Introduction to Swiss Law

Introduction to the Swiss Legal System
Introduction to Swiss Law

Facts about Switzerland
Welcome to Switzerland

– At the heart but not part of EU
– 5 neighbouring countries
– ≈ 8.5 million inhabitants
Welcome to Switzerland

- 700 000 cows
- 1.5 Mio pigs
- 11 Mio chicken
- 60 000 horses
- 75 000 goats
- 350 0000 sheep
Facts

- ≈ 41’000 km²
- 60 % are covered by the Alps
- 30 % are covered by forests
- More than 1’500 lakes
Facts

- GDP/capita 80‘000 per capita
- Highest level of job security and salary in OECD countries
- Rather poor rankings in gender equality in salaries

OECD members (source wikipedia)
Facts

- Military service is compulsory for male citizens
- Self-imposed neutrality
- Managed to stay out of two world wars
- Accidentally invaded Liechtenstein 5 times
Facts

Swiss inventions:
  – Potato peeler
Swiss inventions:
- Potato peeler
- Cellophane
Facts

Swiss inventions:
- Potato peeler
- Cellophane
- Absinthe
Fun Facts

Swiss inventions:

− Potato peeler
− Cellophane
− Absinthe
− LSD
Fun Facts

Swiss inventions:
- Potato peeler
- Cellophane
- Absinthe
- LSD
- The Internet

CERN - European Organization for Nuclear Research
Facts

- 25% of the population are tobacco smokers
- Consumption of 100 tonnes of hashish and marijuana per year (by 600’000 users)
- Consumption of 11 and 12 kilos of chocolate per year/person
4 National Languages

- German (65.6 %)
- French (22.8 %)
- Italian (8.4 %)
- Romansh (0.6 %)
Introduction to Swiss Law

History
History I

- Sworn union of Uri, Schwyz, and Unterwalden
- 1st of August 1291
- Oath on the „Rütli-Wiese“
- Friedrich Schiller: William Tell

Federal Charter of 1291 (Bundesbrief)
Modern Swiss federal state only since 1848
Result of the Sonderbund War
Federal Constitution of 1848
Introduction to Swiss Law

Political System
3 Levels of Government

1. Confederation
2. Cantons
3. Communes
3 Levels of Government

1. Confederation
2. Cantons
3. Communes
Confederation

1. Federal Assembly
2. Federal Council
3. Federal Supreme Court

Federal Palace of Switzerland, Bern (Bundeshaus)
Separation of Powers

- Swiss Population
  - Elects Legislator Federal Assembly
  - Makes the Law
  - Elects Executive Federal Council
  - Elects Judiciary Federal Supreme Court

- Executive Federal Council
  - Elects the Law

- Legislator Federal Assembly
  - Elects the Law

- Judiciary Federal Supreme Court
  - Enforces the Law
Confederation

1. Federal Assembly
2. Federal Council
3. Federal Supreme Court
Federal Assembly

National Council
- First chamber
- Representing the people
- 200 members
- Tenure 4 years
- Bern (federal city)
Federal Assembly

Council of States
- Second chamber
- Representing the Cantons
- 46 members
- Tenure 4 years
- Bern (federal city)
Federal Assembly

- Legislation
- Election:
  - federal council
  - Federal judges
  - attorney general etc.
## The twelve political parties at federal level

### POLITICAL PARTIES IN BRIEF

In the current legislature period 2015–2019, twelve political parties are represented in the National Council. Six of these are also represented in the Council of States, four in the Federal Council. Brief outlines of the political parties represented at federal level are presented here. The order reflects the number of seats they hold in the Federal Assembly.

<table>
<thead>
<tr>
<th>Party</th>
<th>Logo</th>
<th>President</th>
<th>Council of States</th>
<th>National Council</th>
<th>Federal Council</th>
<th>Founded</th>
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</thead>
<tbody>
<tr>
<td><strong>BDP Conservative Democratic Party</strong></td>
<td>![BDP Logo]</td>
<td>Martin Landolt</td>
<td>15</td>
<td>7</td>
<td>1</td>
<td>2000</td>
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<tr>
<td><strong>Gsp Swiss Green Liberal Party</strong></td>
<td>![Gsp Logo]</td>
<td>Jürg Grossen</td>
<td>13</td>
<td>7</td>
<td>2</td>
<td>2007</td>
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<tr>
<td><strong>EVP Swiss Evangelical People’s Party</strong></td>
<td>![EVP Logo]</td>
<td>Marianne Streiff-Feller</td>
<td>25</td>
<td>2</td>
<td>2</td>
<td>1919</td>
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<tr>
<td><strong>LdT Lega dei Ticinesi</strong></td>
<td>![LdT Logo]</td>
<td></td>
<td>12</td>
<td>2</td>
<td>2</td>
<td>1991</td>
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<tr>
<td><strong>CSP OW Christian Social Party Obwalden</strong></td>
<td>![CSP OW Logo]</td>
<td>Sepp Stalder</td>
<td>13</td>
<td>1</td>
<td>1</td>
<td>1956</td>
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<tr>
<td><strong>MCG Citizen’s Movement of Geneva</strong></td>
<td>![MCG Logo]</td>
<td>Ana Roch</td>
<td>13</td>
<td>1</td>
<td>1</td>
<td>2005</td>
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<tr>
<td><strong>PdA Partei der Arbeit der Schweiz</strong></td>
<td>![PdA Logo]</td>
<td>Gabriele Pinson</td>
<td>13</td>
<td>1</td>
<td>1</td>
<td>1944</td>
</tr>
</tbody>
</table>
Confederation

1. Federal Assembly
2. Federal Council
3. Federal Supreme Court
Federal Council

- Executive Power (Government)
- 7 councillors, incl. president
- 1 chancellor (chief of staff)
- Tenure: 4 years
- Bern (federal city)

Walter Thurnheer (Chancellor)
Viola Amherd (Defence)
Simonetta Sommaruga (VP, Energy/Environment)
Guy Parmelin (Economic Affairs)
Ueli Maurer (President, Finance)
Ignazio Cassis (Foreign Affairs)
Alain Berset (Home Affairs)
Karin Keller-Sutter (Justice/Police)
Federal Council

Party affiliation of members

- Peoples Party, SVP
  (Maurer, Parmelin)

- Social Democratic Party, SP
  (Sommaruga, Berset)

- Liberals, FDP
  (Cassis, Keller-Sutter)

- Christian Democratic Party, CVP
  (Amherd)

Walter Thurnheer (Chancellor)
Viola Amherd (Defence)
Simonetta Sommaruga (Energy/Environment)
Guy Parmelin (Economic Affairs)
Ueli Maurer (President, Finance)
Ignazio Cassis (Foreign Affairs)
Alain Berset (Home Affairs)
Karin Keller-Sutter (Justice/Police)
Confederation

1. Federal Assembly
2. Federal Council
3. Federal Supreme Court
Federal Supreme Court

- 38 judges (along party lines)
- Tenure: 6 years
- Lausanne/Lucerne
- 2 chambres public law
- 2 chambers privat law
- 1 chamber criminal law
- 2 chambers social law
Federal Supreme Court

- Supreme judicial authority
- 3rd and weakest branch
- Application of federal law
- Protection of individual constitutional rights
- No power to annul federal laws
3 Levels of Government

1. Confederation
2. Cantons
3. Communes
Cantons

Art. 1 of the Federal Constitution:
„The People and the Cantons of Zurich, Bern, Lucerne, Uri, Schwyz, Obwalden and Nidwalden, Glarus, Zug, Fribourg, Solothurn, Basel Stadt and Basel Landschaft, Schaffhausen, Appenzell Ausserrhoden and Appenzell Innerrhoden, St. Gallen, Graubünden, Aargau, Thurgau, Ticino, Vaud, Valais, Neuchâtel, Geneva, and Jura form the Swiss Confederation.»
Cantons

Art. 3 of the Federal Constitution:
“The Cantons are sovereign except to the extent that their sovereignty is limited by the Federal Constitution. They exercise all rights that are not vested in the Confederation.”
Cantons

Cantons:
- Schooling
- Police
- Health care

Confederation:
- Foreign affairs
- Defence
- Transport
3 Levels of Government

1. Confederation
2. Cantons
3. Communes
Communes

- 2‘212 communes (1.1.2019)
- Smallest commune: Corippo (TI) with 12 inhabitants
- Largest commune: City of Zurich (ZH) with more than 400‘000 inhabitants
Introduction to Swiss Law

Direct democracy
Direct Democracy

- Swiss Population
  - Elects
  - Makes the Law
- Legislator
  - Federal Assembly
    - Elects
- Executive
  - Federal Council
    - Implements the Law
- Judiciary
  - Federal Supreme Court
    - Enforces the Law
Direct Democracy

- Initiative  
  (Art. 139 Constitution)
- Mandatory Referendum  
  (Art. 140 Constitution)
- Optional Referendum  
  (Art. 141 Constitution)
- Elections  
  (Art. 149 f. Constitution)
Legislative Process

How are laws made:
- pp. 27–30 in the book „Introduction to Swiss Law“
- pp. 36–37 in „The Swiss Confederation – a brief guide 2019“

Introduction to Swiss Law

Publication of Federal Laws
Publication of Federal Laws

- German, French, Italian
- Unofficial translation to English
Federal Gazette

- For (preliminary) drafts, explanatory reports and the Federal Council’s dispatches
- Not available in English
Official Compilation

- Chronological collection of all federal acts of legislation
- Acts acquire binding legal force through publication in the official compilation
- No official English version
Classified Compilation

- Lists all federal laws and ordinances under different categories, according to their content
- Each federal act has a specific number that starts with SR (systematische Sammlung) and allows the unequivocal identification

The Federal Constitution is classified with the code SR 101:

Family Laws start at SR 211, e.g. the act on registered partnership has the number SR 211.231

The Criminal Code has the number SR 311.0

SR-numbers starting with „0“ refer to international law that is part of the Swiss legislation
Introduction to Swiss Law

Case citation
Federal Case Citation

1. Official Compilation (BGE/ATF)
2. Publication Online
3. Public Pronouncement
4. Press Releases
Official Compilation (BGE)

- Landmark cases (binding precedents) are published in the official compilation
- Not to be confused with the official compilation of federal laws *(amtliche Sammlung)*
- German, French, Italian
- Each landmark case has a specific citation, e.g. BGE 113 IV 58
Official Compilation (BGE; ATF; DTF)

**BGE 113 IV 58**

- **BGE** = Bundesgerichtsentscheid (i.e. Federal Supreme Court Decision)
- **ATF** = Arrêt du Tribunal fédéral
- **DTF** = Decisione del Tribunale federale
Official Compilation (BGE;ATF;DTF)

BGE 113 IV 58

- The first 3 digits indicate the yearly volume
- The first volume was published in 1874
- Thus „113“ indicates that this decision was rendered 113 years later, in 1987
Official Compilation (BGE;ATF;DTF)

BGE 113 IV 58

I. Constitutional law
II. Administrative and public international law
III. Civil law, bankruptcy law
IV. Criminal law, enforcement of sanctions, and criminal procedure
V. Social security law
Official Compilation (BGE;ATF;DTF)

BGE 113 IV 58

- The last group of digits designates the relevant page(s) within the volume
- So in our example pp. 58
- BGE 113 IV 58, E. 2 (60) – (Erwägung 2 on page 60)
Before the year 2000 only the landmark cases were published.

- Violation of Art. 6 I ECHR

Since the year 2007 all final decisions of the Federal Supreme Court are published online.

**ARTICLE 6**

Right to a fair trial

1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly, but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.
Each case is assigned a specific case number, e.g. 6B_300/2017
The first number indicates the chamber (i.e. 6 = Chamber of criminal law)

The first letter indicates the type of procedure (i.e. B = complaint in criminal matters)

300th complaint in criminal matters in 2017
Landmark Case: Woman’s Suffrage

- On the federal level, women obtained the right to vote only in 1971.
- After that, the cantons adapted their constitutions and extended the right to participate in votes and elections to women.
- In the canton of Appenzell Innerrhoden, however, it remained a right reserved to men by the cantonal constitution until 1990.
Introduction to Swiss Law

Landmark cases
Landmark Case: Woman’s Suffrage

- In 1989, Theresa Rohner, a female citizen of Appenzell Innerrhoden, requested to participate in votes and elections.

- In 1990, there was a vote to change the cantonal constitution by granting the right to participate in votes and elections to both men and women.
Landmark Case: Woman’s Suffrage

- Only men were allowed to vote and they rejected the proposal
- 53 women and several men challenged this decision
- They requested that the Federal Supreme court annul the decision and oblige the canton to introduce women’s suffrage

Women in Appenzell Innerrhoden observing the vote from outside (1980)
Landmark Case: Woman’s Suffrage

– The Federal Supreme Court agreed with the applicants
– It determined that the constitution of the canton of Appenzell Innerrhoden violated the right for equal treatment of men and women.
– Therewith, it forced the canton of Appenzell Innerrhoden to introduce women’s suffrage
Introduction to Swiss Law

Group assignment
Group Assignment

1. Fun Facts about your country
2. Your political system
3. Landmark cases
Introduction to Swiss Law

General information
<table>
<thead>
<tr>
<th>Datum</th>
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<th>Raum</th>
<th>Dozierende/ir</th>
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<td>10:15 - 12:00</td>
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<td>Introduction to the Swiss Legal System Marc Thommen</td>
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<td>Legal Philosophy and Legal Theory Matthias Mahlmann (replaced by Elisabetta Fiocchi Malaspina)</td>
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Syllabus

Public Law
Constitutional Law (Prof. Oesch)
Administrative Law (Prof. Uhlmann)
Tax Law (Prof. Simonek)

Private Law
Civil Law (Prof. Arnet/Prof. Fiocchi/Dr. Battaglia)
Law of Obligations (Dr. Huber- Purtschert/Prof. Alexander)

Criminal Law & Civil Procedure
Criminal Law (Prof. Thommen/Dr. Zurkinden)
Criminal Procedure (Prof. Thommen/Dr. Zurkinden)
Civil Procedure (Prof. Domej)

Foundations
Roman Law (Prof. Alonso)
Legal History (Prof. Fiocchi)
Legal Sociology (Prof. Graber)
Legal Philosophy (Prof. Mahlmann → replaced by Prof. Fiocchi)
Textbook

Paperback
Hardcover
Open Access
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Introduction to Swiss Law (Sui Generis) Paperback – 1. September 2018
by Marc Thommen (Herausgeber)

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www.introductiontoswisslaw.ch
Materials

- Slides
- Further Reading
- Podcasts
Exam

- Date: November 15, 2019
- Duration: 1h
- Multiple Choice
- Open Book
Prior exams:
https://www.ius.uzh.ch/de/studies/general/exams/master/Archiv.html
Constitutional Law

- Law studies in Bern, Switzerland (1992-1999)
- LL.M Public International Law, London School of Economics and Political Science
- Doctorate and habilitation in Bern (2002 and 2008)
- Chair for Public Law, European Law and International Economic Law

Prof. Dr. iur. Matthias Oesch
Tax Law

- Law studies in Bern, Switzerland (1986)
- Doctorate and habilitation in Bern (1994 and 2004)
- Certified Tax Expert (1996)
- Chair for Swiss and International Tax Law

Prof. Dr. iur. Madeleine Simonek
Administrative Law

- Doctorate and habilitation in Basel (1996 and 2004)
- Chair for Constitutional and Administrative Law and Legislative Doctrine

Prof. Dr. iur. Felix Uhlmann
Civil Law

- Law studies in Zurich, Switzerland (1981-1987)
- Doctorate in Zurich (1993)
- Chair for Private Law with a particular focus on property law

Prof. Dr. iur. Ruth Arnet
Civil Law

- Law studies and Doctorate in Pavia, Italy (Roman law and European legal culture)
- Researcher/scholar at University of Saarbrücken (D)/University of Paris II (F)
- Habilitation (Italy 2013 [class II] and 2018 [class I], Roman law, Ancient legal history)
- Oberassistent in Zurich (Basic subjects [Grundlagenfächer])

Dr. iur. Federico Battaglia
Law of Obligations

- Studies of Economics, Bern, Switzerland (1996-2002)
- Dissertation in Zurich (2008-2012)
- Since 2014: Habilitation in Zurich

RA Dr. iur. lic. et mag. rer. pol.
Tina Huber-Purtschert
Law of Obligations

- Law studies in Cornell, Oxford and Cambridge
- (Senior) Lecturer in different Universities around the globe (London, Cambridge, Warwick)
- Professor of Economics and Law (London; 2008 – 2010)
- Since 2010: Chair of Law and Finance in Zurich

Prof. Dr. Kern Alexander
Civil Procedure

- Mag.iur./Dr. iur. University of Vienna/Austria
- Researcher Hans-Kelsen Institute, Vienna
- Habilitation University of Zürich
- Chair for Swiss and International Civil Procedure and Comparative Private Law

Prof. Dr. iur. Tanja Domej
Criminal Law / Criminal Procedure

- Doctorate and habilitation in Basel and Lucerne (2004 and 2013)
- LL.M University of Cambridge, Trinity Hall College (2005)
- Chair for Criminal Law and Criminal Procedure

Prof. Dr. iur. Marc Thommen
Criminal Law / Criminal Procedure

- Law studies in Bern (until 2007)
- Doctorate in Zurich (2013)
- Senior Assistant for Substantive and Procedural Criminal Law (since June 2018)
- Lawyer for the road traffic department of the Basel Cantonal Police
- Co-author of Swiss Criminal Law (with Anna Petrig, 2015).

Dr. iur. Nadine Zurkinden
Roman Law

- Law studies/Doctorat in Santiago de Compostela/Spain
- Professor of Roman Law, University of the Basque Country/Spain
- Professor of Ancient History and Legal Papyrology, University of Warsaw/Poland
- Chair for Roman Law, Legal Papyrology and Private Law

Prof. Dr. iur. José Luis Alonso
Legal History

- Law Studies, Università degli Studi di Milano/Italy
- Dr.iur., Università degli Studi die Genova/Italy
- Resarcher/Scholar at the Max Planck Institute for Legal History, Frankfurt a.M.
- Assistant Professor for Legal History, Zürich

Prof. Dr. iur. Elisabetta Fiocchi Malaspina
Legal Sociology

- Law Studies, Bern, St.Gallen
- Doctorate Florence/Italy
- Habilitation, Bern
- Professor for Law of Communications/Culture, Lucerne
- Visiting Professor/Scholar: Georgetown University Law Center, Center for the Study of Law and Society der University of California, Berkeley (School of Law), Faculty Associate am Berkman Klein Center for Internet and Society, Harvard University.
- Chair for Legal Sociology with particular focus on Media Law

Prof. Dr. iur. Christoph Beat Graber
Introduction to Swiss Law

Fall Semester 2019