

A Gödelian Loophole in the Swiss Constitution

Misapplication of Article 190 BV by the Swiss Authorities

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Introduction

Context in Space-Time

Loophole Spot & Transcendence

Corrective Action

Conclusion

References

Roadmap for our journey (through the legal jungle towards the light of logic)

The loophole in a nutshell

(bug spot & transform)

Context in Space-Time

The original (Gödel's) loophole

The legal contour of our loophole

Loophole Spot & Transcendence

A buggy legal code snippet

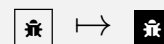
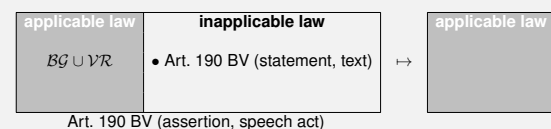
Proving the **loophole property**

Self-amendment (self-repair)

Corrective Action

Miscarriage of legislation & justice

A call for **logical law**



It's all over! (v. Neumann on Gödel's proof [1])

Gödel's loophole (∃ anecdote—with holes in it)

According to [2, Page 3]:

[...] the problem with the [American] Constitution is the amending power in Article V and the logical possibility of “self-amendment.” In brief, if the amending clause of the Constitution can itself be amended, then all express and implied limitations on the amending power might be overcome through a constitutional self-amendment.

Corollary (Some constitutional norms prioritise themselves.)

The (well-established) principle of equal priority of constitutional norms [3] is inapplicable to the American (and also to the Swiss) Constitution.

Gödel's loophole (definition)

Definition (Gödelian loophole)

A loophole of Gödelian type, short, a *Gödelian loophole*, is a(n explicit or implicit) loophole (presence or absence of articles, or a mix of both) in the political constitution of a state (a political organisation with a population and a territory, and thus borders) that *opens up the possibility of legally overthrowing the order defined by that very constitution.*

hole by pre- or
absence

Swiss federal law within international law (hierarchy)

Right to Resist Tyranny (German: *Widerstandsrecht* [7])
|
European Convention on Human Rights (ECHR [5, 6])
|
extra-constitutional emergency law (German: *echtes Notrecht*)
|
Swiss Constitution (German: *Bundesverfassung*, BV [4])
|
federal acts (German: *Bundesgesetze*, BG)
|
federal ordinances (German: *Bundesverordnungen*)

Art. 190 BV (original sin—constitutional paradise lost)

Spot of the Legal Fallacy (Misinterpretation)

Massgebendes Recht	Bundesgesetze und Völkerrecht sind für das Bundesgericht und die anderen rechtsanwendenden Behörden massgebend. 
Droit applicable	Le Tribunal fédéral et les autres autorités sont tenus d'appliquer les lois fédérales et le droit international. 
Diritto determinante	Le leggi federali e il diritto internazionale sono determinanti per il Tribunale federale e per le altre autorità incaricate dell'applicazione del diritto. 
Dretg decisiv	Leschas federalas ed il dretg internaziunal èn decisivs per il Tribunal federal e per las autras autoritads incaricadas d'applitgar il dretg. 
Applicable law	<i>The Federal Supreme Court and the other judicial authorities apply the federal acts and international law.</i> 

Interpreting Art. 190 BV (polyglot proof strategy)

Lemma (On the meanings of applicable law)

(Massgebend or determinante or decisiv) implies applicable. However, the converse is not true; that is, the implication is not an equivalence.

Remark (Proof strategy)

Given that the notion of mere legal applicability is implied by the other three, stronger notions, it is most economical to prove the existence of our Swiss loophole for all notions by proving the existence for the weaker notion and then by deducing the existence for the stronger notions by way of that implication.

Interpreting Art. 190 BV (ill-defined delimitation)

Definition (Open interpretation)

An open interpretation of Art. 190 BV is to construe the meaning of the interpretable article more precisely as “The Federal Supreme Court and the other judicial authorities apply the federal acts and international law (as **decisive axioms**) **and other law.**”

$$\mathcal{BGUVR} \subsetneq \mathcal{AL}$$

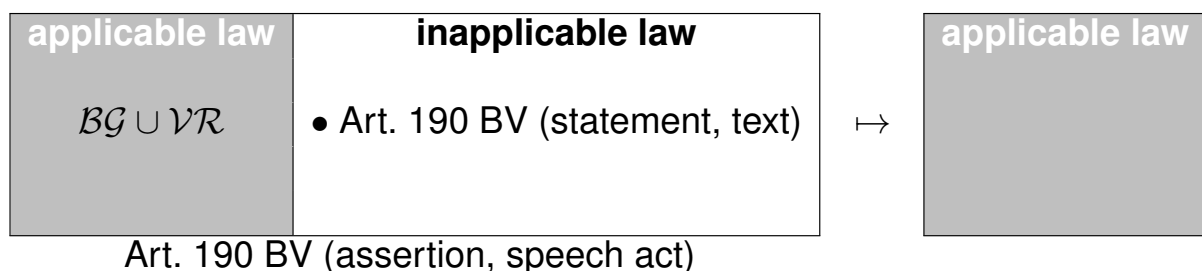
Interpreting Art. 190 BV (well-defined delimitation)

Definition (Closed interpretation)

The closed interpretation of Art. 190 BV is to construe the meaning of the interpretable article more precisely as “The Federal Supreme Court and the other judicial authorities apply the federal acts and international law (as **decisive axioms**) **and no other law.**”

$$\mathcal{BG} \cup \mathcal{VR} = \mathcal{AL}$$

Informal (diagrammatic) proof (full proof ∈ paper)



1. the wording of **Art. 190 BV** (Slide 6 and 9) **Art. 190 BV**
2. **Art. 190 BV** is in the Swiss Constitution (**BV**). trivial legal fact
3. **Art. 190 BV** is inapplicable law (self-erasure). 1, 2, elementary logic

1st formal proof (paradise regained) (proof $\nexists$ paper [8])

	Statement	Justification
1.	$\mathcal{AL} = \mathcal{BG} \cup \mathcal{VR}$	Art. 190 BV (Slide 6 and 9)
2.	$(\text{Art. 190 BV}) \notin \mathcal{BG}$	trivially-verifiable legal fact
3.	$(\text{Art. 190 BV}) \notin \mathcal{VR}$	trivially-verifiable legal fact
4.	$(\text{Art. 190 BV}) \notin \mathcal{BG} \cup \mathcal{VR}$	2, 3, naïve (finite) set theory ^a
5.	$(\text{Art. 190 BV}) \notin \mathcal{AL}$	1, 4, elementary logic ■

^aNo deductive closure (rule induction) is really needed. By the way, this proof is language-agnostic.

Art. 190 BV is inapplicable law (self-erasure).

2nd formal proof (paradise confirmed) (proof $\nexists$ paper)

	Statement	Justification
1.	Art. 190 BV is applicable law.	hypothesis ^a
2.	$\mathcal{AL} = \mathcal{BG} \cup \mathcal{VR}$	Art. 190 BV (Slide 6 and 9)
3.	$(\text{Art. 190 BV}) \in \mathcal{AL}$	1, 2, $\mathcal{AL}$ is the applicable law
4.	$(\text{Art. 190 BV}) \in \mathcal{BG} \vee (\text{Art. 190 BV}) \in \mathcal{VR}$	2, 3, union as disjunction
5.	$(\text{Art. 190 BV}) \notin \mathcal{BG} \wedge (\text{Art. 190 BV}) \notin \mathcal{VR}$	by inspection of $\mathcal{BG}$ and $\mathcal{VR}$
6.	Contradiction (symbolically, $\perp$)!	4, 5, De Morgan's law
7.	Art. 190 BV is inapplicable law (self-erasure).	1–6, proof by contradiction ■

^aWhatever "applicable" may mean ($\Rightarrow$ language dependence; determined by Proof Line 2).

E pur si muove!

Self-amendment by Self-erasure by Self-application

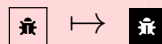
One transitive fell swoop (a logical stroke of legal luck):

1. the Swiss Constitution amends itself (constitutional **self-amendment**)
2. **by** the fact that **Art. 190 BV** erases itself (article **self-erasure**)
3. **by** the application of **Art. 190 BV** to itself (**self-application**)

Key questions (observations):



1. where does **Art. 190 BV** belong ($\in$) and where not ($\notin$)?
2. what does **Art. 190 BV** imply about its own belonging?



Miscarriage of legislation and justice (illogical $\Rightarrow$ illegal)

Corollary (Miscarriage of justice)

*The standard (mis)application (be it explicit or implicit) of **Art. 190 BV** by the Federal Supreme Court and the other judicial authorities constitutes miscarriage of justice (anti-constitutional federal or international law).*

Corollary (Miscarriage of legislation)

Any legislation of a Swiss federal act (be it approved through a people's referendum—or not) and Swiss federal ordinance (be it issued in a state of emergency—or not) that is inconsistent with the Swiss Constitution or the ECHR constitutes (totalitarian) miscarriage of legislation (dito).

Alexis de Tocqueville on the Swiss legal system [9, 10]

1. *la démocratie suisse* a grand besoin qu'on l'éclaire sur *l'imperfection de ses lois*
2. c'est surtout par *la mauvaise constitution et la mauvaise composition du pouvoir judiciaire* que les lois de la démocratie suisse sont défectueuses
3. La Suisse [...] a été de tous les pays d'Europe celui peut-être où *la justice s'est le plus confondue avec le pouvoir politique*, [...]
4. En général, il n'y a point de condition de capacité exigées. *Le juge, d'ailleurs, simple exécuter de la loi, n'a pas le droit de rechercher si cette loi est conforme à la constitution.*
5. les institutions [...] tendent toutes à rendre le *gouvernement* du peuple [...] *tyrannique* dans ses actes.

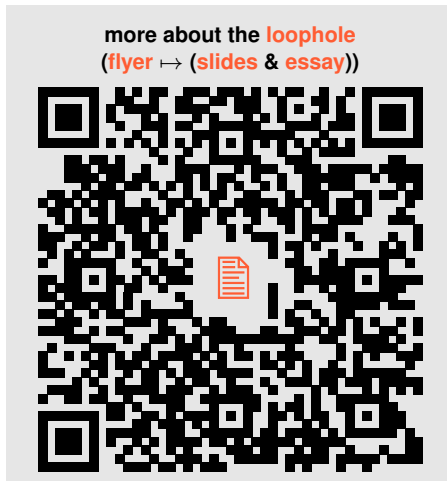
Calling for the rule of logical law (logic before law)

Proposal (Rule of *logical* law)

The prescription “All activities of the state are based on and limited by law.” in **Article 5 of the Swiss Constitution is to be amended as** “All activities of the state are based on evidenced facts, limited by classical logic, and then by law as direct-democratically approved by adequately-informed voters. In states of emergency, the state has the burden of proof for (in)action.” (Principle of *distrust* from the citizens towards the state.)

Questions? Remarks?

(Kurt Gödel)



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- [1] A. Doxiadis, C.H. Papadimitriou, A. Papadatos, and A. Di Donna. *Logicomix*. URL: <https://www.logicomix.com> (S. 2).
- [2] F.E. Guerra-Pujol. "Gödel's Loophole". In: *Capital University Law Review* 41 (2013). DOI: 10.2139/ssrn.2010183 (S. 3).
- [3] M. Gubler. "One or Several Types of Constitutional Law? (On the Hierarchy of Constitutional Norms)". In: *sui generis* (2024). DOI: 10.21257/sg.264 (S. 3).

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- [4] *Bundesverfassung (BV) der Schweizerischen Eidgenossenschaft vom 18. April 1999*. Jan. 2000. URL:
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- [6] European Court of Human Rights (ECHR). *Guide on Article 15 of the European Convention on Human Rights: Derogation in time of emergency*. URL:
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<https://www.institutcoppet.org/alexis-de-tocqueville-et-la-democratie-suisse/> (S. 15).

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- [10] O. Meuwly. *Une brève histoire constitutionnelle de la Suisse*. Éditions Livreo-Alphil. Neuchâtel, 2023. ↗ (S. 15).

Presentation history

Delivery date	Platonic midwives	Brain babies
2024-12-13	Swiss Logic Gathering, Bern Univ.	1st proof (Slide 11)
2026-01-09	8th World Logic Day, Rényi Inst.	2nd proof (Slide 12)