

The Federal Tribunal has jurisdiction in all cases between the Confederation and a canton or between one canton and another. The Federal Tribunal has appellate jurisdiction over all cases involving a sum of at least 4,000 francs, when such cases have been heard in the highest cantonal court. As a court of criminal justice, its jurisdiction extends to all cases of treason, revolt and violence against the Federation, offences against the law of nations and in criminal charges framed by the superior federal officials against their subordinates. The Federal Tribunal is empowered to invalidate a cantonal law if it is found to violate either the federal or cantonal Constitution. But it has no power to declare a law passed by the Federal legislature unconstitutional. In this respect, it does not occupy that exalted position of the American Supreme Court. "In Switzerland" says C. F. Strong "no such interpretative power exists and in this impotence of its judiciary, Switzerland is unique among federal states". The Constitution vests with the Federal Assembly the exclusive right of interpreting the Constitution. The Federal Tribunal, now, serves as an administrative court. It is empowered to settle disputes concerning the legal competence of public officials.

## 6. DIRECT DEMOCRACY.

A noteworthy feature of the Swiss democracy is the extensive use made of the popular Referendum and Initiative. The growth of population all over the world has rendered direct democracy a mere mockery. But Switzerland still remains as the classical home of direct democracy. Four institutions of direct democracy still survive in the Swiss system of government. They are: (1) Primary Assemblies, (2) Compulsory Constitutional Referendum, (3) Optional Legislative Referendum, and (4) Constitutional Initiative. It should be clearly borne in mind that there is no provision for Legislative Initiative for the Confederation of Switzerland. But it does exist in the cantons.



## The Primary Assembly

The Primary Assembly or the *Landsgemeinde* or the Democracy of the open-air type still survives in 5 of the Swiss cantons. It is the most curious and picturesque of all the political institutions of Switzerland. Like the city states of Athens and Sparta where all the adult male citizens took an active part in the administration of the country, the *Landsgemeinde* in Switzerland is represented by all the adult male citizens of the canton. Every adult male citizen is entitled to attend the *Landsgemeinde*, participate in the discussions and exercise his vote. It meets once in a year under a President called *Landamman*. It passes new laws and approves those which have been already passed by the Executive Council. The Primary Assembly elects the members of the Council and other cantonal officials including the judges. Though the *Landsgemeinde* is a political anachronism in the modern days, it still survives as a political curiosity in 5 of the Swiss cantons. The citizens of the *Landsgemeinde* cantons still zealously guard and prefer this type of self-government to representative government.

## Referendum and Initiative in the Confederation

The twin direct democratic checks of Referendum and Initiative—the shield and sword of democracy—are extensively used in Switzerland. The Referendum is an instrument which permits the citizens to approve or veto a law passed by the legislature. The Initiative, on the other hand, involves the right of the citizens to bring forward the actual proposal of laws to be accepted or rejected by the people. The Referendum and Initiative are so widely developed in Switzerland that they serve as effective safeguards for the acts of omission and commission by the legislature. Referendum is of two types—Compulsory Constitutional Referendum and Optional Legislative Referendum.

### Compulsory Constitutional Referendum

Changes in the Constitution can be made either totally or partially. Total change is called revision and partial change amendment. No constitutional change can be effective without the approval of the people. If both Houses of the Federal Assembly agree on revision or amendment, the proposed mea-



sure may be submitted to the people at a referendum. If it is approved by a majority of the people in the majority of the cantons, the revised Constitution or amendment will come into effect. If, on the other hand, only one House approves of the measure, the matter will be referred to the people at a referendum. If at the referendum the majority of the people in the majority of the cantons are in favour of the measure fresh elections to the legislature take place. The newly constituted legislature will prepare the measure and after it is duly approved, it will be submitted to the citizens. The measure, for its validity, requires to be approved by the majority of the people in the majority of the cantons. The first two methods are called Compulsory (Obligatory) Constitutional Referenda.

### **Optional Legislative Referendum**

While changes in the Constitution have to be approved by the citizens, ordinary laws can enter the statute book without popular approval. A legislative measure passed by the federal legislature may or may not be referred to the people. It is purely optional. But if 30,000 citizens or 8 cantons demand that the matter be referred to the people, provided it is not declared urgent by the legislature, there is no other alternative but to refer it to the people. It should be clearly borne in mind that Compulsory Constitutional Referenda require both popular and cantonal majorities. Optional Referenda on laws and treaties require only popular majority.

### **Constitutional Initiative**

If the initiative is taken by the people instead of the legislature to amend or revise the Constitution, it is called Constitutional Initiative. If 50,000 Swiss citizens desire a complete revision of the Constitution, the proposed measure will be submitted to the people at a referendum. If the stipulated majorities are obtained, fresh elections take place and the newly constituted federal legislature will carry out the wishes of the people. If



50,000 Swiss citizens desire to have an amendment, they may send the proposal in general terms (unformulated constitutional initiative or in the form of a definitely-worded amendment (formulated constitutional initiative). If the legislature approves of an Unformulated Constitutional Initiative, it will draft an amendment incorporating the desire of the citizens and submit it at a referendum. If the stated majorities are obtained, the amendment shall be deemed as passed. Even if the Federal Assembly is not favourably disposed to the amendment, the proposed amendment has to be referred to the people at a referendum. If the people are in favour of the measure, the legislature has no other alternative but to undertake the amendment and submit it to popular vote. If 50,000 Swiss citizens submit a definitely-worded amendment and if it is approved by one of the Houses, then it will be referred to people at a referendum. If the two Houses oppose the measure, they may either appeal to the people to vote against the amendment or submit a counter-proposal along with the original. This issue will be finally decided by the people at a referendum.

### Referendum and Initiative in the cantons

As in the case of the Confederation, provision is made in cantonal Constitutions for Constitutional Referendum and Constitutional Initiative. While the Legislative Referendum is optional in the Confederation, it is compulsory in all the cantons except those retaining the *Landsgemeinde*. Popular Legislative Initiative—a thing unknown to the Confederation—exists in the majority of the cantons.

### Conclusion

(A glance at the record of the experiment with direct democracy must convince any impartial observer that there is little cause for fear as to the capacity of the people to discharge their sovereign responsibility. That brilliant record nears a century. Between 1874 and 1938, the Swiss people were called to the polls—119 times to express their wishes on some piece of constitutional or ordinary legislation.) The following table illustrates the number of acceptances and rejections.

Nature of the Referendum	Total	Accepted	Rejected
1. Compulsory Constitutional Referendum	38	31	-
2. Optional Legislative Referendum	45	16	29
3. Constitutional Initiative	31	7	24
4. Counter-proposals submitted by the Federal Assembly for Constitutional Initiative	5	4	1

These figures show that in the case of compulsory constitutional referendum, the rejections are lesser, in the case of optional legislative referendum the rejections are greater and in the last two cases the rejections are still greater. This clearly elucidates the fact that the Swiss people wish more to check than to guide their representatives.

The Swiss people are more conservative than their representatives. They are highly educated people with a good deal of political consciousness. They have made use of the institutions of direct democracy in a cautious and judicious manner. They show a tendency to reject radical and complicated measures. Measures involving public expenditure have also been rejected by them. The use of Referendum and Initiative has put such a restraint on the federal and cantonal legislatures that they can be justly described as constituting the Third House of the legislature. Hence, the power of the Swiss legislature is much restricted.

In the working of direct democratic principles, the Swiss Federation which the people still call the 'Swiss confederation' had become the cynosure of all democratic-minded nations of the world. Beneath the outward splendour and apparent glamour, there was a grievous anomaly in the political system of the country and that was women were not given voting rights. However, in 1959, the cantons of Vaud and Neuchatel and in 1960, the canton of Geneva adopted woman-suffrage in cantonal and communal affairs. In 1970 women were completely enfranchised.



## Comparison with American Direct Democracy

Referendum, Initiative and Recall are the three instruments of Direct Democracy used in America. The Federal Constitution does not make any provision for such direct constitutional devices, but many State Constitutions do. The Referendum procedure in the U. S. A. obtains in 21 states, the Initiative in 13 states and Recall in 12 states. In the case of Obligatory Referendum, all legislative enactments would be suspended for a maximum period of 90 days within which period the citizens of the concerned state should express their approval or disapproval. In the case of Optional Referendum, a certain percentage of voters, usually 5% require that a particular law passed by the legislature should be submitted to the people at a referendum, the law must be referred to the people. In the case of Constitutional Initiative, if a certain percentage of the voters, usually 8% to 15% desire, then the proposed measure would be submitted to the officer-in-charge for the purpose. The measure would then be referred to the people for their acceptance or rejection. In the case of recall, if 10% to 35% of the voters deem that a state official is incompetent or unworthy for the job, the recall petition would be drafted and then referred to the people for their approval or rejection. Judges also come under this category.

The operation of Direct Democracy in Switzerland has grown out of a genuine desire on the part of the people to have a say in the making of laws. But in the U. S. A., the desire is more to check the legislative abuses and excesses of the state legislatures. An average American citizen does not like to be bossed over by others and this spirit of individualism is found in a more marked degree in America than in Switzerland. Hence, the citizens of America make a more frequent use of the Initiative procedure than the Referendum. The position is just the reverse in Switzerland. While the Swiss citizens make a cautious and judicious use of the Referendum and the Initiative, the Americans abuse the use of their power and resort to corrupt practices.