

On Switzerland's struggle with socio-political advance: the tedious path to the legalization of same-gender marriage

By Eva Sophia Burkhard

Eva Sophia Burkhard (she|they) is a student at the old cantonal school of Aarau, Switzerland, where her focus areas of study are Spanish and History. They have previously worked as a writer and web-manager for the school's magazine and are an avid member of the school's rainbow society. Aside from school, they are also volunteering for the ongoing "marriage for all" campaign. Upon graduating, she wishes to study international relations and political science at the University of Geneva. She enjoys creative writing, travelling and theatre.

Introduction

Switzerland is often viewed as a beacon of democracy and progress.ⁱ A half-direct democratic system allows the country's citizens a high level of involvement in policy matters: as often as ten times a year, the Swiss population goes to the polls to vote about constitutional changes, initiatives and facultative referenda. In smaller cantons and local communities, the direct system relies on the raising of hands as a means to vote on political decisionsⁱⁱ. This governmental structure ensures many opportunities to raise one's voice on policy decisions and even involve personal ideas for progress, which has led to global recognition of Switzerland as one of the most democratically progressive countries.ⁱⁱⁱ

Nonetheless, this unique way of policymaking has flaws that make it especially difficult to enact socio-political change. Compared to its neighboring nations, Switzerland has historically lagged in passing progressive policy measures. While Germany passed the universal right to vote in 1918^{iv} and France in 1944^v, Switzerland, despite its status as a highly democratic federal state since 1848^{vi}, only joined their ranks in 1971. Some cantons stalled further, without universal suffrage until 1991.^{vii} Fifty years later, Switzerland's political system still presents significant barriers to the adoption of progressive social policies, for example the introduction of same-gender marriage, which took seven years to be approved. This article uses the legalization of same-gender marriage to illustrate these barriers and compares it to the prime example of women's suffrage to show that this is not a unique case.

Swiss government structure and policy making

To understand the "marriage for all" debate, we must first look at the Swiss government and its structure.

At a national level, the executive branch is represented by the Federal Council, which consists of seven individuals. The legislature is composed of two councils: the National Council with seats allocated to each canton by population size and the Council of States, which offers two seats per canton. There are 26 cantons and their own local governments are similarly structured.^{viii}

Both Councils meet four times a year in sessions lasting three weeks each to discuss policy matters. While topics require approval from each Council, they discuss these matters separately and only communicate their results when both sides reach the same decision.^{ix} Outside these quarterly sessions, the parliamentarians meet in committees to prepare bills assigned to their policy area of focus for the Council's full sessions.^x

Constituents participate in policy-making through the following avenues:

1. Mandatory referendum: constitutional changes must automatically undergo a mandatory referendum, where the entire population votes on the matter.^{xi}

2. Facultative referendum: For any legal change decided upon by the parliament that would be able to pass without the population's approval, citizens may submit a facultative referendum by the collection of 50,000 signatures, which triggers a vote by the entire population on the matter, serving as a populist check on the parliament.^{xii}
3. Popular initiative: Citizens can also submit their own initiatives for constitutional changes to be voted upon nationwide. 100,000 signatures are required for this process.^{xiii}

The party distribution within the parliament is fairly constant, with no party having an absolute majority.^{xiv} This ensures a balanced but slow policy making process, as each party engages in heavy debates with all other parties.^{xv}

With the fundamentals of the Swiss government explained, we can now take a closer look at the “marriage for all” debate.

The road to same-gender marriage

Article 14 of the Swiss Constitution states the following: ‘The right to marriage and family is guaranteed.’^{xvi} Swiss politicians have historically interpreted this right to refer to a marriage between a man and a woman. Through the addition of the Law on Registered Partnerships into the Swiss Civil Code in 2007, same-gender couples gained the right to live together in a registered partnership.^{xvii} This partnership came with a host of other rights, including rights of inheritance and joint taxation. However, these registered partnerships lack property rights, rights for adoption, and do not include access to reproductive medicine.^{xviii} Due to this clear lack of equality on a fundamental as well as legal basis, there remains a need for same-gender civil marriage.

In December of 2013, the Green Liberal Party proposed the parliamentary “marriage for all” initiative. The initiative called for an addition to Article 14 of the Constitution that would guarantee access to marriage regardless of gender or sexual orientation.^{xix} In 2015, the Committee for Legal Affairs of both the National Council^{xx} and the Council of States^{xxi} revisited the initiative, though it received no attention until 2017. At this session, the due date to decide the matter was moved to the Council's 2019 summer session, by which point the Council would also have received a review it requested of the initiative from the Office of Justice.^{xxii}

The Office of Justice, in said ordered review published in 2018, explained the differences between marriage and registered partnership, the legal changes required to be made if the initiative were accepted, and possible variants of marriage for all. They also emphasized the possibility of introducing same-gender marriage *without* Constitutional changes so as to avoid the mandatory referendum and contested the gender-agnostic reading of the right to marriage in Article 14.^{xxiii} In response, the National Council's Committee for Legal Affairs resolved to pursue the initiative without constitutional amendment.^{xxiv}

In the following year, the initiative's drafted bill underwent the mandatory council consultation process^{xxv} before it was picked up again at the 2019 summer session. However, the deadline for a decision was once more pushed back, this time to 2021.^{xxvi} Two months after the session, the Council's Committee for Legal Affairs published an altered draft taking into account the results of the consultation process. Where the first draft aimed towards immediate steps for a possible introduction and provided expansive reproductive services, this draft adopted a more gradual approach to introduction and excluded these services for lesbian couples.^{xxvii}

In 2020, for the first time in seven years, the National Council debated the initiative. The debate lasted more than a week, with the most heavily debated topic being the guaranteed access to reproductive medicine for lesbian couples—by contrast to debates earlier in the century, this draft and its provision of equal marriage access were much more warmly welcomed among the parliamentarians. The draft law, including the access to reproductive medicine, was accepted by approximately three-quarters of the National Council.^{xxviii}

The debates that followed in the Council of States were much more critical of the draft, but it was eventually approved by the majority. They approved of the guaranteed access to reproductive medicine with one alteration that would prohibit the recognition of a child's second mother if the child was conceived abroad through anonymous semen donation^{xxix} in places where, unlike in Switzerland, anonymous donations are legal.^{xxx} The National Council, which had to approve this change, did so a week later.^{xxxi} On December 18, 2020, the two Councils' winter sessions closed with a final positive vote on the initiative.^{xxxii} Only four months later, a coalition of various parties submitted a referendum of 59,000 signatures, thus causing a national vote on the initiative in the near future.^{xxxiii}

After seven years, the conclusion is finally within reach. Still, the question as to why this process took so long remains. Mia Jenni, queer feminist, member of the Young Socialist Party's leadership, and former candidate for the National Council, emphasizes that not all initiatives take so long for approval. Some initiatives, such as laws on observations of state-insured persons, are able to close discussions after one session only.^{xxxiv} Meanwhile, progressive social changes, like the “marriage for all” initiative, take several years.^{xxxv}

This is a deliberate feature of the Swiss political system. According to Jenni, a tendency of the parliament to push back decisions on socio-political policy matters like the “marriage for all” initiative has been a constant. This is due to parliamentarians' fears that Swiss society is not ready for progressive policies, as well as a lack of diverse representation in the parliament. While there have been a few openly gay legislators^{xxxvi}, a lack of queer female representatives remains a prominent issue.^{xxxvii} This misrepresentation only bolsters the continuous pushback against policies like same-gender marriage.^{xxxviii}

The endless back and forth between the two Councils does not facilitate fast decisions, either. We can see this through the “marriage for all” initiative, which, with a referendum submitted and a nationwide vote thus already on its way, is still in the policymaking process after seven years.^{xxxix}

Jenni also noted that the debate on access to reproductive medicine will continue to receive attention until lesbian couples are guaranteed the same rights as their heterosexual counterparts. This means that the fight for marriage equality is far from over.^{xl}

A historical struggle: the legalization of women's rights to vote

This bias against progressive social change does not uniquely apply to the case of same-gender marriage. Looking at Switzerland's history, the most infamous example of delayed progressive policy is the legalization of a universal right to vote – which, in Switzerland, took almost fifty years longer than in most of its surrounding countries.^{xli}

According to Elisabeth Joris, expert on women's history in Switzerland, this is not only because of how direct the Swiss political system is. For one, Switzerland's neutrality in both world wars prevented it from engaging in a government reformation many other countries experienced following the war years. Many of its neighbors, who were left shattered by the war, adopted more progressive constitutions, which made the universal right to vote much

easier to introduce. Furthermore, with a majority of the nation rejecting a first attempt of a national vote on women's political rights in 1959^{xlii}, no one seemed pressed to make a decision anymore – especially not the men who would be voting on the matter. Only after years of vocal protest among disenfranchised women and the adoption of women's suffrage in almost every other country surrounding Switzerland did the all-male voting population choose to accept the legalization of women's rights to vote in 1971.^{xliii}

While the length of time it took to accept women's suffrage was primarily due to societal prejudices, the delay in broadening the definition of marriage is primarily explained by the government's structure. Still, the parallels are strong, Joris says. Social norms like the one of the heterosexual family are deeply rooted in Swiss society and thus likewise deeply defended in parliament. Combined with a feeling of superiority and pride for Swiss direct democracy, there is also a denial of existing inequality, which makes certain progressive advances feel less important. While the men required to vote on women's rights did not feel pressed enough to consider the topic of importance, today's initiative "Marriage for all" has been postponed and brushed off by the parliament for many years.^{xliv}

Another similarity between the processes of accepting women's suffrage and same-gender marriage is the lack of involvement of the affected minority groups on an official level. In 1971, men needed to vote on the women's political rights. Today, only a few queer lawmakers fight for their own rights within the parliament. In both cases, those affected by the considered policies were largely excluded from the ranks of policymakers, reflecting the societal norms of Swiss society more broadly.

Lastly, Switzerland's relatively stable party distribution also influences the readiness of the government to introduce social change. With relatively stable party coalitions, politicians tend not to make electoral promises like actively fighting for LGBTQ+ equality. The result is an aversion to take up social issues like "marriage for all" and women's suffrage that could fracture party coalitions.^{xlv}

Conclusion

Switzerland's open democracy comes with many advantages and maximizes opportunities for citizens' participation, but an important criticism of the system is that it fails to promote progressive socio-political policies.

Though the system's design bears the most important part of the responsibility in the slow policymaking process, the fact that other initiatives quickly become law suggests that there are other problem areas to scrutinize. Therefore, it is important to note that this is not solely the system's fault, but also that of the people partaking in it. Social conservatism, reliance on outdated norms, myopic pride in the country's democracy, and lack of personal connection to emergent social issues among the Swiss people explain some of the country's aversion to progressive social policy as well.

While the country reckons with these significant structural and social barriers, the fight for equality for queer couples continues.

ⁱ Brian Daigle, "Switzerland: The Ultimate Democracy?", *The National Interest*, 07 September 2014, <https://nationalinterest.org/feature/switzerland-the-ultimate-democracy-11219>.

ⁱⁱ Kerstin Hilt, «Direkte Demokratie in der Schweiz», *Planet Wissen*, 10 July 2018, https://www.planet-wissen.de/kultur/mitteleuropa/urlaubsland_schweiz/pwiedirektedemokratieinderschweiz100.html.

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- ⁱⁱⁱ In 2019, The Economist ranked Switzerland 10th place on its Democracy Index with a score of 9.03: <https://www.economist.com/graphic-detail/2020/01/22/global-democracy-has-another-bad-year>.
- ^{iv} Irene Altenmüller, «1918: Frauen erkämpfen sich das Wahlrecht.», NDR, 28 november 2020, <https://www.ndr.de/geschichte/chronologie/Frauenwahlrecht-in-Deutschland-Die-Geburtsstunde,frauenwahlrecht110.html>.
- ^v France Culture, « 21 avril 1944 : le droit de vote accordé aux femmes », 29 November 2020, <https://www.franceculture.fr/societe/21-avril-1944-le-droit-de-vote-accorde-aux-femmes>.
- ^{vi} Eidgenössisches Departement für auswärtige Angelegenheiten EDA, *Auf dem Weg zum Bundesstaat (1815-1848)*, 12 December, https://www.eda.admin.ch/dam/PRS-Web/de/dokumente/weg-bundesstaat_DE.pdf.
- ^{vii} Historisches Lexikon der Schweiz, «Frauenstimmrecht» 28 November 2020, <https://hls-dhs-dss.ch/de/articles/010380/2019-09-17/>.
- ^{viii} Demokratie Schweiz, «Die Gewaltenteilung», 12 December 2020, <https://www.ch.ch/de/demokratie/funktionsweise-und-organisation-der-schweiz/die-gewaltenteilung/>.
- ^{ix} Demokratie Schweiz, «Aufgaben des Parlaments», 12 December 2020, <https://www.ch.ch/de/demokratie/das-parlament/aufgaben-des-parlaments>.
- ^x Schweizer Parlament, «Parlamentswörterbuch: Kommission», 12 December 2020, <https://www.parlament.ch/de/%C3%BCber-das-parlament/parlamentsw%C3%B6rterbuch/parlamentsw%C3%B6rterbuch-detail?WordId=120>.
- ^{xi} SR 101 Bundesverfassung der Schweizerischen Eidgenossenschaft vom 18. April 1999, *Art. 140 Obligatorisches Referendum*, 12 December 2020, <https://www.admin.ch/opc/de/classified-compilation/19995395/index.html#a140>.
- ^{xii} Demokratie Schweiz, «Referendum», 12 December 2020, <https://www.ch.ch/de/demokratie/politische-rechte/fakultatives-referendum/>.
- ^{xiii} Demokratie Schweiz, «Was ist eine eidgenössische Volksinitiative?», 12 December 2020, <https://www.ch.ch/de/demokratie/politische-rechte/volksinitiative/was-ist-eine-eidgenossische-volksinitiative>.
- ^{xiv} Bundesamt für Statistik, «Parteistärken», 12 December 2020, <https://www.bfs.admin.ch/bfs/de/home/statistiken/politik/wahlen/nationalratswahlen/parteistaerken.html>.
- ^{xv} Mia Jenni, Interview with the author, 18 December 2020.
- ^{xvi} SR 101 Bundesverfassung der Schweizerischen Eidgenossenschaft vom 18. April 1999, 03 November 2020, <https://www.admin.ch/opc/de/classified-compilation/19995395/index.html#a14>.
- ^{xvii} *Federal law of 18 June 2004 on the registered partnership of same-sex couples*, 01 December 2020, <https://www.admin.ch/opc/de/classified-compilation/20022194/history.html>.
- ^{xviii} Bundesamt für Justiz, *Ehe, Eingetragene Partnerschaft, Gesetzliche Grundlagen*, 02 December 2020, <https://www.parlament.ch/centers/documents/de/beilage-mm-rk-n-2018-07-06-13.486-d.pdf>.
- ^{xix} Schweizer Parlament, «Parlamentarische Initiative ‘Ehe für alle’», 06 December 2020, <https://www.parlament.ch/de/ratsbetrieb/suche-curia-vista/geschaef?AffairId=20130468>.
- ^{xx} Parlamentsdienste, «Medienmitteilung vom Freitag, 20. Februar 2015», 02 December 2020, <https://www.parlament.ch/press-releases/Pages/2015/mm-rk-n-2015-02-20.aspx>.
- ^{xxi} Parlamentsdienste, «Medienmitteilung vom Dienstag, 01. September 2015», 02 December 2020, <https://www.parlament.ch/press-releases/Pages/2015/mm-rk-s-2015-09-01.aspx>.
- ^{xxii} Parlamentsdienste, «Medienmitteilung vom Freitag, 12. Mai 2017», 03 December 2020, <https://www.parlament.ch/press-releases/Pages/mm-rk-n-2017-05-12.aspx>.
- ^{xxiii} Bundesamt für Justiz, *Auslegeordnung betreffend die Auswirkungen der Öffnung der Ehe in den verschiedenen Rechtsbereichen*, 04 December 2020, <https://www.parlament.ch/centers/documents/de/arbeitspapier-mm-rk-n-2018-07-06-d.pdf>.
- ^{xxiv} *Parlamentarische Initiative ‘Ehe für alle’: Vorentwurf und erläuternder Bericht der Kommission für Rechtsfragen des Nationalrates*, 06 December 2020, <https://www.parlament.ch/centers/documents/de/bericht-rk-n-13-468-d.pdf>.
- ^{xxv} Parlamentsdienste, *Vernehmlassung Parlamentsinitiative «Ehe für Alle»*, 05 December 2020, <https://www.parlament.ch/de/organe/kommissionen/sachbereichskommissionen/kommissionen-rk/vernehmlassung-rk-13-468>.
- ^{xxvi} Parlamentsdienste, «Amtliches Bulletin, Nationalrat Sommersession 2019», 06 December 2020, <https://www.parlament.ch/de/ratsbetrieb/amtliches-bulletin/amtliches-bulletin-die-verhandlungen?SubjectId=46630>.
- ^{xxvii} Parlamentsdienste, «Medienmitteilung vom 30. August 2019», 06 December 2020, <https://www.parlament.ch/press-releases/Pages/mm-rk-n-2019-08-30.aspx>.
- ^{xxviii} Schweizer Parlament, «Parlamentarische Initiative ‘Ehe für alle’».
- ^{xxix} Schweizer Parlament, «Parlamentarische Initiative ‘Ehe für alle’».

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- ^{xxx} Fortpflanzungsmedizingesetz, Art. 24 Dokumentationspflicht, Stand am 1. September 2017, <https://www.admin.ch/opc/de/classified-compilation/20001938/index.html>.
- ^{xxxi} Schweizer Parlament, «Parlamentarische Initiative ‘Ehe für alle’».
- ^{xxxii} Parlamentsdienste, «Amtliches Bulletin, Ständerat Wintersession 2020», 16 January 2021, <https://www.parlament.ch/de/ratsbetrieb/amtliches-bulletin/amtliches-bulletin-die-verhandlungen?SubjectId=51513>.
- ^{xxxiii} Nils Pfändler, Jann Lienhart, «Unterschriften für das Referendum gegen die Ehe für alle eingereicht – unter heftigem Widerstand», Neue Zürcher Zeitung, 12 April 2021, <https://www.nzz.ch/schweiz/referendum-gegen-ehe-fuer-alle-unterschriften-eingereicht-ld.1611400#register>.
- ^{xxxiv} Schweizer Parlament, «Parlamentarische Initiative ‘Gesetzliche Grundlage für die Überwachung von Versicherten’», 11 December 2020, <https://www.parlament.ch/de/ratsbetrieb/suche-curia-vista/geschaeft?AffairId=20160479>.
- ^{xxxv} Mia Jenni, Interview with the author, 08 December 2020.
- ^{xxxvi} Andrea Barrile (Current), Martin Naef (Until 2019), Hans-Ueli Vogt, (Current), Claude Janiak (1999-2019), Hans-Peter Portmann (Current).
- ^{xxxvii} Tamara Funicello (Current).
- ^{xxxviii} Mia Jenni, Interview with the author.
- ^{xxxix} Nils Pfändler, Jann Lienhart, «Unterschriften für das Referendum gegen die Ehe für alle eingereicht – unter heftigem Widerstand», Neue Zürcher Zeitung, 12 April 2021, <https://www.nzz.ch/schweiz/referendum-gegen-ehe-fuer-alle-unterschriften-eingereicht-ld.1611400#register>.
- ^{xl} Mia Jenni, Interview with the author.
- ^{xli} Historisches Lexikon der Schweiz, «Frauenstimmrecht»
- ^{xlii} Historisches Lexikon der Schweiz, «Frauenstimmrecht»
- ^{xliii} Elisabeth Joris, Interview with the author, 08 December 2020.
- ^{xliv} Elisabeth Joris, Interview
- ^{xlv} Elisabeth Joris, Interview