art. 64, they were supposed to deliberate at least every three months.

The executive power was the Directory, constituting of 5 people. Every year one person was replaced, and its members were guaranteed the place in the Senate. Its members came from the complicated elections (stated in art. 73, 74). Besides, the right to stand in election was given to men (married or widowers) who were more than 40 years old. They were entitled to:

- ensure the state's safety and disposal of the army (art. 76),
- lodging some issues to the Parliament (art. 77),
- applying the prerogative of mercy (art. 78),
- signing the acts with a seal, announcing them and supervising their execution (art. 79),
- representing the country outside and negotiating with foreign countries (art. 80).

Four ministries were subjected to the Directory (art. 84):

- 1) the Ministry of Foreign Affairs and War,
- 2) the Ministry of Justice and Police,
- 3) the Ministry of Finance, Trade, Agriculture and Craft,
- 4) the Ministry of Education, Art, Public Construction, Bridges and Roads<sup>40</sup>.

The judiciary belonged to the Highest Tribunal (*Obester Gerichtshof*), and constituted of one representative from each canton. Among its members – its leader, prosecuting attorney, and the main penman were chosen by the Directory. Their duties were to:

- consider appeals from the cantons' courts ("in serious criminal cases")<sup>41</sup>,
- consider as a court of cassation some "sentences given in civil cases by the lower instance tribunal, which had decided without appropriate competences or violating regulations"<sup>42</sup>,

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<sup>40</sup> "The issues of hospitals for poor people and those living off alms are dealt by the Minister of Justice and Police" (ibidem, p. 104).

<sup>41</sup> M. Aleksandrowicz, op.cit., p. 18.

<sup>42</sup> Art. 89 – *Konstytucja Republiki Helweccji z 12 kwietnia 1798 roku*, op.cit., p. 105.

- taking decisions concerning charging members of the Parliament and the Directory (in criminal cases).

In the cantons, the power was exercised by: a prefect, an administrative chamber, and a canton's tribunal<sup>43</sup>.

It is worth mentioning that the Helvetic Constitution contained a lot of issues concerning civil liberties, among which were: equality of citizens, personal freedom, religious freedom, freedom of press, freedom of expression, a right of domicile and craft. Each citizen who was older than 20 years old was obliged (apart from registering as a voter) to take an oath of allegiance to the Republic: "As a good and faithful citizen I will do my best to serve my country, freedom and equality and I will despise anarchy and licentiousness" (art. 24)<sup>44</sup>.

The Helvetic Republic period was not peaceful. The Russian army led by gen. Suvorov was stationing in the country. There were anti-French uprisings in the cantons. The political situation was not steady because of a growing conflict between supporters of the old system (federalists) and the new one (unitarists).

In June 1809, a referendum was held concerning adopting new constitution – the so called 2<sup>nd</sup> Helvetic Constitution. Despite the fact that the vast majority of voters was against it (92 423: 72 453 votes), the votes of people who were entitled but had not taken part in the referendum were counted as votes supporting it (167 172)<sup>45</sup>. The new constitution brought back the name of the old Parliament (Tagsatzung) and increased the cantons' powers.

Napoleon Bonaparte acted as a mediator between the altercated Helvetians in 1802 and he threatened to use his army in order to ensure peace in the country.

The Swiss delegates gathered in Paris to prepare a new basic law, however, the cantons' constitution was prepared by the Helvetians

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<sup>43</sup> Its first composition was: Lucas Legrand (Basel), Maurice Glayre (Leman), Victor Oberlin (Solothurn), Ludwig Bay (Bern), and Alphons Pfyffer (Lucerne) – A. Bütikofer, *Staat und Wissen. Ursprünge des modernen schweizerischen Bildungssystems in Diskurs der Helvetischen Republik*, Bern 2004, p. 30.

<sup>44</sup> *Konstytucja Republiki Helwecji z 12 kwietnia 1798 roku*, op.cit., p. 95.

<sup>45</sup> M. Aleksandrowicz, op.cit., p. 20–21.

and the national one by Napoleon. It was imposed by Napoleon as a Mediator Act (February 19<sup>th</sup>, 1803). Accepting it by the Senate (March 10<sup>th</sup>, 1803) brought an end to the Helvetic Republic<sup>46</sup>.

#### 4. “Mediation’s time” (1803–1813)

“The very nature has created your country as confederation. A sensible man cannot change it”, said Napoleon to the members of the Swiss Constituent Assembly in Paris, deliberating over a new constitution<sup>47</sup>. The new constitution (*Mediationsakt*) was modeled on the American one<sup>48</sup>.

The basic assumption of the Swiss political system is to return to the federal character of the country. The Act was divided into twenty chapters – nineteen chapters contained the cantons’ constitutions<sup>49</sup> and the last one the Swiss constitution.

The Act was divided into three titles: General provisions, Directory Canton, and Union’s *Tagsatzung*. According to art. 1 of the Act, the cantons included into Switzerland guaranteed their constitutions, territories, freedom and independence to each other, and not to attack any of them. Whereas art. 12 stated that they executed all the powers not assigned to the Union’s authorities<sup>50</sup>.

The legislative authority on the federal level was held by one – chamber Parliament: the Union’s Parliament (*Tagsatzung*). It constituted of representatives from all the cantons, but the number of votes depended on the number of citizens – the deputies from can-

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<sup>46</sup> Ibidem, p. 21.

<sup>47</sup> A. Baur, op.cit., p. 29.

<sup>48</sup> E. His, *Amerikanische Einflüsse im schweizerischen Verfassungsrecht*, Basel 1920, p. 81–100; see also C.A. Spenle, *Das Kräfteverhältniss der Gliedstaaten im Gesamtgefüge des Bundesstaates*, Basel 1999, p. 209.

<sup>49</sup> Appenzell, Aargau, Basel, Bern, Fribourg, Glarus, Graubünden, Lucerne, St. Gallen, Schaffhausen, Schwyz, Solothurn, Tessin, Thurgau, Unterwalden, Uri, Vaud, Zug, and Zurich.

<sup>50</sup> A. Kölz, *Quellenbuch zur neueren schweizerischen Verfassungsgeschichte. Vom Ende der Alten Eidgenossenschaft bis 1848*, Bern 1992, p. 175, 178.

tons with more than 100 000 citizens had two votes (Bern, Zurich, Vaadt, St. Gallen, Aargau, Graubünden), the rest had one vote (art. 28). The deputies were under some instruction. On ordinary sessions (not longer than a month), they gathered on the first Monday of June, while on the extraordinary ones – when they were demanded by the cantons (Great Council or *Landsgemeinde* of 5 cantons) or Swiss Landamman.

The *Tagsatzung's* assignments were: declaring wars, making peace, forming an alliance (treaties) with foreign countries, authorizing mercenaries' recruitment, appointing ambassadors, settling disputes between the cantons. Apart from that, its duty was to choose a Federal Chancellor and a penman.

The *Tagsatzung* was supposed to gather (alternately every year) in Fribourg, Bern, Solothurn, Basel, Zurich, and Lucerne<sup>51</sup>.

The cantons in which the *Tagsatzung* gathered (in a given year) were called the Directory Cantons and they held the country's executive authority. It was led by a Swiss *Landamman*, who was always a mayor of the Directory Canton. Apart from calling and leading the *Tagsatzung*, he had to submit a report concerning federal issues, receive accreditation letters, sign state documents.

It needs to be mentioned that the Mediator Act did not contain any rules concerning the judiciary, which was preserved by the cantons. Only art. 36 granted the *Tagsatzung* the right to settle disputes between the cantons.

The Napoleon's defeat also brought some changes in Switzerland. On November 18<sup>th</sup>, 1813, it declared impartiality<sup>52</sup>, and the *Tagsatzung* (on demand of anti-Napoleonic coalition) adopted a resolution on December 29<sup>th</sup>, 1813 to repeal the Mediator Act<sup>53</sup>.

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<sup>51</sup> One year it was a catholic canton, and another a protestant one – Sz. Wachholz, op.cit., p. 115.

<sup>52</sup> Confirmed by the Congress of Vienna in March 1815 – T. Maciejewski, op.cit., p. 691.

<sup>53</sup> It consisted of deputies from 10 cantons – C.A. Spenle, op.cit., p. 211.

## 5. Restoration and Regeneration (1815–1847)

The issue of the Swiss country and its impartiality was a subject of discussions during the Congress of Vienna. It acknowledged (apart from its impartiality) a new shape of the country, after including Geneva, Wallis and Neuchatel into it<sup>54</sup>.

The agreement of August 7<sup>th</sup>, 1815 (*Bundesvertrag*) between 22 cantons was a basis for the political system of the Swiss Union. It was not a constitution (the name did not suggest it) but an agreement between sovereign cantons concerning their mutual relations. It brought back the peace of political system from before the Helvetic Republic, which was its restoration<sup>55</sup>.

The supreme authority was held by the Union's Parliament (*Tagsatzung*) consisting of 22 representatives from each canton. It could not be identified with a parliament, but rather with a meeting of the cantons' representatives<sup>56</sup>. They were supposed to:

- a right to pronounce and to make peace,
- a right to form an alliance and treaties,
- a right to appoint ambassadors, army's commander-in-chiefs, staff chiefs.

The *Tagsatzung* delegates were under some instructions given by their cantons<sup>57</sup>. It was supposed to gather once a year under the leadership of a mayor of a host canton (Zurich, Bern, and Lucerne).

When the *Tagsatzung* did not debate, the power was held by the leading canton (*Vorort*) – it was supposed to change every three years.

The Union's agreement did not contain any rules concerning the judiciary.

In 1830, Switzerland faced the so called regeneration (under the strong influence of July Revolution in France). Firstly, it concerned

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<sup>54</sup> Sz. Wachholz, op.cit., p. 116.

<sup>55</sup> Ibidem, p. 116; see also: E. Nägeli, *Die Entwicklung der Bundesrechtspflege seit 1815*, Winterthur 1920, p. 16.

<sup>56</sup> Sz. Wachholz, op.cit., p. 116.

<sup>57</sup> A. Kölz, op.cit., p. 198–199.



political changes in each canton and adopting a new constitution of democratic character by them<sup>58</sup>. The constitution was an anti-Union's agreement, what increased the pressure to reform the Union's political system. In 1831 and 1833, some projects of a new Union's constitution were prepared. However, they were not accepted (like the project of 1836).

The country faced some religious disorders and tensions. The reformative cantons (Aargau, Bern, Lucerne, Solothurn, St. Gallen, and Zurich) created the so called Pact of Seven, and the conservative cantons – Sonderbund (Lucerne, Uri, Schwyz, Unterwalden, Zug, Fribourg, and Wallis). On August 7<sup>th</sup>, 1847, the *Tagsatzung* Sonderbund was dismissed, but the cantons creating it did not comply with it and some disputes took place. The Civil War started in the country, and confederates were eventually defeated. The way to political reforms in the country was open.

## 6. Modern Swiss State (1848)

On August 16<sup>th</sup>, 1847, a committee was created and it was supposed to prepare a project of a new federal constitution. In May 1848, it was a subject of Parliament's debates and then it was voted by citizens. The majority of voters supported the constitution. On September 12<sup>th</sup>, 1848, it was passed by the Parliament<sup>59</sup>.

The federal constitution of 1848 was a “characteristic for of compromise between federal and central tendencies” and it “changed the former federation of completely independent cantons into the union of cantons, subjected to the central authority”<sup>60</sup>.

This constitution introduced Switzerland an institution of referendum and citizen initiative – two institutions of direct democracy. Thanks to it, Swiss citizens had a real impact on the law-making

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<sup>58</sup> Z. Czeszejko-Sochacki, op.cit., p. 11.

<sup>59</sup> J. Wojtowicz, op.cit., p. 170.

<sup>60</sup> Ibidem, p. 170

process. "Before the constitution created referendum as a legal institution, referendum had been a factor that created the constitution"<sup>61</sup>.

The Swiss political system based on the classic tripartite division of power:

- 1) The legislative power – two-chamber Federal Assembly (*Bundesversammlung*), consisting of 111 people in National Council and 44 people in Council of States;
- 2) The executive power – Federal Council (*Bundesrat*), consisting of 7 people;
- 3) The judiciary – Federal Court, consisting of 11 people (*Bundesgericht*).

The constitution clearly determined federal competence – foreign policy, army, duties, measure, weight, money issue, creating national companies. Everything that was not subjected to the federal authorities was a cantons' competence.

The cantons were forbidden to make political agreements and help against others.

The constitution introduced a wide list of basic laws, among which were: law equality, right of domicile, freedom of beliefs, religion, and freedom of the press<sup>62</sup>.

Other important rules of the New Constitution were: general elections to the lower chamber of the Parliament and the necessity to change constitution through referendum.

The constitution of 1848 was in force for twenty-four years and it was amended only once (1866)<sup>63</sup>. The French-Prussian war of 1870 and the democratic transformation in cantons pointed to some changes in the constitution (a necessity to bring back central authority). A project of a new constitution was rejected in 1872, but two years later (April 19<sup>th</sup>, 1874) it was accepted by the majority of citizens (340 199) and cantons (14 1/2).

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<sup>61</sup> Z. Czeszejko-Sochacki, op.cit., p. 13.

<sup>62</sup> P. Tschannen, *Eidgenössisches Organisationsrecht. Grundlagen für das Studium*, Bern 1997, p. 15.

<sup>63</sup> *Ibidem*, p. 15.

The new federal constitution of May 24<sup>th</sup>, 1874 “is not a completely new and original act in comparison with the constitution of 1848. It adopted in unchanged forms the basic federal institutions with two-chamber Parliament and Union’s Council as a government, as well as regulations concerning citizens’ rights and freedoms. All the former system has been kept. 60 articles out of 114 have remained unchanged, 40 have been slightly changed, and 14 articles have been skipped. Apart from that, 21 new articles have been introduced. As a matter of fact, it may be said that the 1874 constitution is a revised version of the 1848 constitution. The most important change was to move some entitlements from the cantons’ authorities to the Union’s ones, they were mainly the economic issues [...] It needs to be highlighted that there was serious expansion of Union’s competences as far as the army is concerned and increase of the Union’s Tribunal competences, which functions were very limited. The 1874 constitution introduced optional referendum within the scope of Union’s legislation and created the basis for unification of the vast majority of legal regulations of economic and trade relations”<sup>64</sup>.

The federal constitution of 1874 was in force for 125 years and it was amended 163 times<sup>65</sup>. That is why, in the second half of 20<sup>th</sup> century, it constituted a record of regulations that were passed in different periods and sounded quite archaically. The beginning of its change was determined by K. Brecht and P. Dürrenmatt in 1965, and the first project of 1977 was consulted. “This project was supposed to be created in a spirit of «continuation and updating» (*Nachführung*) of applicable written and unwritten constitutional law”<sup>66</sup>. It is worth mentioning that the new constitution does not include the regulations that were no longer significant (abolition of compulsory serfdom or limits in the cantons’ troops).

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<sup>64</sup> M. Rybicki, *Szwajcaria*, [in:] *Konstytucje: Wielkiej Brytanii, Stanów Zjednoczonych, Belgii, Szwajcarii*, ed. M. Rybicki, A. Burda, Wrocław–Warszawa–Kraków 1970, p. 201–202.

<sup>65</sup> M. Aleksandrowicz, *System...*, op.cit., p. 81.

<sup>66</sup> *Ibidem*, p. 80.

The new federal of April 18<sup>th</sup>, 1999 (which motto was: “Preserve the proven – shape the future – strengthen Switzerland”)<sup>67</sup> skipped only 15 articles of its predecessor and introduced 29 completely new regulations<sup>68</sup>. Till 2013, it has been amended several times, and the last amendment was introduced in March that year.

However, the constitution is not a subject of the paper and its entering into force closes it. The Polish literature provides many studies of its regulations<sup>69</sup>.

To sum up, it is worth mentioning that since 1848 Switzerland has possessed a steady political system, based on a tripartite division of powers and clearly indicated federal competences. The cantons, on the other hand, instead of separate national organisms<sup>70</sup> have become “politically autonomous territorial communities of limited statehood”<sup>71</sup>.

## Tadeusz Branecki

### The development of the Swiss Confederation's political system – historical perspective

The main aim of the article is the analysis of the development of Swiss political system. The analysis starts on September 1<sup>st</sup>, 1291, when the three cantons Uri, Schwyz, and Nidwalden created the alliance (*Eidgenossenschaft*), and takes under considerations all important events that happened on the Swiss path to contemporary political system. The considerations are made from the historical perspective.

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<sup>67</sup> A. Fischbacher, *Verfassungsrichter in der Schweiz und in Deutschland. Aufgaben, Einfluss und Auswahl*, Zurich 2005, p. 33.

<sup>68</sup> M. Aleksandrowicz, op.cit., p. 83–84.

<sup>69</sup> Z. Czeszejko-Sochacki, op.cit.; K. Kociubiński, *Systemy polityczne Austrii, Niemiec i Szwajcarii*, Wrocław 2003, p. 78–107; P. Sarnecki, *Ustroje konstytucyjne państw współczesnych*, Warszawa 2013, p. 285–334; and others.

<sup>70</sup> A. Baur, op.cit., p. 21; Z. Niewiadomski, *Gmina w Szwajcarii. Studium ustrojowo-prawne*, Warszawa 1993, p. 9.

<sup>71</sup> P. Tschannen, *Staatsrecht der Schweizerischen Eidgenossenschaft*, Bern 2011, p. 237.