

*WING Spring Conference  
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*Let's Talk About  
«Swiss Basic Values»:  
Legal View(s)*

by

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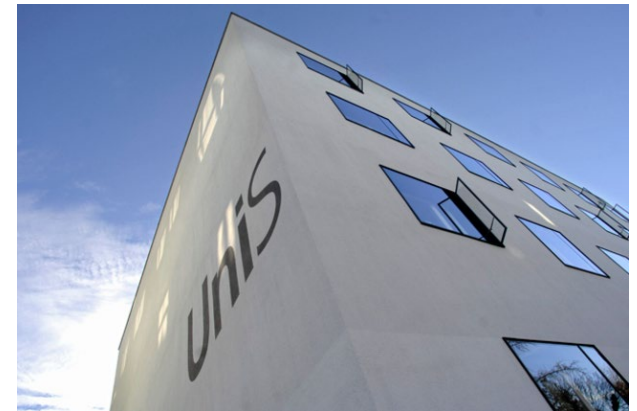


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# *Overview*

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1. Introduction
2. Prejudices (and Realities)
3. Federal Constitution
4. Economic Law
5. Conclusion(s) regarding «Swiss Basic Values»

*What (and Who) is a «typical Swiss»?*



# *Introduction*



# Prejudices (and Realities)

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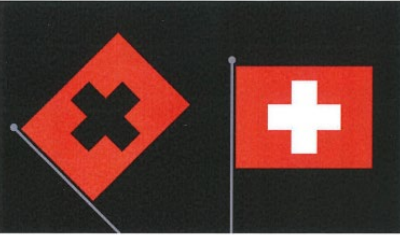
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**Illustration by Neil Klugman**



**Roger Federer, Swiss Banking Will Both Come Back**  
By Pear Vitar Kane | May 1, 2012 1:00 AM GMT+0200

27 COMMENTS | Q QUEUE

Why is it, many Swiss are asking today, that the whole world seems to be out to get us?

A recent Swiss court decision blocking Credit Suisse Group AG from handing confidential banking data on American clients to the Internal Revenue Service, and a continuing tax struggle with Germany have brought what Swiss call the "tax wars" against us roaring back into the public debate.

Switzerland gave the world many wonderful things, in addition to our controversial banking-secrecy laws: world-class watches and chocolate, the fictional heroine Heidi and tennis great Roger Federer, to name a few. But a series of setbacks have triggered something of an identity crisis in my country.

Federer is now ranked as only the third-best player in the world, and Switzerland's banking-secrecy laws are cracking under the weight of pressure from abroad. Unlike our tennis champion, they may not be able to bounce back.

We Swiss are used to getting belittled as alpine tooting, yodeling, simple mountain folk, or demonized in Hollywood movies as the banker accomplice to the bad guy, helping him to stash ill-gotten assets in Zurich or Geneva. But lately, we've had to recognize that we have genuine reputational issues abroad.

**Swiss Bad Guys**

The importance of this hit home hard a few years ago, when then Libyan leader Muammar Qaddafi reacted to the arrest of one of his sons in Geneva by taking two Swiss businessmen hostage and asking the United Nations to split Switzerland between Germany, France and Italy. There was no international outcry in Switzerland's defense. Nobody seemed to care.

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## *Prejudices (and Realities)*

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### **Bloomberg, Op-Ed of April 30, 2012, by Peter V. Kunz**

#### ***«Roger Federer, Swiss Banking Will Both Come Back»***

«Why is it, many Swiss are asking today, that the whole world seems to be out to get us? (...) Switzerland gave the world many wonderful things, in addition to our controversial banking-secrecy laws: world-class watches and chocolate, the fictional heroine Heidi and tennis great Roger Federer, to name a few. (...) We Swiss are used to getting belittled as alphorn tooting, yodeling, simple mountain folk, or demonized in Hollywood movies as the banker accomplice to the bad guy. But lately, we've had to recognize that we have genuine reputational issues abroad».



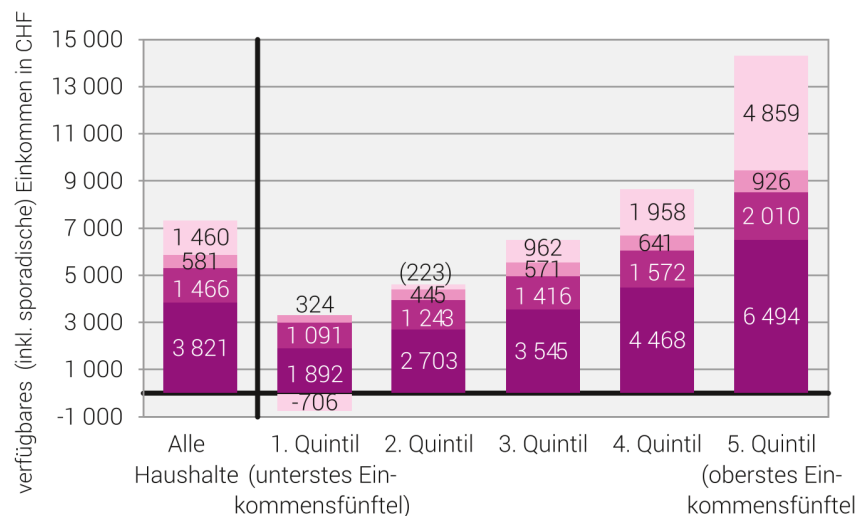
# Prejudices (and Realities)



# Prejudices (and Realities)

## Verfügbares Einkommen, Konsumausgaben und Sparbetrag pro Monat der Haushalte

Monatliche Frankenbeträge nach Einkommensklassen, zusammengelegte Stichproben 2015-2017



- Sparbetrag (indirekt berechnet, siehe Definitionen)
- Kosten für Wohnen und Energie
- Weitere Versicherungen, Gebühren und Übertragungen
- Übrige Konsumausgaben

(in Klammern): Grosse Variabilität der Schätzung: Variationskoeffizient  $\geq 10\%$

Bemerkung: Die Einkommensklassen basieren auf den Quintilen der Bruttoeinkommensverteilung

Vermögen der natürlichen Personen 2018

Stufen des Reinvermögens in 1'000 Fr.	Pflichtige		Reinvermögen	
	Anzahl absolut	%	in Mio Franken	%
<b>Total</b>	<b>5 417 722</b>	<b>100</b>	<b>2 005 357,5</b>	<b>100</b>
0	1 277 593	23,58	0,0	0
> 0-50	1 682 145	31,05	28 037,0	1,40
> 50-100	514 667	9,50	37 435,1	1,87
> 100-200	540 243	9,97	78 193,7	3,90
> 200-500	691 283	12,76	223 823,5	11,16
> 500-1'000	378 847	6,99	265 651,5	13,25
> 1'000-2'000	195 232	3,60	268 694,2	13,40
> 2'000-3'000	56 087	1,04	135 897,5	6,78
> 3'000-5'000	39 642	0,73	151 006,2	7,53
> 5'000-10'000	24 832	0,46	170 378,0	8,50
> 10'000	17 140	0,32	646 240,7	32,23

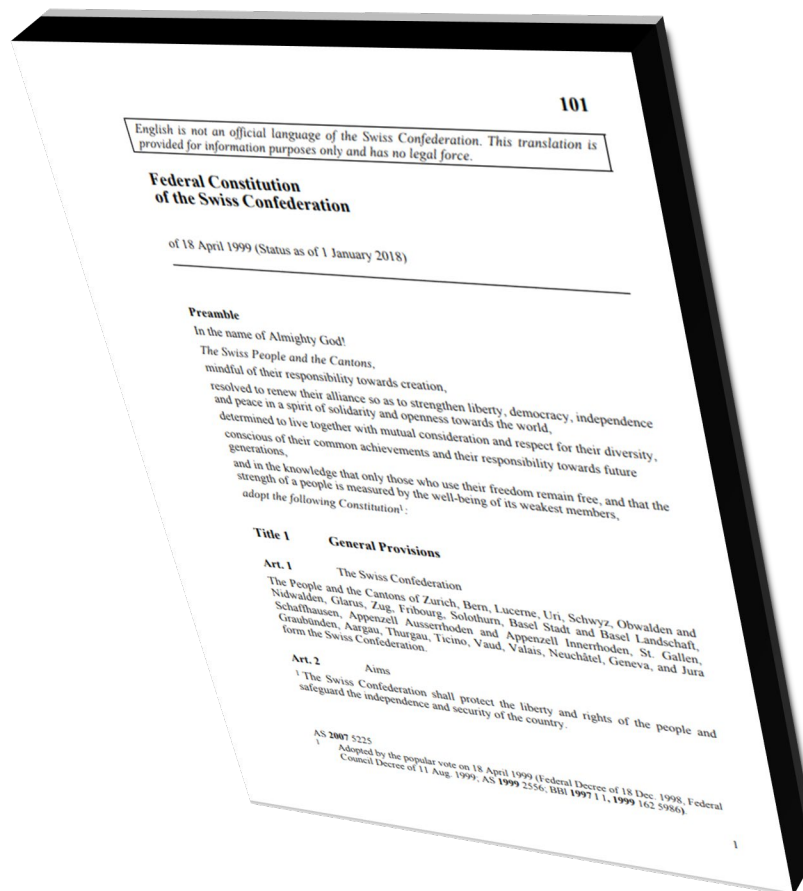
In den Steuererklärungen per 31. Dezember 2018 ausgewiesenes Reinvermögen (Aktiven abzüglich Passiven, vor Berücksichtigung der Sozialabzüge)

Quelle: Eidgenössische Steuerverwaltung (ESTV)

# *Prejudices (and Realities)*



# Federal Constitution



# *Federal Constitution*

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## - Art. 2 Aims

- <sup>1</sup> The Swiss Confederation shall protect the liberty and rights of the people and safeguard the independence and security of the country.
- <sup>2</sup> It shall promote the common welfare, sustainable development, internal cohesion and cultural diversity of the country.
- <sup>3</sup> It shall ensure the greatest possible equality of opportunity among its citizens.
- <sup>4</sup> It is committed to the long term preservation of natural resources and to a just and peaceful international order.

# *Federal Constitution*

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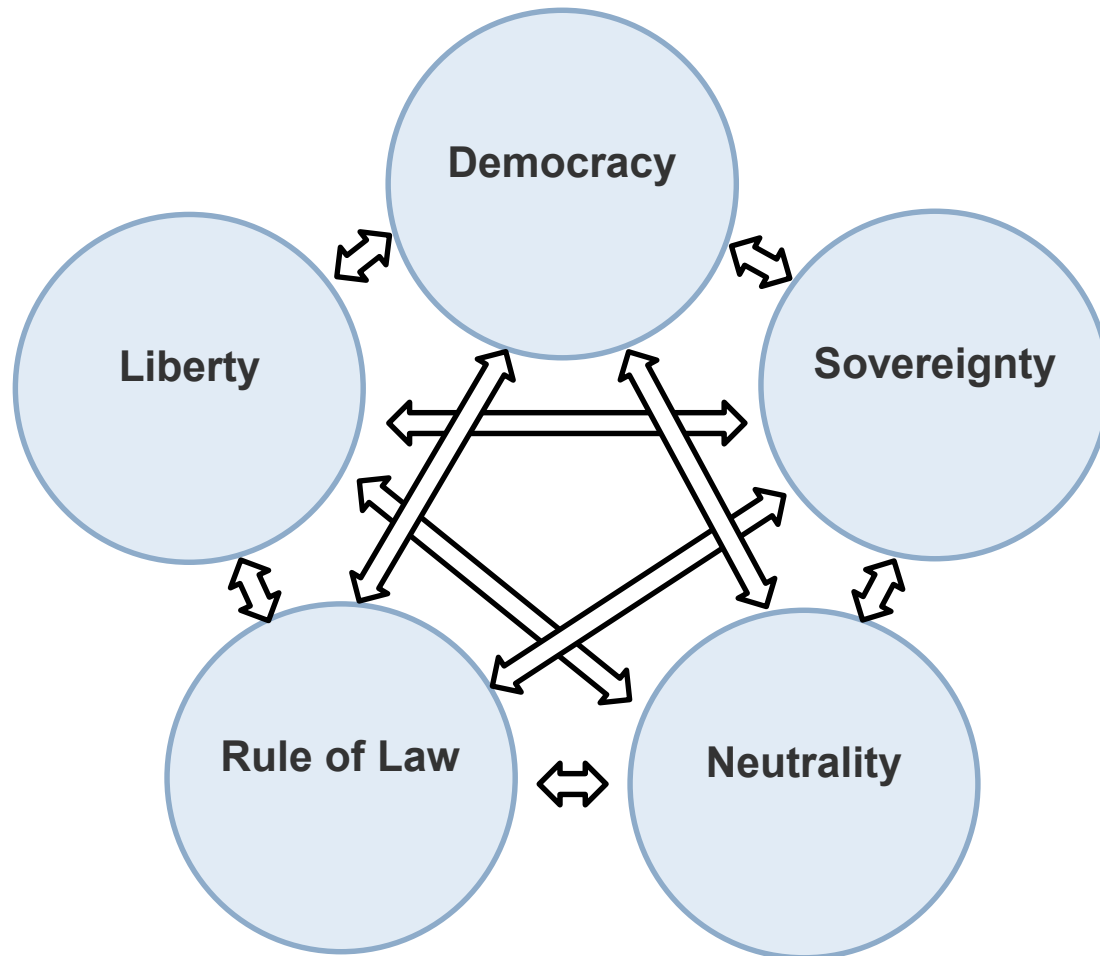
## - **Art. 5 Rule of law**

<sup>1</sup> All activities of the state are based on and limited by law.

<sup>2</sup> State activities must be conducted in the public interest and be proportionate to the ends sought.

<sup>3</sup> State institutions and private persons shall act in good faith.

<sup>4</sup> The Confederation and the Cantons shall respect international law.



# *Constitutional «Principles»*





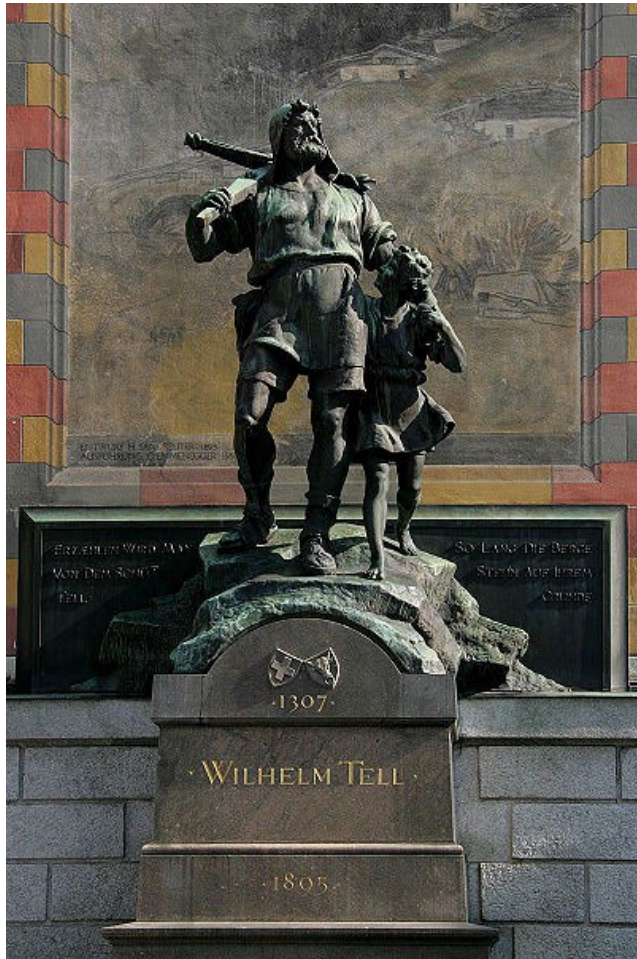
# Constitutional «Principles»

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## a) Democracy

- Switzerland as «*oldest democracy*» (worldwide – it is claimed)...  
... with its start in 1291 or 1848 or 1891
  
- «*Popular Initiative*» (1891):  
100'000 Swiss citizens' request for a popular vote to amend the *Federal Constitution*; examples:  
(i) Swiss Military as such – yes or no? (ii) Swiss Air Force Fighters – yes or no, and even specific type of aircraft (e.g. no «F-35» from USA)? (iii) «Cow Horn»-Initiative?
  
- «*Popular Referendum*»:  
50'000 Swiss citizens' request for a popular vote regarding any *Federal law*; example: Hunting Law

# Constitutional «Principles»



# Constitutional «Principles»

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## b) Sovereignty

- Switzerland as an *independent Country*...  
... though not expressly mentioned in the Federal Constitution – but considered as a «fact»
  
- *European Union (EU)*:  
no membership likely for the foreseeable future...
  
- *United Nations (UN)*:  
(i) 1986: 76% of the people and all cantons said «no»; (ii) 2002: 54% of the people and 12 cantons said «yes» to a membership of Switzerland

# Constitutional «Principles»

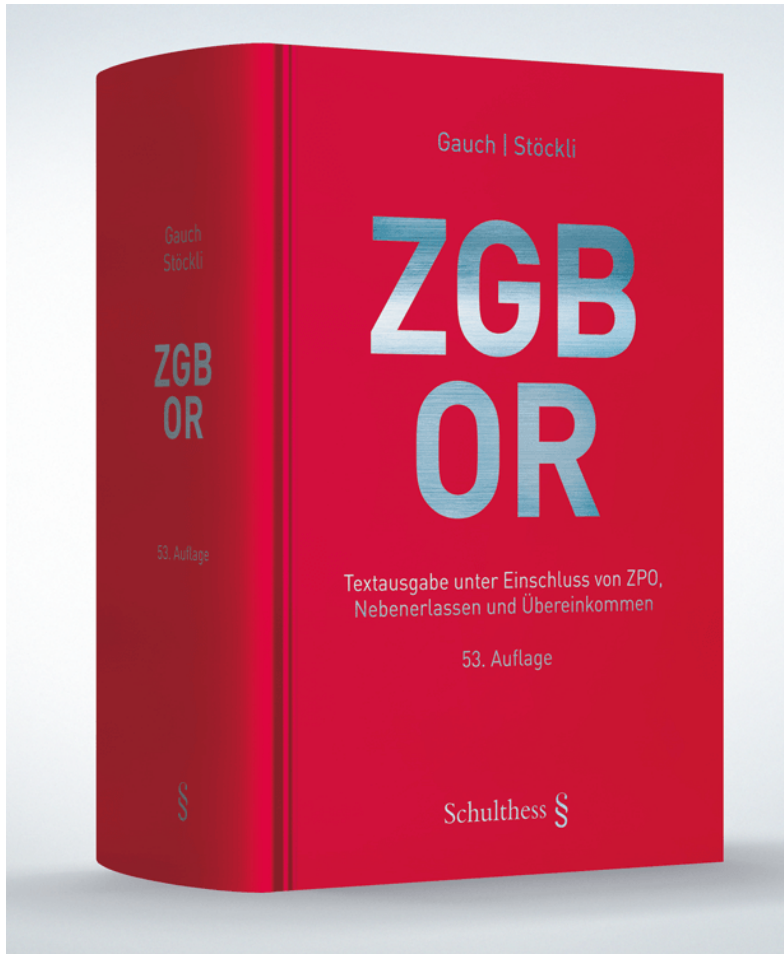


## *Constitutional «Principles»*

### c) Liberty...

- ... has *Priority* – e.g. with the «*Preamble*» of the Federal Constitution:  
«so as to strengthen *liberty*, democracy, independence and peace»
- *Fundamental Rights* («Grundrechte»):  
Freedom of Religion and Conscience (article 15 FC), Freedoms of Expression and of Information (article 16 FC), Freedom of the Media (article 17 FC), Academic Freedom (article 20 FC), Freedom of Artistic Expression (article 21 FC), Freedom of Assembly (article 22 FC) etc.
- Re Economy:  
e.g. *Guarantee of Ownership* (article 26 FC) and *Economic Freedom* (article 27 FC)

# Constitutional «Principles»



## Constitutional «Principles»

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### d) Rule of Law

➤ *Article 5 FC...*

... applies to «[a]ll activities of the state» (i.e. on each State Level) and is *legally binding*, in general, for both (i) the *Courts* and (ii) the *Authorities*

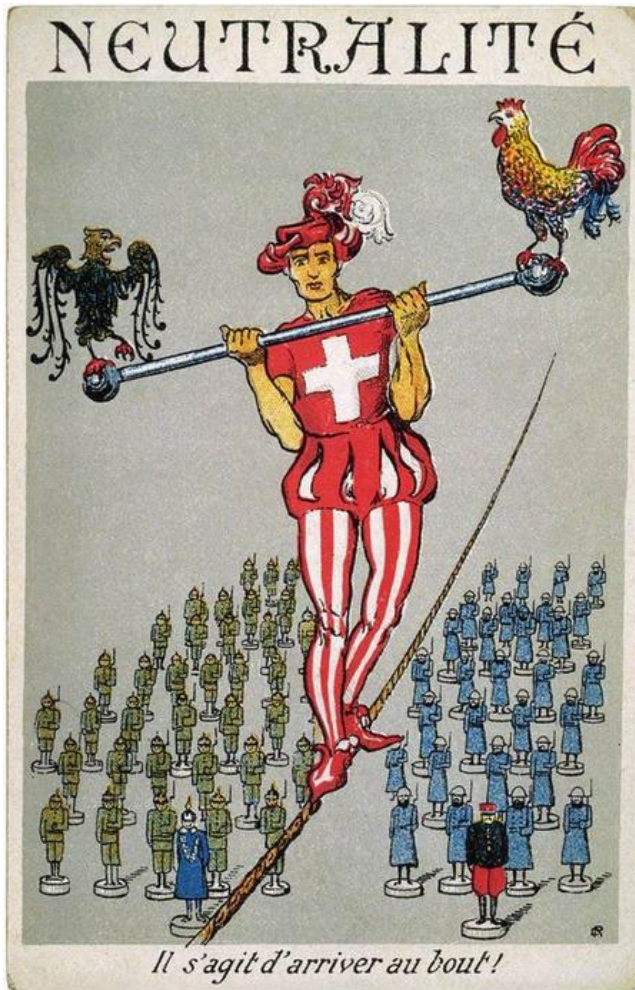
➤ antagonistic *Democracy*:

Rule of Law does not apply to (iii) *Legislature* (on Federal Level), hence, the Federal Parliament is «above the Federal Constitution» and may even disregard the Fundamental rights

➤ ... Switzerland lacks a *Constitutional Jurisdiction* (and Court):

«The Federal Supreme Court [as well as Swiss Courts in general] and the other judicial authorities apply the federal acts (...)» (article 190 FC)

# Constitutional «Principles»





# Constitutional «Principles»

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## e) Neutrality

### ➤ *Myth or Reality?*

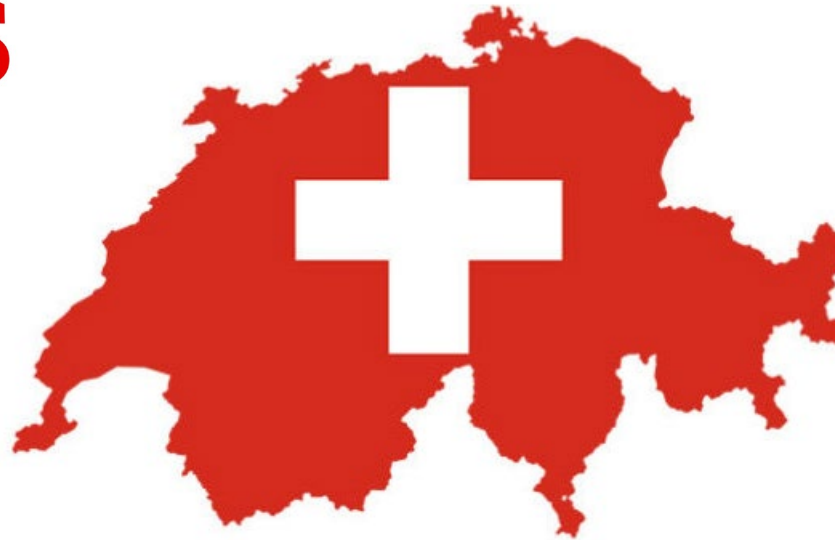
Switzerland has always been *rather «flexible»* when it comes to its «neutrality»; no final answer, for instance: How «neutral» was Switzerland with respect to «*Nazi Germany*» in WWII?

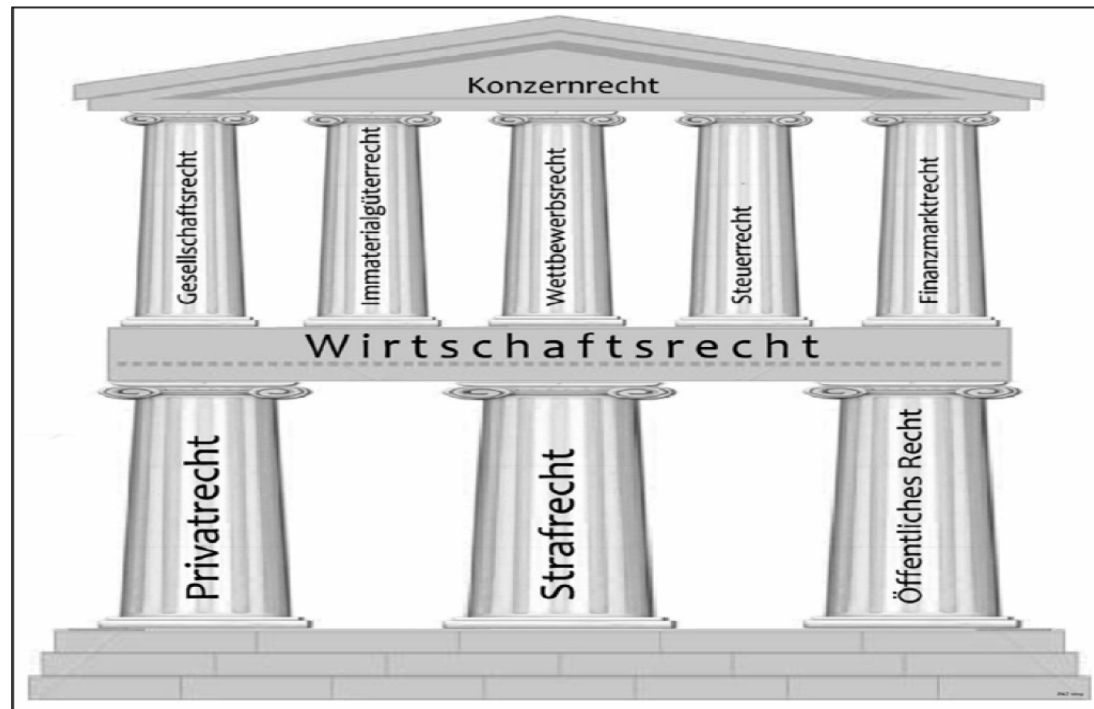
### ➤ *Example 1: Economic Sanctions against Russia*

2022: Switzerland «joins», basically for the first time, the present «EU-regime of sanctions»; lingering doubts: Conviction or Opportunism (due to International Pressure)?

### ➤ *Example 2: UN Security Council*

2023/2024: Switzerland will be a *non-permanent* member of the *UN Security Council* – yet, abundant critics and criticism from the «political right» in Swiss politics








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## UBS May 'Open Floodgates' of Tests to Bank Secrecy (Update1)

By Elena Logutenkova - February 19, 2009 10:11 EST



Pedestrians look at stock tickers at UBS HQ

Feb. 19 (Bloomberg) -- Switzerland's unprecedented decision to let UBS AG hand U.S. tax authorities clients' details risks damaging a banking industry that relies on a pledge of confidentiality to win business, legal scholars said.

"This could open the floodgates," [Peter V. Kunz](#), head of the business law department at the University of Berne, said in a telephone interview today. "Giving in to the U.S. sends a signal to other countries and the European Union. I don't see what would stop them from acting in the same way."

The Swiss Financial Market Supervisory Authority said yesterday it would allow UBS to pass on some client data to save the country's biggest bank from criminal charges in the U.S. that it said could have "put its existence at risk."

Switzerland is being increasingly pressed by countries such as neighboring Germany to amend banking secrecy laws, first introduced in 1934, which they say promote tax evasion. German Finance Minister [Peer Steinbrueck](#) said last year the Swiss should be put on a "blacklist" of uncooperative tax havens. The European Commission proposed this month to end anonymity for bank account holders within the 27-nation area, and may seek to expand the measure to cover Switzerland and Liechtenstein.

## a) International (legislative) «Impacts»

- Legal «*Doors*» into Swiss Law:
  - (i) *Pressure* from Abroad, (ii) voluntary «*Adjustments*», (iii) *legislative References* to «International Standards», (iv) *International Treaties* etc.
  
- «*Economic Law is International Law*»
  - e.g. Corporate Law, Financial Markets Law, Intellectual Property Law, and Tax Law

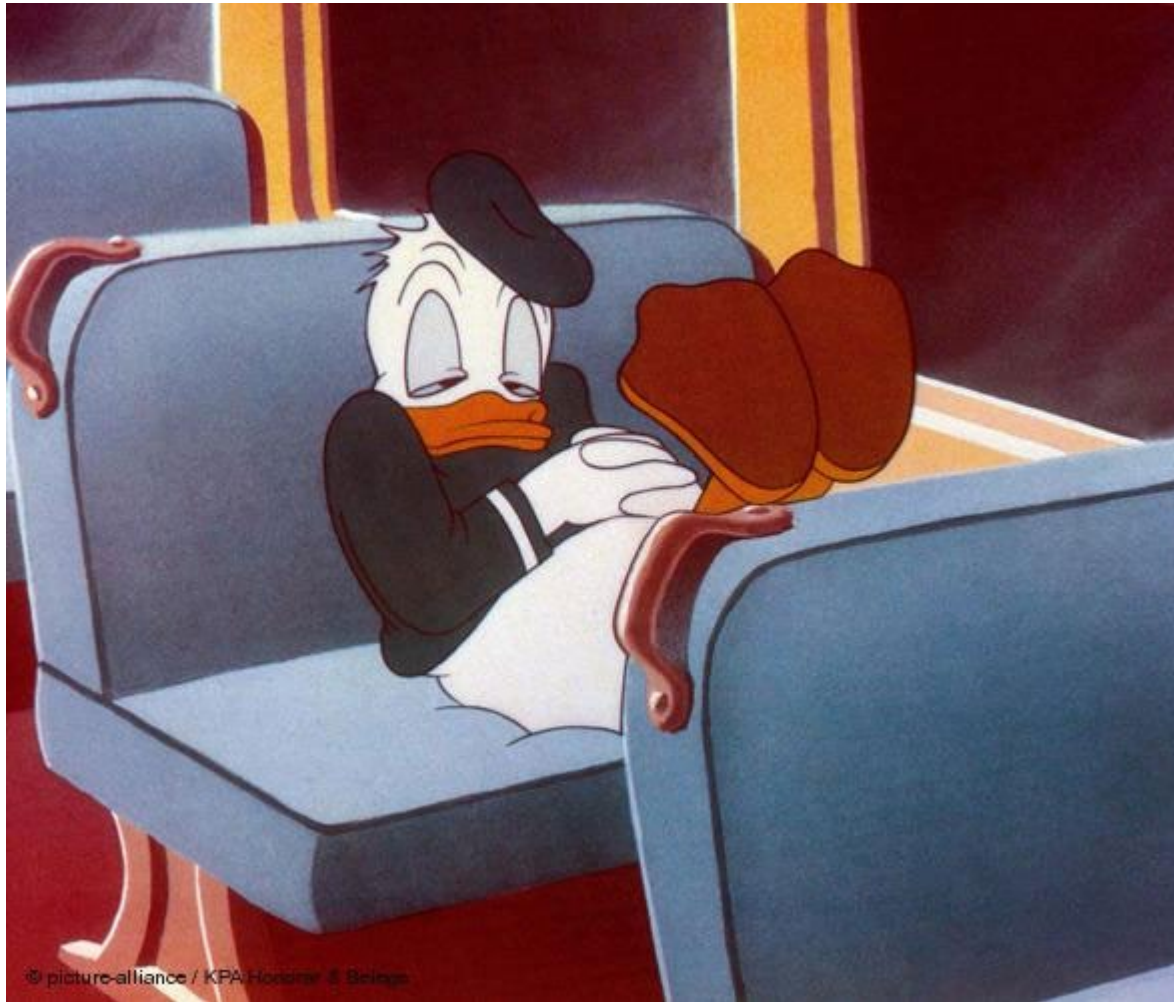


**b) Future of Swiss (Economic) Law**

- «*Global Village*» will return...  
... after the Covid-19 Pandemic of 2020 – 2022 (and maybe 20xx)
- *Covid-19* leaves «impressions» in our Law(s)...  
... e.g. the new Swiss Corporate Law: *Digitalization* (example: «*Virtual General Assembly*»)
- *Internationalization* seems unavoidable...  
... e.g. the new Swiss Corporate Law, examples: (i) the use of *English* gets more important, and (ii) «*General Assembly Abroad*» will be legally acceptable



*... and finally...*



*... I come to my «Expert» Opinion(s)...*



## Conclusion(s) regarding «Swiss Basic Values»

### 1. **Opportunism? Pragmatism!**

*The legendary «Swiss flexibility» is well known abroad – the latest example, caused by international pressure, is the current «sanctions policy» against Russia? Q: Is Switzerland’s behavior opportunistic? A: Well, yes! Q: Does Switzerland have an alternative? A: Hell, no! But let’s call it not Opportunism but rather Pragmatism...*

### 2. **The five «Swiss Basic Values»**

*Democracy – Sovereignty – Liberty – Rule of Law – Neutrality – yes, these Values (and also Convictions) determine the «Swiss DNA». They are key to better understanding Swiss people (and Swiss business as well). These five «Swiss Basic Values» are part of our understanding regarding statehood and are rooted in a very long national tradition.*

### 3. **Democracy’s «Stubbornness»**

*That the Swiss People have a «Say» in almost any (sometimes: silly) Matters has Advantages and Disadvantages. Many Countries do not understand (and not appreciate) that our Conviction is clear: All Power comes from the «People» – that Switzerland therefore is no member of NATO or the EU does not seem to be that bad.*

### 4. **Core Value: the Rule of Law**

*The most important «Swiss Basic Value» is the Rule of Law, i.e. the «red line» of all our State Activities in Switzerland; we do not wish to live as Citizens of a «Banana Republic». The Rule of Law, based on the Separation of Powers, may be the main Competitive Location Advantage our country has.*



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# Thanks For your Attention..!

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