

THE HISTORY OF THE SWITZERLAND REFERENDUM AND THE INITIATIVE.

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Switzerland, not having any royal power, possessed no central legislature. As democracy developed within her boundaries, popular voting upon laws, known as the referendum, sprang into use.

The name referendum is not new, being applied to a practice that existed before the birth of democracy in Switzerland. The first real referendum system used by the Swiss was very dissimilar to the modern institution. The former came from the nature of the federal conditions, while the latter is based upon the conception of popular sovereignty. Altho having little connection with each other, they both originally grew from the same cause -- the lack of a representative system. The delegates to the Diet of the Confederation, from the several states, were never given power to make final settlement of matters of importance, but were simply instructed to hear what was proposed and then to report.

Conditions were similar in the Grisons. The Grisons, altho strictly not a part of the Confederation was closely associated with it, being a confederation of three separate leagues, each of which was composed of districts. These districts were the political units, and their actions were taken in mass meetings of all the Citizens. Each league contained a council, and for all three there existed a diet, but all of their decisions upon important matters had to be submitted to the districts for approval. The referendum grew gradually, until it was extended to foreign as well as domestic affairs. This system of referendum, tho poorly organized, lasted with modifications until 1854, when it was replaced by the modern referendum.

A custom more nearly resembling the modern referendum existed in the Canton of Berne. The aristocracy of the city of Berne not only



governed the city, but also the adjoining country districts. Upon the levying of all extraordinary taxes the districts were consulted, they being represented by two deputies. The patricians then changed their methods, and sent their own officials to collect the opinions of the districts, and finally, when the people repeatedly rejected plans for military reform, they were not even consulted.

The modern referendum being quite different in form and effect from the ancient institution, is based upon abstract theories of popular rights, derived from the teachings of Rousseau. Rousseau believed that in order to realize true liberty the laws ought to be enacted directly by the people.

The referendum for constitutional questions can not be considered as a Swiss invention, since for many years it has been the practice of several of the states of the United States, for them to submit their constitutions to the vote of the people. But the credit for using the referendum on ordinary laws belongs entirely to the people of Switzerland. Since the introduction of this system the politics in the cantons have been managed with much less friction and a great source of agitation and discontent has been removed.

The veto, a limited form of direct popular voting upon laws, was first introduced in the canton of St. Gall. By means of the veto, the people could refuse their consent to a law passed by the legislature. The principle difference between the referendum and the veto, is that the men who do not vote at the referendum are not counted, while in the veto they are treated as if they had voted affirmatively. The veto, being a clumsy device, was soon to be replaced by a more perfect instrument.



Switzerland's referendum is of two kinds; first, the optional, in which the law must be submitted to popular vote, if a certain number of people petition for it; and second, obligatory, which compels all laws to be submitted without the need of any petition. At present, all of the Cantons of Switzerland, with the exception of two, possess a referendum for ordinary laws, about half of them using the obligatory, and the other half the optional form. In 1874 the Confederation itself adopted the optional referendum.

The value of the referendum used in legislation varies greatly in the Confederation, and the several cantons. For all amendments to the constitution in the Confederation, the referendum is obligatory. For all laws having a general application, the optional form is used. These laws do not go into effect until ninety days after they have been passed by the assembly: thus affording time for the presentation of the petition. From 1874 to 1895 petitions were made for the referendum in twenty out of one-hundred and eighty-two laws, which were subject to petitioning. Of these twenty laws, the people accepted six and rejected fourteen. During this same period, out of the constitutional amendments submitted to the people six were ratified and four rejected.

The use of the federal referendum has been somewhat spasmodic. There will occur a period of three or four years, when every measure passed by the assembly, will be condemned by the people, and then for the five, or six years following perhaps there will not be a single rejection.

In the Canton of Zurich, the most democratic of the cantons, in twenty-four years, there were submitted to the people one-hundred and twenty-eight measures proposed by the Cantonal Council, and of these, ninety-nine were adopted and twenty-nine were refused.



The referendum is very effective, and prevents the passage of a great many laws that the people do not like. The laws that are voted down are those that usually have a radical tendency. The measures relating to labor and the improvement of the working classes, are generally rejected by the people. It would naturally seem that laws of this character would receive the approval of the people as a whole. This is not the fact however. As an illustration, in 1870, a cantonal law which limited the hours of labor in factories to twelve hours a day, which protected the women who work in them,-- and forbade the employment of children during the years when they were required to go to school, was submitted to the people and was rejected. Many of the laws presented, having provisions for the betterment of the educational advantages, have met with the same fate. However, it is not to be inferred that all such laws are rejected, but, on the contrary, that the people are much slower in accepting them than the legislature is to pass them.

One of the unsatisfactory results to be derived from the referendum is that it becomes a powerful instrument in the hands of the employers of factories. One of the principle reasons why so few beneficial factory and labor laws are passed is that the employers bring pressure to bear upon their employes, and threaten the cutting of their wages if these certain laws are passed. Another reason why many laws are refused by the people is that they are too comprehensive. The people demand that a law be simple enough for them to understand, before they will cast a vote in its favor.

Measures involving expense are often rejected entirely, or are passed with great difficulty. The people have as a rule an inherited



tendency to economize, and are very zealous lest the public moneys be squandered. Another fact is that Switzerland has no cities so large, but what all classes of the inhabitants of the cities and country feel the burden of taxation. Also, the peasants are accustomed to handling small sums and do not see the need of making large salaries for their officials; and hence the salaries of the men doing public work are unusually small.

One of the strongest criticisms often made in regard to the referendum is that the ballot is not always a fair representative of the popular opinion. In the majority of cases, the opponents of a measure go to the polls in larger proportion than do its supporters. It is difficult, however, to prove that this is universally true; but the fact remains that the indifference exists to a marked degree. Many measures are often not ratified, in the cantons where the law requires a majority vote of all persons qualified to vote, simply on account of lack of attendance at the polls. The percentage of the votes cast by registered voters varies from 81.6 per cent down to 20.2 per cent.

The largest vote is cast on religious questions; the next political ones; then come railroad; then school; then financial; then economical ones; while the smallest vote was upon administrative regulations, no doubt due to the fact that the people did not understand them. Thus it shows that even with the most democratic system ever devised, the people as a whole do not rule, but that it is left with those who take a genuine interest in public affairs.

Another objection is often made which relates to the method of conducting the referendum. It is claimed that the laws submitted to be voted upon are not brought before the people in a manner so as to attract their attention sufficiently to enable them to form a serious



opinion of the measures. It is true that the laws are printed and sent to each citizen, sometimes at the expense of 130,000 francs. Also in some cantons messages are prepared and distributed in like manner; but they so nearly resemble the law itself that the people scarcely look at them.

Another method was attempted, which was to have a debating contest upon the law at the polls; but this was ineffectual, and became merely a formality; for when the official called for those who wished to speak on the question, no volunteers responded. It was thus shown that perhaps it would be more advisable for Switzerland to make a distinction, and submit for referendum only matters on which the ordinary man can readily form an opinion.

The following is the summary of M. Droz's estimation on the value of the referendum in Switzerland, M. Droz being a distinguished statesman and writer, who served a score of years on the Federal Council.

"M. Droz had at first a strong admiration for the referendum, but, after a long experience of its actual working, he became impressed with its defects and the abuse of which it is susceptible, and modified his views to some extent. He complains that it furnishes a basis for demagoguery, and encourages the growth of professional politicians, whose ideas are systematically negative, and who are constantly trying to instill among others their own spirit of discontent. He remarks that the voter is often influenced by his humor at the moment, which is good if the crops have been satisfactory, and bad if something disagreeable has taken place in public life. On the whole, however, he concludes that the people have made a moderate use of their power, and that the federal referendum in its



present optional form has done more good than harm."

While the referendum has purely a negative effect, merely enabling the people to reject measures, the initiative gives the people the right to enact laws directly. By this method a certain number of citizens can require a popular vote to be taken upon a law, in spite of the refusal of the legislature to adopt their views, and thus it differs from a mere petition, which is simply a suggestion made to the legislature. When it was first adopted by the different cantons, it was in the form of a compulsory petition, and later it was coupled with the obligatory referendum. It gradually spread until now every canton, but one, possesses it for the revision of the constitution; and all but three for ordinary laws.

In 1891, the initiative was extended to particular amendments of the Constitution of the Confederation.

The following is A. L. Lowell's description in detail of the provisions of the federal constitution in regard to the initiative. "Any fifty thousand voters can propose an amendment, which may either be expressed in general terms, or presented in a complete and final form. When the proposal is couched in general terms, the Assembly proceeds at once to draw up the amendment if it approves of it; if not, the question must first be submitted to the people whether such an amendment shall be made, and in case the popular vote is affirmative, the duty of putting the amendment into form is entrusted to the existing Assembly, altho that body has already shown itself opposed to the measure. The petitioners are not, however, obliged to rely on the fairness of the Assembly in carrying out their intention. They are at liberty to present their



amendment, drawn up in final shape, and require that it shall be submitted directly to the people and the cantons for adoption. But in that case, the Assembly can advise the rejection of the measure, or can prepare and submit to vote at the same time a distinct amendment as an alternative."

The criticism to the federal initiative has been chiefly in regard to the right of presenting the amendment as a complete draft, some declaring that it constantly puts the constitution in question. It fortunately is not put into practice often enough to effect the politics of the Confederation in ordinary times.

The referendum is at present in use in America, and is applied almost universally to constitutional changes. Since there has been a tendency to make the constitutions of some of the western states more and more extensive, the range of subjects controlled by direct popular votes has been very much increased. This system has also been used in the management of local affairs, and a few states, since the banking mania of 1848, require a popular vote upon every act creating banks.

The citizens of a large American city, altho opposed to a local option bill, passed by the legislature, cannot prevent it from becoming a law. A popular vote can be taken only upon the local application of the provisions of this certain law.

It is thus shown that really, after all, the referendum in the United States is confined almost entirely to constitutional matters, which are of an extremely simple character; and furthermore, that the popular voting is always of the obligatory form.

Strong objections have been raised to the introduction of a general



referendum in America. Since our whole political system is based upon the distinction between constitutional and other laws, and since we hold our constitution as something that is more sacred than ordinary laws, the general referendum which would do away with this distinction, would change the very nature of our government.

The constitution consists of the principles laid down by the people in its ultimate sovereignty, while the ordinary laws are those regulations made by, and within the limits of authority given to its representatives, and the courts can hold void any act exceeding those limits. The courts which are maintained against the legislature would no longer be of value and thus upon the adoption of a general referendum our whole system of government would be endangered and shaken from its very foundation.

Another objection to the general use of the referendum in the United States is that the laws passed, even in a single state, are entirely too numerous to permit the people to vote upon them intelligently. Again, since we have an executive veto and a judiciary system, we are not in as much need of a referendum as is Switzerland.

Any of these objections do not apply to popular voting in municipal government where the distinction between constitutional and other laws are not obscured. Great success has been obtained when the principle of the town-meeting has been extended and used in the governing of our large cities. Therefore it seems wise to limit the use of the referendum in America to the constitutional changes and to local, or municipal government.