

## ON THE INFLUENCE OF THE LAW (AND HISTORY) ON FAMILY RELATIONSHIPS IN SWITZERLAND

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**Abstract.** The purpose of the paper is to present the fundamental laws regulating family relations in Switzerland. The historically shaped practice of these relations, where over the years the legally and actually dominant role was assigned to the father, as the head of the family, has been rather rapidly rejected on normative grounds in the 1970s. The emancipation of women, initially in the area of suffrage, led to the change of the Swiss family model. The changes in legislation have enabled the phenomenon of constantly rising share of families not based on the traditional structure – ones whose essence no longer is a married couple with children.

**Keywords:** the Swiss Confederation, family law, spouses, parents, children

### INTRODUCTION

Persons participating in discussion on whether the social changes are the reason for amendments to existing laws, or whether the reverse is true – the law stimulates social changes, should not adopt extremely opposing views. In their naiveté the governing elites, including the legislators, harbor the belief of the strictly causative powers of legislation. The reverse view – assuming that the social life takes place beside the law – is also not consistent with reality. The example of Switzerland, proposed in this paper, where for centuries the traditional and seemingly “tested and tried” social structures have been supported, is meant to encourage the readers to reflect over this issue: does the mismatch between the law in force and the social needs inevitably lead to weakening the existing institutions and social practices? In other words: can the long-term suppression of freedom and consent to social inequalities lead to the effect of reveling in the freedom, of the state not only encouraging but perhaps even emboldening its citizens to reject the existing, ossified through lack of reforms, even such fundamental social constructs as the family.

## 1. HISTORICAL CIRCUMSTANCES

In the Swiss legal literature, a frequent scheme for describing any legal issue is the introduction (sometimes quite extensive), clarifying the historical circumstances (German: *Entstehungsgeschichte*). In this manner, the local authors not only demonstrate their respect for the past normative achievements and doctrinal works on that issue, but also exercise an important educational function for the readers. The information on regulations that preceded the current status and on the factors that contributed to changes of the law allow to preserve in the social consciousness the belief that the law, being a solid foundation for relations between the individual and the state (as well as between individuals) is also a system subject to continuous changes which should be rationally justified, and not result from arbitrary decisions made by those who are in power at the moment. The referral to history enables observation of certain processes which, despite being a collection of “trials and errors,” lead (at least according to the assumption) to a “better” social, political and legal order [Kley 2004, 31].

Based on the examples of Swiss literature, referred to above, we should note that until the mid-19th century (with a short break for the period of the so-called Helvetic Republic, the years 1798–1802), Switzerland has been a confederation. Hence the family matters remained for centuries in the hands of the individual cantons which regulated these issues independently. In consequence, those matters were subject to ecclesiastical law applied by episcopal courts (German: *Offizialat*), which has been formally confirmed in an agreement between the cantons, concluded in 1370, the so-called *Pfaffenbrief* [Greyerz von 1991, 33]. The social changes of the Reformation period did not change much in that respect. In the Catholic cantons, the practice followed the decisions of the Council of Trent (1545–1563), which recognized as valid a marriage concluded before a priest, while incest, adultery or cohabitation could be punished by excommunication. Divorces were not foreseen. In the Protestant cantons, the former episcopal courts were replaced by the so-called *Sittengerichte* (German), where both the clergymen and laymen sat.

For example, since 1525 in Zurich the Protestant court was composed of two clergymen and two representatives of municipal authorities. Similar solutions were applied in St. Gallen (since 1526), in Bern (since 1528), Basel and Schaffhausen (since 1529) [Hubler 2010]. The moral rigors of the Protestant law were as strict (or perhaps even stricter) as the Catholic laws, however, due to acceptance of the statement by Martin Luther that “the marriage is after all a lay matter” (German: *Die Ehe ist ein äußerlich, weltlich Ding*), divorces were permitted. In practice, they did not occur frequently (for example, in Lausanne, which has been a Protestant city after all, in the years

1754–1763 there have been 489 marriages concluded, and only 3 divorces granted) [Reusser 2006].

The traditional Swiss family seemed a strongly hierarchical structure, with the dominant figure of the father, the independent master of the house – head of the family. The father was endowed with powers of authority over all members of the household (German: *Haus- und Schirmgewalt*), which stemmed primarily from his economic domination over other family members. The father's authority covered thus his supervision over the religious life of the family and included the application of corporal punishment towards his wife, children and house servants. The master of the house decided upon the marriages of his daughters and represented persons subordinate to his authority in all proceedings before courts [Dubler 2006].

Point-blank revolutionary, although short-lived changes to the legal situation of a family were introduced during the period of the Helvetic Republic. The constitution,<sup>1</sup> imposed by the French occupier, introduced a centralized system for state management. The cantons were deprived of their sovereign nature and turned into administrative units. The whole legislation was transferred under the exclusive competence of state-wide parliament. In a short period of time, by way of legislation all properties held by religious orders were transferred under state administration, and the clerical judiciary was closed down (both Catholic and Protestant). Churches, including the Catholic church, were to be treated only as private associations. The constitution directly, *expressis verbis* forbade the “sects” to have such ties to their foreign superiors that could influence the public matters, the welfare and education of the people (Article 6). A secular (civilian) form of marriage was introduced [Kölz 1992, 108].

Due to the unstable social and military situation, the political system of the Helvetic Republic has turned out to be both ineffective and unsustainable. When the French army left the country, the young republic collapsed, having survived barely four years. Its experience became a point of reference for reforms introduced on the level of individual cantons through the coming decades. It has also turned out to be an inspiration for state-wide systemic changes, which were introduced only after several dozens of years. But the wait for first reforms in the area of family law was even longer, as it took more than a hundred years.

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<sup>1</sup> Constitution of the Helvetic Republic of 12 April 1798 [*Verfassung der helvetischen Republik vom 12. April 1798*], source text in German: A. Kölz, *Quellenbuch zur Neueren schweizerischen Verfassungsgeschichte*. Vol. 1: *Vom Ende der Alten Eidgenossenschaft bis 1848*, Verlag Stämpfli+Cie AG, Bern 1992, item 126–52.

With the coming into force of the Constitution of 1848,<sup>2</sup> Switzerland formally became a federal state. Thus, family matters continued to be the responsibility of individual cantons, which in turn recognized the jurisdiction of the church. The text of the constitution did contain certain (although rather offhand) references to family. The constitution forbade any privileges based on family background (Article 4) and allowed only the citizens of Switzerland to settle freely in the territory of the whole state, under certain conditions, including being able to provide for one's family (Article 41(1)(c)).

Another federal constitution in the history of Switzerland – adopted in 1874<sup>3</sup> – transferred regulations of marital law and thus, family law, to the state-wide level (Articles 53 and 54). The federal legislature made civil marriages universally obligatory, a practice that continues to this day (the civil marriage precedes the church marriage). Church obstacles to a marriage were abolished (of course from the standpoint of the state law), replacing them with civil regulations. The possibility for divorce was introduced (and also the institution of marital separation, which has been known for centuries). The obligation to maintain civil registry books was introduced throughout the country, and was performed by secular authorities [Lalive 1969, 1057, 1064–1068, 1088–101]. Amendment of the constitution in 1898 enabled a state-wide codification of civil law. In 1907, the civil code (ZGB)<sup>4</sup> was adopted, which came into force on 1st January 1912.

Provisions of this code did not depart from the paternalistic family model, but introduced certain novelties. For example, in lieu of the traditional paternal authority of the master of the house, the Code introduced (in Article 273 ZGB o.v.) the concept of parental authority (German: *elterliche Gewalt*). The parents were obligated (Article 275(1) ZGB o.v.) to raise and educate their children, to ensure them conditions for appropriate physical and mental development (during the period up to the age of legal majority<sup>5</sup>), and also religious development (up to the age of 16). The children were obliged to obey and respect their parents, who in turn could punish them as part of the upbringing process. Article 278 ZGB o.v. directly authorized each of the parents to apply

<sup>2</sup> Federal Constitution of the Swiss Confederation of 12 September 1848 [*Bundesverfassung der Schweizerischen Eidgenossenschaft vom 12. September 1848*], source text in German: A. Kölz, *Quellenbuch*, vol. 1, item 447–91.

<sup>3</sup> Federal Constitution of the Swiss Confederation 29 May 1874 [*Bundesverfassung der Schweizerischen Eidgenossenschaft*], source text in German: A. Kölz, *Quellenbuch zur Neuen schweizerischen Verfassungsgeschichte*. Vol. 2: *Von 1848 bis in die Gegenwart*, Verlag Stämpfli+Cie AG, Bern 1996, item 151–86.

<sup>4</sup> Swiss Civil Code of 10 December 1907 [*Schweizerisches Zivilgesetzbuch vom 10. Dezember 1907*], SR 210. SR 101. The original version of the ZGB [henceforth: ZGB o.v.], author's own resources.

<sup>5</sup> As a rule (the exception was an earlier marriage) up to the age of 20; only in 1996 the age was reduced to 18 years – see Article 14 ZGB o.v., and ZGB (the current status).

the necessary disciplinary measures (German: *nötige Züchtigungsmittel*). The limit to the use of such measures was the causing of physical or psychological harm to the child, which was prohibited under criminal law.<sup>6</sup>

On the basis of the ZGB o.v., it was possible to interpret the norm which guaranteed the principle that decisions concerning important matters of the child should be made jointly by both parents (but only while their marriage lasted). This norm stemmed from the provision on joint upbringing of the child and on the exercise of parental authority (Article 274(1) ZGB o.v.). It could appear that from this provision, it was just a step towards formulating the principle of equal rights of each of the parents (spouses) towards the child. The next provision, Article 274(2) ZGB o.v., extinguished all hopes or doubts in that respect. In the event of lack of agreement between the parents, the will of the father was final (in German: *Stichentscheid – Sind die Eltern nicht einig, so entscheidet der Wille des Vaters*). According to the literal wording of Article 160(1) ZGB o.v., the father was after all the head of the family. This function was associated with certain statutory obligations, especially as regards fulfillment of family needs with respect to housing and exercising due care for the upkeep of the wife and children. In consequence, the husband/father managed the family assets, could effectively contract obligations encumbering the family and represented the family in relations with third parties. In particular, the husband had to grant consent for his wife to engage in gainful employment or business activity. He could also represent the wife in court proceedings. The wife was expected to support the husband, provide him with assistance and advice, and to run the household (Articles 162, 200, 167 and 168 and 161 ZGB o.v., respectively).

The ZGB in the original version clearly differentiated the legal status of legitimate and illegitimate children. This was associated with the rule that the wife adopted the homeland law (German: *Heimatrecht*) of her husband (Article 54(4) of the Swiss constitution of 1874), including his citizenship (which was reflected in sequence on the level of citizenship of a municipality, a canton and finally – of the federation). A child born out of wedlock, as a rule, remained with the mother's homeland law. By way of an exception, it was possible for an (unmarried) Swiss citizen to acknowledge such a child, with implications for the child's state rights (German: *Anerkennung mit Standesfolge*), or if paternity was established with such implications by a court (Article 307 and following of the ZGB o.v.).

The financial situation of illegitimate children was another issue of moral nature. A solution was introduced on the federal level, which from the perspective of the 21st century may seem rather cruel, but which in the beginning of the 20th century was a small step on the road to protection of illegitimate

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<sup>6</sup> See for example the verdict of the Federal Tribunal of 15 May 1959, BGE 85 IV 125.

children [Meskina 2016, 193]. If a man acknowledged a child without the implications of *Anerkennung mit Standesfolge*, it was possible to apply the solution of the so-called *Zahlvaterschaft*. This institution merits special attention also due to the fact that it remained in operation for many years (until 1978), and its legal consequences are experienced to this day [Meier 2018]. Under the *Zahlvaterschaft* it was possible to claim alimony from the actual father of the illegitimate (natural) child (as a rule until the child came of age) and compensation for the mother (coverage of costs of delivery and upkeep for at least four weeks preceding the birth, and four weeks following the birth of the child). The *Zahlvaterschaft* did not result in a legal relationship between the payer and the child (and the child did not receive the father's surname). Thus, the child was eliminated from the circle of potential heirs of their biological father [Zwahlen 1977, 74]. It is worth noting that pursuant to Article 315 ZGB o.v., neither the alimony nor the compensation were due if the woman, during the time of conception, led a "lewd lifestyle" (German: *unzüchtiger Lebenswandel*).

Another issue was the parental authority over an illegitimate child. As a matter of fact, the court could grant the parental authority only to the mother, but then only in the case where the child remained with her (Article 324(1) and (3) ZGB o.v.). In practice, usually the court established guardianship for such child (German: *Vormundschaft*) to be exercised by another person, even the actual, biological father, to whom – in the event of *Zahlvaterschaft* – the child was not related from the legal perspective [Davaz–Angehrn 2019, 31].

Adoption (both of minors and children of legal age) as a rule (provided that the condition of minimum age difference for the adopters and the adoptees, which was set at eighteen years, was fulfilled) was allowed only for persons who were at least forty years old and had no children from their marriage. Joint adoption was possible only for childless married couples (Article 264 and Article 266(2) ZGB o.v.).

As already mentioned, since the Reformation the legal systems of Protestant cantons allowed the dissolution of marriage through divorce. Under the original version of the ZGB, divorce (or separation) were also permitted. The premise for awarding divorce, as a rule, could include only grave faults (German: *Verschulden*) of one of the spouses (Articles 137–142 ZGB o.v.). These faults included: betrayal, continuous harassment, grave abuse or insult, a committed crime, or in general, "dishonorable conduct" (German: *unehrender Lebenswandel*) [Aleksandrowicz 2017, 122–25].

It should be stressed that women held no suffrage rights during the whole period of Swiss history, described above. The cantons have traditionally been non-monarchical. Both in the cantons where authority belonged to Large and Small Councils (substitutes of future parliaments and executive authorities), and in cantons with the system based on the German *Landsgemeinde*, where

power was exercised directly during meetings, political rights could be vested in men only (observing, of course, additional specific conditions regarding social background, or resulting from economic factors). Even during the time of the Helvetic Republic, suffrage was granted only to men who were at least twenty years old. The issue of women's participation in the settlement of general social matters was regulated similarly in the federal constitutions of 1848 (Article 63) and of 1874 (Article 74) – every Swiss man at least twenty years old was entitled to vote (provided that his right to vote was not excluded under the laws of the given canton). The interpretation of these regulations and election practice were clear: women were not entitled to vote.

Social movements, in the second half of the 19th century and in the first half of the 20th century, demanding equal rights for women, which initially engaged in action on cantonal level, to move later to the national level, were relatively weak. Hence the family law remained unchanged.

## 2. CHANGES IN WOMEN'S SUFFRAGE AND THEIR CONSEQUENCES IN REGULATIONS REGARDING FAMILIES

Switzerland was not directly affected by consequences of World War 2. The post-war years were pragmatically used for dynamic economic growth. The goodbye to the consequences of the 1930s economic crisis, which affected also Switzerland, opened the way to a wealthier society. The possibilities for gainful employment increased, and this applied to women too. They could achieve a level of income which allowed them relatively independent financial existence (without the care of the master of the house). In such circumstances, the laws regulating family life, based on the traditional model dating back to the Middle Ages, were not in line with social reality. As already stated in section 1 of this paper, the emancipation movement in Switzerland was not very effective. However, it would be untrue to claim that it did not occur at all. The efforts to achieve equal rights for women in the social life in Switzerland date back to the end of the 1860s. Women formed associations, with activity usually limited to the canton level, whose goal was to improve women's situation, especially in terms of social security or access to education (including tertiary education). In 1896 Geneva was the site of the first national Swiss Women's Congress (German: *Schweizerische Kongress für die Interessen der Frau*). The debates of representatives of social organizations are nowadays seen as the beginning of serious political presence of women in the national arena [EKF 2009, 7]. The early twentieth century saw a rising activity of groups with social-democratic roots, but this did not bring any clear result in the legal sphere. The legal solutions proposed for women (favorable primarily for women) were not implemented on cantonal level until the second half of the twentieth century. Neither the federal government nor the

parliament (both consisting of men only) have not shown during that period any initiative to reform the laws regarding women [Musiał-Karg 2012, 117].

The anachronism of the Swiss solutions regarding women's suffrage rights, which led to inequality in social and family life, was made even deeper by the fact that in almost all neighbor countries of the Swiss Federation, women had voting rights (in Germany and Austria – since 1918, in France since 1944 and in Italy since 1945; the only exception was Liechtenstein, where women were accorded voting rights only in 1984).

In 1957, voting rights were granted to women in the Riehen municipality (in the Basel-Stadt canton). In 1959, a nationwide referendum was held, on granting women active and passive voting rights on federal matters. The referendum (in which of course participated only men) was a crushing defeat for the proponents of political emancipation of women. More than twice as many votes were cast against giving women the right to vote than for it. Votes counted in individual cantons have shown even worse results: only 3 cantons (Waadt, Neuenburg and Geneva) supported this change, all other were against.<sup>7</sup>

The failure of those favoring women's suffrage on a state-wide level did not stand in the way of gradually granting it in individual cantons. The process began in the already mentioned cantons: Waadt and Neuenburg (1959) and Geneva (1960), next Basel-Stadt (1966), Basel-Country (1968), Ticino (1969) and Valais and Zurich (1970). As a side note, it is worth mentioning that the idea met with the strongest resistance in Appenzell Innerrhoden, where men voting at the *Landsgemeinde* rejected women's rights. They have been forced to acknowledge women's voting rights only in 1990, by the Federal Supreme Court, which declared as binding its own interpretation of the local canton's constitution [Musiał-Karg 2012, 121, 127–28]. According to the verdict of the court, the existing provisions of the cantonal constitution allowed women to participate in elections, therefore they did not require a direct legislative intervention.<sup>8</sup>

On the state-wide level, the granting of active and passive voting rights to women was finally decided in a universal vote held in 1971.<sup>9</sup> According to the amended Article 74 of the Swiss constitution of 1874, Swiss men and women have equal rights and obligations in federal elections and voting.

The ZGB was amended on areas of adoption law and child's law, in 1972 and next in 1976. Henceforth, concepts such as the explicit recognition of the individual legal subjectivity of the child, the principle of primacy of the child's welfare, the legal equality of children born in and out of wedlock,

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<sup>7</sup> Detailed results of the referendum of 1 February 1959 are available in the Federal Journal – BBI 1959 I 370.

<sup>8</sup> See the verdict of the Federal Tribunal of 27 November 1990, BGE 116 Ia 359.

<sup>9</sup> Detailed results of the referendum of 7 February 1971 – BBI 1971 I 482.

the inadmissibility of terminating the adoption relationship and protection of the rights of the child have been introduced in Swiss family law. The conditions for adoption of (underage) children by individuals and married couples were made less severe (e.g. the minimum age of adoptive parents was reduced to 35 years, and the condition for no own children was lifted). The institutions of *Stichentscheid* and *Zahlvaterschaft*, described above, were removed. However, it should be noted that this did not change, by force of the law, the legal status of existing natural children as regarded their potential inheritance from their natural fathers. Persons born before 1978 could count on receiving inheritance from their father, with whom they were bound by *Zahlvaterschaft*, only if they have been officially recognized (according to the new regulations), or if they were included in the will (with deduction of already incurred expenses). If those conditions were not met, inheritance was not possible (and is still not possible) [Meier 2018].

It should be added that changes to the family law, introduced in the 1970s, brought about the statutory granting of parental authority to unwed mothers (in the form of the so-called parental care, German: *elterliche Sorge*). The continuation of these reforms was the guarantee of joint parental care (based on the principle of equality of both parents, regardless of whether they were married or not), but this was introduced much later, only in 2014 (Article 133 ZGB in its current wording).

The 1981 referendum<sup>10</sup> brought about a change in the federal constitution of 1874. The formula that all Swiss are equal before the law (copied from the 1848 constitution) was replaced with the provision (Article 4) that man and woman have equal rights (German: *gleichberechtigt*). The following sentence was also important, ordering the legislator to ensure care for their equal position, especially in the family, access to education and employment. So it was only the decision made by the sovereign that opened the way for further reforms of the family law at the statutory, state-wide level. These changes were enacted in 1988. Most importantly, the ZGB no longer supported the principle of dominant role of the father – the former master of the house – with all the consequences it entailed. This principle was replaced by a modern family model, based on partnership relations between equal spouses (formally in every possible respect – even the equal minimum age for marriage, which has been set at 18 years since 1996) [Aleksandrowicz 2017, 126–27].

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<sup>10</sup> Results of the referendum of 14 June 1981 – BBl 1981 II 1267.

### 3. LAWS REGULATING FAMILY RELATIONS IN CONTEMPORARY SWITZERLAND

As of 1997, the Swiss Confederation is bound by the provisions of the Convention on the Rights of the Child of 1989<sup>11</sup> and the Convention on the Elimination of All Forms of Discrimination against Women of 1979.<sup>12</sup> In 2000, the current federal constitution<sup>13</sup> came into force, which repeated the provisions regarding equality of both genders before the law, also with respect to family relations (Article 8(3)). This means the definitive rejection (at least in normative terms) of the centuries-old principle determining a woman's position in the family, which was formulated rather bluntly as “dreimal K – Kinder, Küche, Kirche” (children, cooking, church). It should be noted that the departure from the classical division of social roles in marriage with the father as the head of the family (i.e. the one who provides the means of subsistence) enabled the change in the model of upbringing. It no longer primarily involves enforcing obedience, discipline and admonition (even punishment) or instilling rules of etiquette (in the form of parental authority). Rather, the focus is now on participating in the creation (shaping) of the child's independent personality, based on partnership and integration (within the family), which includes the child's responsibility and opportunities for involvement in society. These are the elements of parental care understood in the contemporary way. In 2000 the statutory requirement of fault of one of the spouses, as the sole grounds for divorce, was also waived. The divorced parents (as well as unwed parents) have the same rights and obligations in relations with their children [Büchler 2020].

The phenomenon of registered civil partnerships (German: *eingetragene Partnerschaft*) merits special attention. The main issue – which, given the generally conservative Swiss society has been regulated almost instantaneously- is that of same-sex unions. In Switzerland, homosexual relations have been legalized in 1942 (the legal age of consent for both heterosexual and homosexual relations has been equalized in 1992 and set at 16 years). The present federal constitution forbids discrimination based on sexual orientation (Article 8(2)). Initially, regulations for same-sex couples were decided on cantonal level. The first canton to adopt them was Geneva (in 2001, as the so-called *Pacte civil de solidarité*). Next came Zurich (2002) and Neuenburg (2004).

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<sup>11</sup> Übereinkommen über die Rechte des Kindes, SR 0.107.

<sup>12</sup> Übereinkommen zur Beseitigung jeder Form von Diskriminierung der Frau, SR 0.108.

<sup>13</sup> Federal Constitution of the Swiss Confederation of 18 April 1999 [*Bundesverfassung der Schweizerischen Eidgenossenschaft vom 18. April 1999*], SR 101.

In 2004 the Swiss parliament adopted the act on registered same-sex partnerships.<sup>14</sup> The conservatives, using the procedure of popular veto, led to a nation-wide referendum regarding the application of this act. The referendum was carried out in June 2005 and ended in a defeat for opponents of same-sex unions. The act came into force on 1 January 2007.<sup>15</sup>

The Swiss partnerships offer same-sex couples rights similar to those of married couples. There is an important difference regarding matters defined in article 28 of the act. Same-sex couples are not legally permitted to use reproductive medical procedures (especially in-vitro fertilization). Joint adoption by such couples is also forbidden. However, it is worth noting that in a situation where one of the partners has a child, his or her partner is obliged to joint responsibility for that child, which includes providing for the child and performing parental tasks [Schulze 2011]. As of 2013, it is possible to take on partner's surname. It should also be added that homosexual marriages contracted abroad are treated by the law in Switzerland as domestic partnerships.

It is impossible to overlook a certain temporal correlation between changes in family law and the Swiss demographics.<sup>16</sup> It is worth examining some statistical coefficients that define the situation of families across the state. The average age of a woman giving birth to her first child was 25.3 in 1970, 31.7 in 2014, and 31 in 2019 [Büchler 2020]. The average number of marriages per thousand inhabitants was 7.6 in 1970, 5.1 in 2014 and 4.5 in 2019 [ibid.], with the average age of a woman entering her first marriage in 1960 being 24.9, in 1980 25.0, in 2000 27.9 and in 2019 30.1 [Höpflinger 2020, 18]. This was reflected to some extent in the fertility rate, except that the share of children born out of wedlock increased markedly and stood at 3.75% in 1970, 21.7% in 2014 and 26.5% in 2019 [Büchler 2020]. Considering all children born (regardless of origin), it is worth noting that in the mid-1960s, a woman in Switzerland gave birth to an average of just over 2.5 children [Höpflinger 2020, 34]. According to the data of the Federal Statistical Office<sup>17</sup> in 1971 – 2.04 child, in 1985 – 1.52, in 2000 – 1.5, while in 2019 this rate dropped to 1.48 (here it is worth noting that the average female Swiss citizen gave birth to 1.37 child, while a legal immigrant – 1.80). It is also necessary to consider the so-called alternative family forms (German: *alternative Familienformen*). They include broadly defined family structures which do not fit inside the classical formula of family, consisting of parents and child (children). Their

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<sup>14</sup> Federal Act of 18 June 2004 on registered partnerships of same-sex couples [*Bundesgesetz über die eingetragene Partnerschaft gleichgeschlechtlicher Paare vom 18. Juni 2004*], SR 211.231.

<sup>15</sup> Results of the referendum of 5 June 2005 – BBI 2005 5183.

<sup>16</sup> This issue was already discussed in the Polish literature on Helvetic matters, see: Aleksandrowicz 2017, 130. The statistical data used in this paper was verified, supplemented and updated.

<sup>17</sup> *Bundesamt für Statistik*, <https://www.bfs.admin.ch/bfs/de/home.html> [accessed: 24.01.2021] [henceforth: BFS].

share among households consisting of at least two persons amounted to: in 1970 – 15.4%, in 2014 – 40.9% and in 2019 – 40.1% [Büchler 2020].

Assuming that the Swiss sociological research and statistical data is as meticulous and reliable as everything else that is Swiss, we see a picture of a society in which the disparity between legal solutions and social reality resulted in a sudden, and permanent in terms of effects, tendency to remodel the family structure. The stubbornness of those in power in not allowing women the right to vote has caused an unusually strong public reaction, as the lack of these rights had a real influence on the legal situation of women, men and children in Switzerland. The legislator's refusal to acknowledge social changes (including the overall increase in the level of living and in the financial situation of women), external influences (information on women emancipation in Europe and in the world), or finally the sense of social injustice, resulting from the legal and factual inequality of spouses were bound to lead to a breakthrough in family relations. Legal regulations, initiated by the reforms of the 1970s, brought to light family issues which for centuries have been settled within the families, by the master of the house. Social consequences resulting from the reaction to "freedom of" the family are rather difficult to assess. One of the factors that appeal to the imagination is the growing problem of people living alone. According to the most recent data of the BFS, in 2018 Switzerland had 3 755 689 of households, of which as much as 1 340 255 (36%) were single-person households. This is of course a trend that affects not only Switzerland, it is encountered in numerous countries of the broadly defined Western civilization, but it shows the severity of the problem. The weakening of the traditional family is a factor that contributes to the disintegration of the community; in the extreme, the most pessimistic perspective – even to atomization of the society.

## CONCLUSION

The absence of gender equality in political life, especially the lack of women's suffrage, inevitably led to the strengthening of sense of social injustice, including in family relations. Even if we engage in the intellectually risky attempt to divert from foundations of social life of the broadly defined Western civilization, such as the freedom and dignity of every human being, we should note that, as far as the traditional division of family roles between the husband (father of the family) who provides for the family and the wife (mother) taking care of the household and children could have been justified (at least to some extent) by cultural conditions or even the pragmatic nature of the Swiss, the subordination of a woman who was capable of economic independence, to the will of the master of the house was, in an affluent society, doomed to a decidedly negative assessment. Men in Switzerland stubbornly did not want to

relinquish their superiority, including in the legal sphere, over the women (and other family members) subordinated to them. It turned out that care for the safety (including financial safety) of the wife cannot result in her enslavement.

Their impaired political presence prevented Swiss women from breaking out of centuries-old bonds of patriarchal relations. Thus, it must be concluded that social democracy (including equal treatment of persons even in family relations) or economic democracy (including, for example, the right to choose and pursue a profession and freely dispose of property) are not possible where the condition of equal participation in the institutions of political democracy is not fulfilled. Giving women the right to vote determined the transformation of family rights – within its traditional interpretation, children's rights, and regulated the rights of those living in alternative family forms.

The dynamic percentage increase in the number of communities which fit within the family relations category, but are not strictly based on relationships between spouses and children, has become a fact in Switzerland. Is the weakening of the traditional family the effect of changes in the law, enacted with the participation of women, or is it rather a reaction to the historically conditioned disappointment in the institution of family with the superior role of husband/father? This question remains open. It does seem that a certain side effect of changes in family relations is the high number of single-family households, with all its societal consequences.

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