

Walter Haller

Emeritus Professor of Constitutional Law
University of Zurich

**The Swiss Constitution
in a Comparative Context**

DIKE

Contents

Acknowledgments	III
Select Bibliography	XI
Abbreviations	XIII
Introduction	1
Part I – Fundamentals	7
1. Historical Development	7
2. The Constitution of 1999	12
3. Comparative Context	14
4. Other Sources of Constitutional Law	17
A. International Law	18
B. Statutory Law	18
C. Case Law	19
5. Constitutional Interpretation	20
A. Verbal Analysis (wording)	21
B. Systematic Analysis	21
C. Historical Analysis (legislative intent)	22
D. Topical Analysis (contemporary understanding)	23
E. Teleological Analysis	24
F. Combination of Methods	25
6. Basic Principles	26
A. Rule of Law	26
B. Democracy	27
C. Federalism	29
D. Social Justice	31
E. Other Principles	32
7. Switzerland as Part of the International Community	34
A. Constitutional Guidelines	35
B. Switzerland and Europe	35
C. Membership in the United Nations and other Global Organisations	40

Part II – Federation, Cantons and Communes	41
1. Three Levels of Government: Overview	41
A. Federal Diversity	41
B. The Federation	42
C. Cantons	43
D. Communes	48
2. Federal Guarantees	50
A. Existence and Territory of the Cantons	50
B. Cantonal Constitutions	53
C. Protection of the Constitutional Order in the Cantons	55
3. Distribution of Competencies	56
A. Methods of Allotment in a Comparative View	56
B. Swiss Method of Assigning Tasks	59
C. Competencies of the Federation: Overview	65
4. Primacy of Federal Law	76
5. Federal Supervision and Federal Coercion	78
6. Intercantonal Treaties	80
Part III – Citizenship and Political Rights	85
1. Swiss Citizenship	85
A. Main Features	85
B. Distribution of Competencies	86
C. Acquisition of Citizenship by Law	87
D. Ordinary Naturalisation	88
E. Facilitated Naturalisation and Reinstatement of Citizenship	91
F. Loss of Citizenship	92
2. Legal Status of Aliens	93
3. Right to Vote	96
A. In General	96
B. Prerequisites in Federal Matters	98
C. Prerequisites in Cantonal and Communal Matters	99
4. Instruments of Direct Democracy: Overview	101
A. Definitions	101

B. Federal Level	103
C. Cantonal Level	104
5. Freedom of Decision as the Essence of Political Rights	105
Part IV – Parliament, Government and the Judiciary	107
1. System of Government in a Comparative Context	107
A. Parliamentary System	107
B. Presidential System	108
C. Semi-Presidential System	110
D. Swiss System: Overview	110
2. Bicameral Parliament	113
A. In General	113
B. In Switzerland	115
3. The National Council	116
A. Composition	116
B. Eligibility and Incompatibilities	116
C. Mode of Election	117
D. Term of Office	119
4. The Council of States	120
5. Parliament at Work: Organisation, Procedures and Powers	121
A. Institutional Framework	121
B. Meetings	123
C. Powers	125
6. The Federal Council	128
A. Composition	128
B. Election	129
C. Collegiate Principle and Administrative Units	132
D. Powers	134
7. The Federal Supreme Court	136
A. Comparison with other Federal States	136
B. Composition and Election	138
C. Organisation	139
D. Duties	140
E. Court Proceedings	142

Part V – Fundamental Rights	145
1. General Considerations	145
A. Definitions	145
B. Comparative Context	147
C. Sources in Swiss Law	150
D. Implementation	153
E. Restrictions	157
2. Human Dignity: Basic Value, Guiding Principle and Civil Liberty	162
3. Civil Liberties and Freedoms	164
A. Right to Life and Personal Liberty	164
B. Right to Privacy	168
C. Right to Marriage and Family	170
D. Freedom of Religion and Conscience	171
E. Freedom of Expression	175
F. Academic Freedom and Freedom of the Arts	182
G. Freedom of Assembly and Association	183
H. Freedom of Domicile	187
I. Protection against Expulsion, Extradition and Deportation	188
J. Right to Property	189
K. Economic Freedom	191
4. Equality before the Law and Other Principles	194
A. Equality before the Law	195
B. Protection against Arbitrariness and Observance of Good Faith	201
5. Basic Procedural Rights	202
A. Procedural Safeguards in General	203
B. Guarantee of Access to the Court	205
C. Special Guarantees for Judicial Proceedings	206
D. No Deprivation of Liberty without a Due Process	208
E. Criminal Proceedings	210
6. Basic Social Rights	211
A. Right to Assistance when in Need	212
B. Right to Primary School Education	213

Part VI –Rule-Making, Treaties and Constitutional Jurisdiction	217
1. Revision of the Constitution	218
A. Distinction between Total and Partial Revision	218
B. Total Revision	219
C. Partial Revision	221
D. Barriers to Constitutional Amendments	225
2. Statutes, Decrees and Ordinances	227
A. Form of Legal Norms and Other Acts	227
B. Federal Statutes	228
C. Federal Decrees	232
D. Ordinances	233
3. Treaties	234
A. Definitions	234
B. Treaty-Making Procedure	235
C. Relationship between Treaties and Domestic Law	238
4. Constitutional Jurisdiction	240
A. Essence and Forms	240
B. Comparative Context	242
C. Swiss Model: Overview	245
Index	249