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Government in Switzerland

BY

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To my friend
CHARLES BORGEAUD
EXPOSITOR OF DEMOCRACY
IN THE UNIVERSITY OF GENEVA

PREFACE

SWITZERLAND continues to be a perennial source of attraction. More than ever, travellers seek its mountains for scenery and recreation. The most inaccessible peaks of other days are now scaled by cable roads, and the remotest cañons have become the sporting grounds of the nations.

Almost equally attractive are the peculiar institutions of the country. To a romantic interest in the dramatic portions of its history, there has succeeded a deeper curiosity regarding the political experience of this mountain republic. Intelligent observers have been making known one or another phase of civic life, until a widespread interest in Switzerland has become distinctly discernible in newspapers and political discussion.

To the American reader the subject is replete with comparisons. The federation of governments is like the union under which he lives. The rights of cantons are the rights for which the states have jealously contended; yet the problems of nation, state, and city have been so differently answered by the Swiss that the closer view is exceedingly instructive.

To reflecting citizens of all countries Switzerland has a word to say on territorial expansion, on direct legislation by the people, on the nationalization of railways and industries, on the accumulation of wealth, and on other social and economic questions of the day. Hence this book.

Some years ago the writer published an essay on Swiss government, which was so well received as to encourage him to continue his studies. Since that time many important changes have taken place in state and nation. In order to take note of these and to make the picture more complete, the earlier volume has been subjected to extensive alterations. The order of treatment has been changed, large portions have been rewritten, and much new matter has been added, in the hope that the work will prove useful both to specialist and general reader.

To the many friends who have lent me their counsel and assistance I am deeply grateful. These favors have come from both sides of the Atlantic, and have extended over many years. Libraries and public authorities in Switzerland have been gracious without exception.

To the Editor of this series I am particularly indebted for a generous fund of thoughtful suggestions.

J. M. V.

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PART I
CANTONAL GOVERNMENT

CHAPTER I

ORIGINS OF THE COMMONWEALTH

THE origins of the political ideas and institutions of Switzerland must be sought among the laws and customs of the early Germans. Although the foothills of the Alps were for a long time occupied by tribes of Kelts, and, later on, became subject to the Roman Empire, no influence of the ancient Helvetians or of Latin civilization survived the Great Migration with strength enough to determine the form in which law and state should develop.

Two nations of Germans, the Burgundians and the Alamanni, then enemies, later confederates, took possession of Switzerland in the first half of the fifth century, and have never been supplanted. The Burgundians, already christianized, divided the soil of the southwestern part with the Roman inhabitants, became Frenchmen, and, because of their connection with the larger Burgundy of France, became members of a Swiss Confederation, only after it had been long in operation and the line of its evolution determined.

The Alamanni, still pagan, and hating the restraints of civilization, entered a land once flourishing with cities, but then almost abandoned.

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Neither Latin inhabitants nor Roman remains affected to any great degree their language or institutions. They grew and developed as a German nation. Their mountainous country fostered their native individuality, and they became the founders of Swiss liberty, the originators of the confederation, and were for centuries the exclusive material out of which the republic was enlarged.

Thus the foundations of the existing form of government and the political instincts of the people of to-day were in large part laid by the same Teutonic forefathers to whom we trace the constitutions of England and America.

The Alamannic invaders divided the land among themselves and settled down under separate chieftains, or kings, in different districts, and, we may believe, as in other German tribes, these districts were subdivided into *Gaue*, or counties, each of which was governed by a *Graf*, or count. The county was divided into smaller sections, called hundreds, which were presided over by *Centenarii*, or *Centgrafen*. This was, at least, the form of government when they were conquered by the Franks in the sixth century. At that time these chiefs were deprived of any semblance to royal power they may have had, and were made dukes of the Merovingian empire.

In 748 Pippin abolished the dukes, and Charles the Great completed the subjugation by causing the *Grafen* to be appointed by royal warrant instead of by popular election. In his district the

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Graf administered the laws under the oversight of the royal commissioners, and commanded its army contingent in time of war. In the hundred the *Centgraf*, with the whole body of citizens assembled about him as judges and jury, held court upon minor offences, and, like the *Graf* in his larger sphere, led his neighbors to battle.

These primitive forms of government are of the first importance in a constitutional study of Switzerland, for the cradle of the confederation was at one time described in these very terms. As we may see by the name which survives, Thurgau, was a Germanic *Gau*, or county. This included originally all the northeastern and central part of Switzerland, and within its borders were hundreds which occupied the valleys of Schwyz, Uri, and Unterwalden.

In the expansion of the feudal system, and in consequence of vast endowments of churches and monasteries, proprietorship in the soil became greatly changed, and the lordship of these counties and hundreds became hereditary in different families. Many small owners put themselves under the protection of powerful lords, others placed themselves in feudal relation to the monasteries. Whole districts were granted in fief to abbeys and cloisters, and thereby received the immunities which the church then enjoyed. Hence, at the time when we first begin to hear of a Swiss Confederation, the legal and political status of the inhabitants had become very much complicated,

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and each of the districts had reasons of its own for revolt.

Uri had been from the ninth century a fief of the abbey of Zürich. It thereby gained immunity from the jurisdiction of the ordinary feudal magnate, and enjoyed the milder rule of the monastic officials, receiving later also the direct protection of the emperor, who appointed the advocate or overlord for all the possessions of the abbey.

The inhabitants of the lower valley of the present canton formed the "Community of the People of Uri," and regulated for themselves all matters pertaining to their common pastures and woodlands. In Schwyz also, along with some manorial subjects, there had been preserved from earlier times a *Markgenossenschaft*, or agricultural community, farming its own land and making its own local laws. The external political status of these people was not so desirable as that of Uri, since they were under the protection of neighboring magnates and only distantly attached to the empire. The same may be said of Unterwalden, except that ownership of land was more divided among monasteries and nobles and there were fewer free farmers than in Schwyz. Over both hung the constant menace that their overlords would assume not only the feudal protection of the districts, but the territorial ownership as well, and gradually deprive the small owners of their remaining rights. We must not put too large an estimate upon the legislative powers of these communities at this

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time. The scope of law-making doubtless went little beyond the concerns of their common farming and pasturage. Popular rights found expression rather in the application of law, in attendance upon court, and in sitting upon juries in local trials. Here they would jealously guard ancient usages and resent foreign interference or arbitrary interpretation. But notwithstanding their limited powers these occasional assemblies kept alive the sense of mutual dependence, and when political matters were in the air, the *Markgenossenschaft* became the centre of action. In this local agricultural freedom lay the germ of larger political liberty, and when the time came for action, the instinct and the instrumentalities were at hand.¹

At the beginning of the thirteenth century we find the dukes of Zähringen in hereditary possession of the combined offices of Count of Zürichgau, now partitioned out of Thurgau, and of advocate for the abbey of Zürich. Thus the three hundreds, Schwyz, Uri, and Unterwalden, were under the same overlord, but with far different relations. In Uri the duke exercised only a general superintendence through a sub-advocate, while in Schwyz and Unterwalden he administered the laws through his own vassals, who received the offices of *Graf* and *Centgraf* as hereditary fiefs. There was imminent danger that through long usage the local liberties of the people would gradually sink into feudal serfdom. But in 1218 the house of Zähr-

¹ Cf. Dierauer, "Gesch.," I., 84.

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ingen became extinct and its fiefs fell back to the crown.

Zürich, city and abbey, and consequently Uri, sought and received from the emperor a renewal of their immunities.¹ The other districts began at once to strive after the same immediate attachment to the empire, and at last obtained it from Frederic II. in 1240, who decreed that Schwyz and Unterwalden should forever after be imperial fiefs and should be governed by imperial advocates.² The counts of Habsburg, who, as vassals of Zähringen, had long held the offices of *Centgraf* in these valleys, now became imperial instead of feudal administrators, and the condition of the people was so far improved that in case of misgovernment appeal could be made directly to the emperor, in place of a self-interested overlord.

In 1273 Rudolf of Habsburg was elected king. He at once confirmed the imperial relationship of Uri, but for Schwyz and Unterwalden deferred without directly refusing the renewal of the privileges of Frederic II.

The evident object was to gain by gradual usurpation the territorial lordship over these districts and add them to the increasing hereditary possessions of his family. The purchase of Luzern and many small landed properties scattered over the three cantons, the imposition of foreign bailiffs, together with increasing burdens of taxation, strengthened these suspicions, and caused not only

¹ In 1231.

² Charter in Oechsli, "Quellenbuch," I., p. 47.

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Schwyz and Unterwalden, but also the imperial fief Uri, to look forward with uneasiness to the future. Rudolf died in 1291, without confirming the charters. The character of his son Albert was not such as would inspire hope of better treatment, and seventeen days¹ after Rudolf's death, the three districts entered into a league. The charter itself declares it to be a renewal of an older compact, but no document earlier than this having been preserved, this agreement is known as the First Perpetual League² and is accepted as the starting-point of the Swiss Confederation.

The object of the League of 1291 was not total independence of all outside domination, but the preservation of their old direct connection with the empire and long-accustomed local rights. The confederates solemnly agreed not to receive any judge who was not a native of their valleys, nor one who had bought his office with a price. All difficulties arising between the three cantons were to be settled by arbitration, and if any party refused to accede to a decision, the others should compel it to obey. In case of attack by any power, the other cantons should come to the help of the endangered.

But all proper feudal claims should be respected, and each district should serve its own overlord in all things so far as they were right, just, and cus-

¹ Dierauer, "Gesch.," p. 78.

² "Amtliche Sammlung der Eidgenössischen Abschiede," I., p. 241; Oechsli, "Quellenbuch," p. 49; Appendix to this volume.

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tomary before the time of King Rudolf. The territorial rights of the abbeys and monasteries which had lands and serfs in those valleys, the family possessions of noble houses, and the imperial overlordship were to be honored as before. Ten weeks later a defensive alliance was also entered into for three years between Uri, Schwyz, and the city of Zürich, in which mutual assistance is promised in case of attack.

The death of Rudolf was followed by the struggle for the throne of Germany between Albert, son of Rudolf, and Adolf of Nassau, in which the Swiss took sides against their hereditary overlords. Austrian forces were brought in to punish the confederates as rebellious subjects, and were strong enough to compel them to sign a peace in 1292. The danger now became imminent that Albert would proceed to take away the liberties already acquired, but, in the meanwhile, Adolf of Nassau was elected king, and the peril was averted.

Adolf left the Swiss pretty much to themselves, and finally, in 1297, renewed the imperial privileges granted by Frederic II.; but in 1298 he was killed in battle with his rival, and the confederates once more fell into the hands of the Habsburgs.

To the period which immediately follows, tradition has assigned the adventures of William Tell. Albert, on coming to the throne, was said to have sent into the cantons overbearing bailiffs who acted like overseers of private Habsburg estates rather than governors of imperial fiefs, outraging