

Commentaries on Karl Ludwig von Haller: the Restauration der Staatswissenschaft, vol. VI, on republics and free communities

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[See also: the [commentary on vols. I-IV dealing with patrimonial and military states](#), and the [introductory essay](#).]

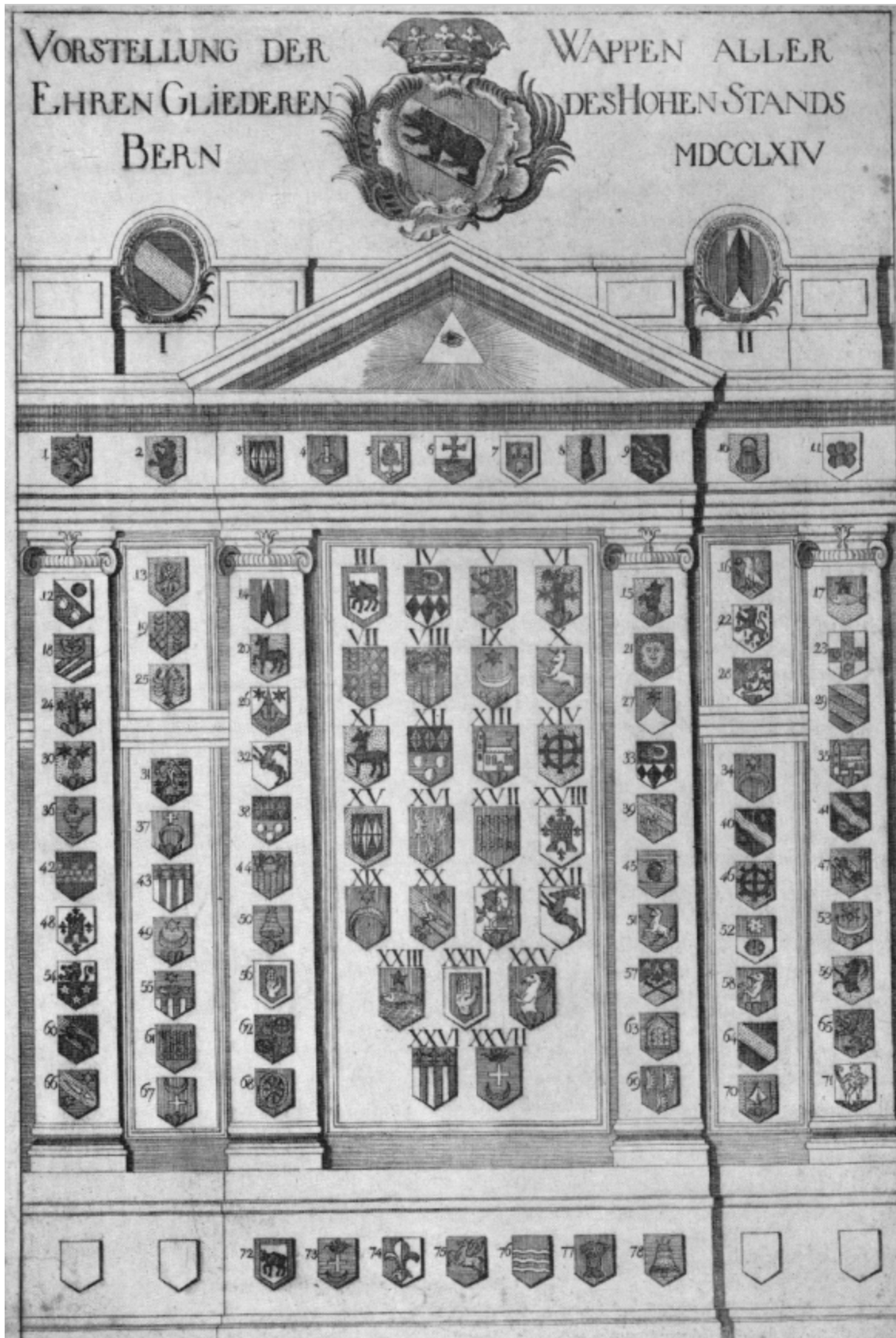
If in the volumes on patrimonial and military states we saw Haller as the defender of the pure private law theory of the state, the unterrified legitimist who doesn't give an inch to the idea of a *societas civilis*, here in the sixth and chronologically final volume on republics we see Haller decrying poll taxes as an assault on the principle of equality, bemoaning wealth as a qualification for holding office, criticizing the privatization of the property of the commonwealth as something that “must be attributed only to the upheaval of our social state, to the declared war on all ancient and stable existences, and to the tendency to transform all the goods of the earth into private property, absolute, perpetually mobile and given over to individual egoism,” stating that a legally privileged patriciate “offends the just sentiment of equality and the self-love of other citizens,” and advocating measures against the extreme concentration of wealth (but not by direct expropriation).

A different tune, to be sure, but not a contradiction. It is in this volume that we see clearly the spirit of Haller, the young Bernese patriot and loyal servant of his city, for whom the great political error was confusing the monarchical and republican forms and giving advice and maxims that though appropriate for one form, would be damaging to the other. In his own words to Johann von Mueller in 1808, “as a Swiss, finally, I believe that I have done my subject a great service by thoroughly rescuing the republics and putting them on an equal footing with monarchies, while the sophists otherwise either want to turn everything into monarchies or everything into republics.”

The republic that Haller defends here is not the modern liberal-democratic republic. Haller saw such a malformed republic invade his homeland in 1798. In the republicanism that Haller is defending, there are no electoral districts, no constituencies, no political parties, no campaigning, no universal suffrage, no birthright citizenship, no principle of representative government, no population-adjusted voter census, no separation of powers, and so forth. A republic is an independent corporation, the citizenry united together in an assembly is the collective sovereign with no intermediary idea of ‘representatives’ who owe favor to a ‘constituency’ of their electors. Presidentialism and preponderance of executive power is strictly checked with a preference for conciliar supremacy, as in the Signoria of Venice who checked the Doge. Unanimity is preferred as a voting rule, and absolute majority where this is not possible. There is typically a separation between a “grand council” (between 200 and

299 people in Bern) and a “small council” (27 people in Bern), the former possessing full undivided sovereignty and electing small councillors, but the latter at the same time having an important directive function in organizing the agenda for the grand council. This can roughly be approximated to a division between a lower and upper house, but isn’t identical, since there is no independent executive or judiciary as such from which they are separate. It goes without saying that this form of government has limits to its scalability; a republic of 300 million would have been an unfathomable absurdity to most people until quite recently. There is a strict distinction between citizens and subjects, or other non-citizen residents. Citizens are only those with a share in power, who are involved in affairs of the republic, and are always bound to be a small minority. Non-citizens cannot or ought not be burdened with direct taxes, military service or other regulatory decrees not relevant to their station. A republic lives and dies off its common treasury, which ought to be diverse in its assets and decentralized in its budgeting. Distinctions between “old families” and “new families” in certain political offices are natural and healthy to rewarding civic service.

This is the only volume where chapter numbering begins anew from the rest of the *Restauration*. Chapters I-XVIII are taken from the French translation, published posthumously in 1875. It consists only of those chapters; the rest of the volume was omitted by the editorial decision of Haller’s son, who published it. As such, the remaining 11 chapters have been taken from the Italian translation. The final and XXXth chapter is a conclusion of the entire book which I have chosen to cut as it is not directly pertinent to the subject of republics and free communities.



Ein Mandat von Bern: Wer es halten will, der tut es gern.

- I. On the concept and definition of republics.
 - II. On the origins and formation of republics and free communities.
 - III. On the purpose of republics.
 - IV. On the means by which communities acquire independence.
 - V. On the natural rights and relationships within a republic or community.
 - VI. On freely exiting a community.
 - VII. On the origin of supreme power in independent communities.
 - VIII. On the exercise of supreme power in independent communities (unanimity, majority, plurality).
 - IX. On the constant and equal freedom of a republic.
 - X. On the dignity of republican magistrates.
 - XI. On the common treasury of a republic.
 - XII. On taxes and contributions.
 - XIII. On the constitutional form of a republic.
 - XIV. On representative bodies and councils.
 - XV. On the governing college (a.k.a. 'executive,' government, magistracy).
 - XVI. On the lordships of republics, or: on the relations of republics to their subjects.
 - XVII. On the distinctive characteristics of collective lordship.
 - XVIII. On the fall of republics.
 - XIX. On the macrobiotics or wise policy in republics.
 - XX. On wise policies in republics pertaining to their community of goods.
 - XXI. On prudent citizenship and naturalization laws.
 - XXII. On prudent electoral laws.
 - XXIII. On forms of voting.
 - XXIV. On deliberation and rules of order.
 - XXV. On precisely determining reserved powers and functions.
 - XXVI. On faithful administration of the common patrimony.
 - XXVII. On public and private virtues.
 - XXVIII. On prudential orders pertaining to familial inheritance.
 - XXIX. Final reflections on republics.
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I. On the concept and definition of republics.

“Now, to fully fulfill the plan that we have drawn up for ourselves in political science, we must speak of independent communities, of republics. From the beginning of this work, already in the introduction, it has been demonstrated that it is not the greater or lesser authority over other men, but the full freedom and the perfect independence of the reigning person, which distinguishes political states from other social institutions. And since there can only be individuals or free corporations, natural or legal persons, that is to say collectives, it follows that any State is necessarily monarchical or republican.”

“In a narrower sense, any association or corporation is the truth a kind of republic, that is to say, according to the etymological meaning of the word, a *res publica*, public thing, as opposed to the private thing, which does not belong to several, but which is the property of only one. There are a large number of communities in the world : towns, villages, artisanal guilds, masteries (workshops), and *jurandes*; ecclesiastical and secular orders, commercial enterprises, academic and scholarly conventions, congregations and brotherhoods of all kinds, whose purpose vary infinitely. All these societies consist of a gathering of men with equal rights, enjoying the same advantages and subject to the same charges. All have a public thing, administered by something near a positive constitution; they own property and income in common, follow common laws and statutes, and pursue a common goal. As collective persons, they exercise, both over their own members and over other men living in their domains, and consequently dependent on them or committed to them in certain services, a more or less extensive authority. However, it is only when, by the unfolding of happy circumstances, they become free from all dependence, that they pass to the number of states and receive the name of republics.”

“The ancients expressed themselves on this subject much more exactly than the moderns. In Switzerland, for example, our illustrious ancestors spoke neither of republic, still less aristocratic or of democracy; they simply said, with rare precision (to designate their political state), free cities or countries ; i.e. free urban municipalities or free rural municipalities.”

“Some Swiss chancelleries used for the first time, around the middle of the eighteenth century, the term republic, but only in diplomatic correspondence with foreign countries, and always accompanied by the word city, to indicate that the city itself was independent and sovereign. This vanity was to be severely punished. By the words city and republic; thus placed side by side, they fostered the mistaken belief that the last of these words expressed not a quality or dignity of the city, but something quite different and separate from it; so soon it was envisaged that the sovereign city was only an ordinary city, and that its territory or its subjects formed the republic. These false and absurd ideas even invaded minds who should have been personally the most interested in the defense of the rights and properties of the free towns of Switzerland, and they have contributed much more powerfully to their humiliation, their despoilment and their enslavement than one can imagine. Ah! How important it is to use accurate and precise language!”

“Republics are therefore free communities or independent societies; and since their independence, like individual lordships comes as a result of their territorial possessions and of their power, one can, to give a real definition, call them rich and powerful communities, which

are not subject to anyone: *sodalitia nemini obnoxia*. Because the uniqueness that distinguishes them from private companies, is in their complete freedom and their full independence.”

“In the final analysis, what do we see in all of these republics? Large or small corporations, composed of equal members; societies which differed from simple communities, only in that they had from the beginning or gained absolute independence. Already many were rich and powerful; several had already more or less extensive domains, long before they could rise to the complete freedom; and their submission, their subjugation, their reduction to a state of dependence, so to speak, sufficed to erase them from the number of states and to deprive them of the name of republic, although they may have maintained their existence as private communities.”

II. On the origins and formation of republics and free communities.

Many republics started as chartered towns, colonial settlements, fortifications, etc. with certain judicial immunities that gradually emancipated themselves from their territorial lord, including through war. The Old Swiss Confederacy is the most pristine example.

“Men do not in themselves incline to communal relations, or even to common possessions; because they feel that in this situation, no one is perfectly free, no one is master of his own, and no one likes sharing his power with his companions.”

“The community is rather the mother of disputes and quarrels, since two wills in possession of an equal right on the same object, can hardly subsist together. No man on earth does likes to submit to their equal, and the too frequent concessions demanded for things of which one is the co-owner, end up being onerous, even to the most peaceful man. Thus, in order to keep the peace, Abraham asked for the division of pastures he owned with his nephew Lot. The many children of the same father who, equal in rights, could keep his inheritance in common and together form a corporation, much prefer to operate the division, so that each of them is master of what belongs to him and can dispose of it as he pleases. You see, it is true, in commercial enterprises where in order to achieve by the meeting of their means greater benefits; as soon as one or the other of their members acquired enough fortune or credit to act with his own resources, these companies are quick to splinter and dissolve. Thus, associations, communities and companies are born by the meeting of equal forces, for the satisfaction of a common need. We must not, in truth, hear, under equality of forces, absolute equality, which does not exist in nature, but it is enough that neither is at the service of the other or depends on him. Even so equal forces and equal need are the generating principle of all alliances and of any community. But even in this case, their foundation still presents many difficulties. It is in fact very rare that they are formed of themselves, by a spontaneous association and without the impulse of some higher power; because of how unlikely the same thought would come to so many at the same time.”

“Also, history tells us that communities are usually founded by some preexisting lord, who has enough means to gather scattered individuals, offering them benefits, rights and certain joint powers that are likely to increase in time. In this way are formed, for example, all rural municipalities. An owner, ecclesiastical or secular, established himself somewhere and, wanting to clear the land, attracted to his service men responsible for the cultivation of his property. These get fixed returns to his land, close to each other. They were equal in the sense that neither of them depended on the other. However it did not exist in community [Ed’s note: joint tenancies are not the same as common property]. But soon common needs arose, needs which none of these colonists could provide on their own, nor were they obliged to do so by their own means. Thus, for example, it was necessary to dig a well, to trace roads and local ways, to construct dikes and bridges, and to provide for the construction or maintenance of a church. Or we had conceded to these colonists common possessions: for example forests, so as to provide for their heating or pasture for their cattle. Therefore it was necessary to commit someone to the management of the work and administration of the property, as well as the regular enjoyment of their products. In this way the community was formed by the effect of the donations of its benefactor. It was an association of equal usufructuaries, sharing the same benefits and the same charges. Later, we were able to grant this community more or less extensive freedoms or immunities, such as the right to choose its servants, to give communal statutes, to judge disputes of any significance which occurred between members, etc. The cities of ancient Greece

had no other origin. They were originally founded by kings who, by building cities, united heads of families and other colonists in a corporation, divided them into classes and granted them various privileges. In the following, these communities began to feel their strength; their power grew with the increase of wealth; they could become masters. Then they conquered their freedom by the force of arms, and thus the cities themselves thus found themselves in full possession of independence. This last case also happened in Carthage. **Romulus had in reality, although without intention, laid down the foundations of the Roman republic himself, by dividing the people into classes and tribes, and above all by instituting a corporation of one hundred senators, whom he consulted on various matters. This corporation gradually grew for two and a half centuries in consideration and power, so that to become sovereign, it only had to get rid of its kings, a revolution which took place under the Tarquins and whose ambition of the senators was the real motive, while the insult to Lucretia must have served as a pretext. The free cities of Italy, in Germany and in Switzerland had a similar origin. Emperors, kings and other rulers built these cities, or rather these villages surrounded by walls and in ditches, to obtain places of safety against the incursions of the Normans and Hungarians, either with the aim of opposing a counterweight to the high territorial nobility, which on all sides tended towards independence; or finally the intention of promoting the development of trade and industry, to increase toll revenues, and to enrich themselves through the free gifts they expected from these cities. A magistracy drawn from their milieu was appointed to these towns by their natural lord, for the dispatch of communal affairs, and thereby the community was accomplished. Soon they obtained more extensive freedoms and privileges, and even territorial possessions and other communal goods.** In the course of time, some of these communities were able to turn into a great power, they rose up to the perfect independence, while others, deprived of true public spirit, or lack of resources and of favorable occasions, remained in their former dependency.”

“It is infinitely rarer for communities to arise, so to speak, of their own accord. However this fact can occur in certain circumstances: for example, when men independent of each other, but united or bonded in one place by accident, and by the nature of things, are, by reason of their common needs, obliged to provide for works and establishments equally in common. Thus, at the time of the invasion of Italy by Attila in 452, the city and Republic of Venice was founded by fugitive Italian nobles, who sought a safe refuge in the northern islands of the Adriatic Sea. These men did not obey a chief, for in that case it would have resulted in a principality. Originally isolated and scattered, their coincidence of necessities made them all equal. But this very necessity created common needs and quite naturally formed a community. The fortunate situation of these islands, then uninhabited and inaccessible, sheltered them from foreign invasions. This is why Venice was one of the few republics which enjoyed independence or at least a high degree of primitive freedom. It is in the same way that about nine centuries before, the city of Marseilles was founded by Ionian emigrants, who, at the time of the conquests of the great Cyrus, had fled from Asia Minor.”

“The third mode according to which communities or corporations can be instituted is when an individual, too weak to achieve any important goal by himself, attaches himself to a certain number of associates or allies, with equal rights, to whom he assures a share of the same advantages, provided that they bear the same charges. It is of this so that in the ordinary course of life, we see all sorts of scientific, literary and artistic associations; trading companies, workshops, etc. This was also the origin of several ecclesiastical or secular orders, alliances of lords and confederations of already existing communities, often transitory alliances, but which can become permanent through the acquisition of common territorial possessions.”

III. On the purpose of republics.

Once more, Haller does not treat independent corporations nor any other form of state as serving *the* common good in the sense of a perfect social existence or a good that pertains to every man’s predication of a rational nature, but as serving specific common needs for which the corporation was founded. Acquiring independence does not elevate its original purpose, but rather it expands its means of action.

“Now, the end of republican societies cannot be, any more than that of monarchies, the establishment or maintenance of justice between their members. We have already repeatedly shown how this idea, put forward by supporters of the doctrine of the social contract, is false and devoid of any foundation. The law itself has not been established by men: it is a law of God, everyone is obliged to observe it regardless of any pact. We have seen that the means of enforcement, such as the police, positive laws, sentences and judicial penalties, can and do exist in every social bond, without it having been founded for this purpose. Everywhere and always, there is a right and duty to maintain the legal responsibility of those in power. If, therefore, in seigneurial relations, the prince is the sovereign dispenser of justice, this function will be, in the communities, exercised by the officials of the commune, who enjoy judicial power there, without either one or the others having been specially authorized for this.”

“Most communities which were later emancipated, had, at their origin, not even the thought of going independent, that is to say to form a state or a republic. More indispensable needs of a different nature forced them to meet their strengths. No doubt safety has been the motive or purpose of many associations; but it was by no means the internal security between the confederates themselves that we had in view; it was on the contrary, the external security against foreign enemies. We met in order to resist a third party, of whom there were dangers to be feared. Thus in the Middle Ages, the bourgeoisie were formed in cities, that is to say, in places surrounded by ditches and walls, to defend themselves, either against foreign hordes, or against the oppression of the powerful lords of that time. According to the most accredited accounts, it was such a cause which gave birth to the first Swiss league, between the three imperial countries Uri, Schwyz and Unterwalden, against the attempts of the House of Austria which wanted to publicize them, it is that is, submit them to its direct authority. The same motive created the League of Dutch States against King Philip II of Spain, a league which, having become independent, was called the Republic of the United Netherlands. Likewise, the League of Thirteen Colonies of North America was formed with a view to repeal the taxes arbitrarily imposed on them by the English Parliament. [Ed.’s note: observe how he says nothing of the king] In all these cases, it was a question of the common defense against an illegitimate power or at least reputed to be such in the mode of its exercise.

A second reason that engages men to meet in actual companies is to obtain a greater measure of subsistence and amenities of life. Hence in the Middle Ages the bourgeoisie settling in the towns, to reap the benefits of trade, a more developed industry, a livelier commerce, more work opportunities, a greater flow of merchandise, better wages for labor, and a fortune that is easier to conquer. Even today, we are received into societies, corporations, endowments, where the revolutionaries have not robbed them, to have a share in their income. Other times individuals pool their financial means in order to obtain greater returns: from there the joint-stock companies, industrial associations, insurance companies, banks of exchange and credit. It was the same thought, together with the need for mutual defense, which formed the league of Hanseatic towns in northern Germany; a league which soon became so powerful that it overcame formidable enemies in fortuitous wars, and was only eclipsed by the growth of neighboring states. To this order of societies belong more especially the East India Companies

of Holland and England, originally composed of simple associations of some traders. Soon after their origin, these companies, to provide more extensive safety to their trade, they were arming ships of war, building forts and trading posts, went to war with native princes, and negotiated alliances and peace treaties. They maintain today armies and navies; they establish judicial and administrative authorities; they currently own the East Indies, a vast empire inhabited by millions of men, and exercise in a word all the rights and all the powers of sovereignty. If these two powerful companies are not counted among the republics, it is because their members reside on the territory of two great monarchs; because they derive from them their revocable privileges; because they receive strong protection from them in their commerce; in a word, because they are dependent in several respects.”

“Other corporations are organized in another goal for the management of their common property, coming from long savings, with contributions from legacies of donations. See rural communities: they have little purpose other than to administer, to maintain, increase and to distribute what makes their heritage and wealth: pastures, forests, town houses, parishes, funds for the poor, school grants. Their officials are also sometimes responsible for the local police, the lower jurisdiction, educational interests; but these are secondary tasks, which come under the main one, as means. And where do the remarkable aggregations formed in the valleys of the Alps come from? Probably, if not certainly, in the possession of the high pastures. It must also assign a similar origin to a number of other cities, i.e. private associations of guilds and families: they were united by the condominium, for the management of their common property.”

IV. On the means by which communities acquire independence.

Either by donation of immunity and immediacy from an overlord, by redeeming any servitudes that stand in the way of their full independence, or by seizing an opportunity when their natural lord expires and there is a vacancy of power.

“Communities, however, find it more difficult than individual seigneuries to achieve independence, a fact clearly proven by monarchies greatly outnumbering republics. [Ed.’s note: Not anymore, wonder why?] It is not the rich and the powerful, but the poor and the weak who form a cluster to multiply their strengths and resources so that communities are almost always crippled by weakness and by poverty in their infancy. And when they have reached middle age, they still encounter many difficulties in increasing their goods and their power. They do not have, this is less trivial than one might think at first, they have neither parents, nor relatives, nor brothers, nor sisters, nor marital alliances; hence, for them, there is no point in the heredity of natural succession, the purpose of marriage dowries. These easy ways to acquire all at once vast estates, are denied to them. However, the communities, weak in their origin, can grow stronger little by little, secure territorial properties that give them the means to be self-sufficient, to defend their rights and to free themselves from any personal or real servitudes; they can, as we said above, rise to the rank of sovereign states. Usually, they achieve independence gradually, by several means. First by the donations and by the privileges received from their founding lords. Because communities sometimes receive from their founder, not only forests, pastures and fields, but judicial prerogatives and precious privileges, such as the right to appoint their own servants, to promulgate statutes, to dispense justice in civil and criminal matters, to fortify and wall their borders, to defend themselves against their enemies by the force of arms, to wage war under the authority and interests of their lord, finally to form alliances and to conclude treaties.”

“When the land does not belong to them in full ownership, can they not buy back the rents, the royalties, the charges which burden them and which often form the last link of their dependence? There is therefore not an urban or rural republic, not an ecclesiastical or secular order, not a religious or monastic community, which has not received from its primitive lord, either by the effect of his benevolence, or at the price of money, or in exchange for other services, concessions, discounts and similar immunities. In the Middle Ages, the communes of Lombardy successively acquired independence with the privileges and rights that their sovereign Emperor Frederick Barbarossa granted them, at the same time recognizing their customary franchises, in the Peace of Constance in 1183.”

“The third and final way that gives corporations their complete freedom: the release or the breaking of their bond of dependence. The master explicitly or tacitly transfers the royalties and services due to him, or he dies without leaving a successor; then the community redeems its sovereignty through the cancellation of the shares, duties and services that they owed under obedience of their overlord.”

V. On the natural rights and relationships within a republic or community.

Republics have subjects and possibly slaves, too. Equality pertains only to citizens, who in a proper republic are only a small fraction of the population since a citizen is at the same time a member of the “ruling class” so to speak, as opposed to today where it is a meaningless title

that nominally guarantees certain constitutional rights (not well protected), but that may just as well mean common inhabitant. Nonetheless, non-citizen subjects have advantages in being exempt from various duties and burdens, or they justly ought to be either way.

“To fulfill this task in a clear and precise manner, we must first of all distinguish two kinds of law in republics: one exists between the members of the community, and regulates acts from within (*jus societatis domesticum*); the other reigns between the entire corporation and those who, without belonging to it, owe it certain services by virtue of agreements or by their natural dependence in some other way. This is the *jus societatis extraneum*.”

“Here then are two kinds of societies, that of equals and that of unequals, so to speak; but the great juriconsult Grotius, it is important to note, did not put the distinction in all its correctness, nor in its true light. The relations of which he speaks between the father and his children, between the master and his servants, between the prince and his subjects, he should not call them societies, societies; but he should have called them, like Cicero: conjunctions, aggregations. On the other hand, brothers and friends, when they have nothing in common, have many relations of equality; but that does not mean they form a congregation. We see in their groups neither admission, nor public deliberation, nor decision taken by a majority of the votes. They are together in the state of private law absolute or extra-social. That’s not all. The expressions which Grotius also uses to designate the law of companies or associations are similarly lacking in accuracy, because they have too much extension; the old *jus publicum* or *jus societatis domesticum* or even *jus sodalitorium* [sodality, meaning ‘fellowship’] would have brought to mind a clearer idea of relations of assistance and those of co-ownership, those of services and those of union, those of seigneuries and those of community, they admitted only the last, or at least proclaimed only them as legitimate and reasonable.

To give themselves the ability to replace monarchical law with republican law, they imagined or presupposed communities where none existed. Deceived by the false idea that the subjects of the prince formed a corporation with the sovereign power, they lent the constitution of republics to monarchies; a thing no less absurd than if one made the tenant the owner, and the servant the master. It is to this fundamental error that we must attribute not only the disturbance of political science, but also the dreadful upheaval of all kinds. **Princes, servants of the same master, and individuals — though they do not live ex aequo independently of each other, yet they do not form communities; their simultaneous existence offers none of the characteristic signs of societies; we see among them neither statutes nor a common center, no common property, no common laws, no common treasury, etc. They live under natural and private law, a law which in relation to princes and sovereign corporations is called, although in an improper sense, the law of nations, and not company law.**”

“An association or community is the voluntary gathering of several men to achieve a common end. For this purpose, provided it contains nothing illegal, nothing to the contrary to higher duties or the rights of others, is the personal business of its members. These have in common property, income, usufructs and other advantages, which the community has acquired by way of donation or other legitimate titles. How then could the community be held and consequently be forced to admit in sharing other men, who perhaps did not contribute anything to its foundation, to its growth, to its well-being? This would damage its freedom and its right to property. It could even compromise its existence, when, for example, one would like to impose members

who are too powerful, or have hostile intentions, or others who would incite discord, which would hamper rather than promote the purposes of the society; or who would only like to enjoy the benefits of society, without wanting or without being able to bear the costs. Also experience teaches us that this rule is generally observed in all communities, and that its violation is always considered a reprehensible abuse. To start with examples of minimal importance, we do not see that any social circle, any literary society allows itself to be imposed, or that one thinks of imposing on it without its consent new associates. Each urban or rural community, any company of trade, any scientific society is free to accept or to reject citizens or new members, even when those aspiring to membership because of their qualities, deserve to be admitted to this favor. However, this same right belongs equally, and even more so, to the powerful and independent communities known as republics.”

“And if the communities are not obliged to accept foreigners as members, they also have the right to fix the mode, the charges, the conditions of their admission. Only one rule applies to their conduct in this field, a rule of prudence. They can, in relation to admissions, make statutes according to their convenience, laws according to their interest. They can interpret and apply these regulations as they see fit; modify and change them, suspend and abolish them. Whether the prescribed conditions are easy or difficult, broad or restricted, accessible to all or only to the few, no one has the right to condemn them, because they do not infringe the rights of anyone; at most we might charge them with a kind of recklessness and selfishness. Usually the associations fix for admission clauses in their midst, qualities and services in conformity with their ends, consequently as multiple and varied like the needs which gave them their existence and which they must satisfy. They demand from the recipients, here a determined age, there an honorable extraction, further on such and such a profession, sometimes the application to a particular science for scholarly meetings; sometimes the payment of a certain sum for richly endowed corporations; let us also say a greater or lesser fortune and territorial properties, or several of these things at the same time. There are also communities which do not legally or constitutionally regulate admission to their midst, reserving the right to rule in particular cases. Moreover, it must be remarked, fulfilling conditions gives only eligibility, but not election, the ability to be received, but not the reception. In vain does the candidate meet all the requirements, the community still retains the right to reject him, if he does not please it in other respects; it is the moral body, it is its assent which aggregates its new members. We can therefore see that any admission to a community finds its basis in a bilateral and voluntary contract.”

VI. On freely exiting a community.

Citizenship is not a slave contract, and what was freely entered into should be freely revocable. That said, there are many contexts where it might be dishonorable to do so.

“In the same way also the cities and free countries of Switzerland, the imperial cities of Germany did not force anybody to enter their corps of bourgeoisie, nor did they prevent anybody from leaving them. It even often happened that we left it when the duties we owed to the community were in conflict with interests and commitments of a higher order. However, in monasteries and some religious orders, it is no longer allowed to leave after entering them. But then also, it is necessary that before reception he is voluntarily and knowingly committed to stay there for the rest of his life, to ensure that this apparent exception confirms the rule. Long years preceding an extraordinary resolution, the successive trials and solemn wishes that they occasion, precisely prove that the obligation to remain all his life in an ecclesiastical community is not of natural right, but it is a requirement for admission itself which must be adhered to voluntarily, and which in this case must be faithfully guarded.”

“It cannot however be denied that, although the right of free exit from an association is owed to each of its members, however the untimely renunciation of the quality of citizen, or rather of the rights and duties which result therefrom, can in some circumstances be seen as an act of selfishness and ingratitude. The natural law not only forbids to do harm to his neighbor, but it commands to do him good. From this precept, we conclude that there is something immoral to abandon in times of calamity, of danger or of extraordinary charges, a society of which we formerly enjoyed so many advantages and profits. However, if a large number of citizens were to act in this way, the burdens to be borne would fall on the few who would remain faithful and the ruin of the society would become inevitable. One blames, and with reason, the functionaries and the subjects who abandon the sovereign in his misfortune; how much more severely should we not condemn the citizens who abandon the republic, this great family of brothers, in the same circumstances? Despite this, we cannot share the opinion of several famous jurisconsults who, while recognizing that the renunciation of the right of citizenship and emigrations are lawful in principle, nevertheless admit that the untimely exercise of this right (*discessio intempestiva*) can and must, in certain given cases, be prevented by cooperative means. These kinds of measures are always contrary to the justice which must remain the supreme rule. They usually miss their point and produce the gravest inconveniences, the results of the confusion of the duties of humanity with the debts of strict justice. Because this confusion, admitted in principle, opens the door to any arbitrariness. Who, for example, will decide whether the abandonment of a company is untimely or not? The interest of a faction will easily find any exit to be untimely, and the power it would have to decide as it pleases, would nullify any rights of the individual. Finally, it is still to be observed that an association loses its respective rights over those who have separated from it; it can no longer demand civic duties. The cessation of the reason for the obligation puts an end to the obligation itself, and there remains on both sides only the obligations of humanity, which exist in all social relations.”

VII. On the origin of supreme power in independent communities.

From the entire community, and not from “representatives.” Haller also has an interesting comment on the jurists conflating different types of multitudes and aggregations of men, to imply that they all form communities, which they do not.

“As one individual stated his personal commitment and that it is within the limits of his power and of his right to be absolute master of his actions and of his business, so too the community, composed of equal members, expressed its collective will by unanimity or, in the case of dissent, by a majority of votes; and since this will is, like that of the individual, sovereign in the circle of its right and of its power, it forms a mandatory law for partners or others. Here we see that positive law is the product and expression of the general will; but the same cannot be said neither of the established natural law through the creator and master of the world, or even of the positive law made by princes or by a particular legislator. The community based on equality, forming a single legal person, is the collective lord and master in the same way that, in societies based on inequality, the prince is the sovereign in his sole person. It is the ignorance or forgetting of this fundamental distinction between the collective sovereign and the individual sovereign; it is the deplorable mania to see in any multitude, in any aggregation or agglomeration of men, effective and independent communities, where there was neither association nor independence, which gave birth to the false and absurd doctrine of the sovereignty of the people even in monarchical states. What is true of a free corporation, namely that its laws emanate from the general will of its members, is far from the case as soon as one wishes to affirm it of the servants and subjects of a prince or even of the subjects of the republic itself. **For between the subjects there is no community; but they find themselves placed, towards their prince, in very different forms of natural dependency or of voluntary service. Unfortunately, the imperfection of language is, and will always remain, the source of the most serious and the most numerous errors. As the word society varies in its meaning, the substantive people (populus) expresses two very different things or two kinds of social relations. Sometimes it designates a free corporation, a multitude united in its members (multitudo unita) , such as was the community of the Roman people; sometimes it designates sparse multitude without common link (multitudo soluta); or even a number of men attached to the service of one or of several. However, the jurisconsults, not very attentive, failed to distinguish these two kinds of so distinct peoples: the peoples forming a free community, and the peoples living scattered under the domination of a master. Thus, by confusing these two different kinds of peoples, we have, so to speak, extended the right of the first to the second; and the fallacy arising from the ambiguity of terms, as the logicians express themselves, has reinforced in the minds the fatal error of the sovereignty of the people.”**

“All the so-called representative republics that arose in history were never and nowhere founded by the free will of the community, but that they were thus established by those who originally had the right and the power to create and organize the corporation itself.”

“[The magistrates] are themselves members of the association, they can not be considered as representatives of holders of full powers. The eligibility requirements for these judges and often the mode of their election, the oath they are required to take, the usual style of their discussions and of their resolutions, all shows that the sovereign power resides in all of the community, or at least in its constitutive source. Moreover, this is indeed a serious inconvenience attached to all republics, that they cease to be able to exercise their rights by themselves from the moment

when the number of their members becomes too considerable, and that consequently they see each other, willy-nilly, forced to delegate them in whole or in part to others. In these circumstances the power shared of these delegates or of those representatives can pose a danger for the rights of the community, if they are prepared to use their power in their private interest, rather than in the public interest. These disadvantages, it must be said, are inevitable, because they arise from the very nature of things. They may well be reduced by wise constitutional laws, but only moral and religious principles can overcome them completely. Moreover, these problems are common to the artificial organization of similar societies, and demonstrate how little great [in size] republics comply with the laws of nature.”

VIII. On the exercise of supreme power in independent communities (unanimity, majority, plurality).

Unanimity ought to be preferred, as was traditional, but failing that an absolute majority still has the right to bind the minority.

“When members of a community who all have the right to issue their opinion and to express their will, are divided on a question, the result is a collision of rights in which one party has to give, and in this case, the stronger party wins. However, between equals, the most numerous are the strongest, and the minority must necessarily give in, since it cannot prevent the execution of the wishes of the majority, and moreover it still has the hope of forming at its own discretion and in other cases the majority, therefore to enjoy the same right. Let us add that, since this majority itself decides only on the affairs of the community, none of the members of the minority is infringed on their private rights. The general law of nature, which means that the most powerful dominates in the case of a collision of rights prevents only a long war and maintains or restores the peace among men. The philosophers who disregard this divine order cannot escape it, even when they imagine all men equal in strength, and when they claim to erect the entire people as sovereign, women and children included. Their embarrassment is visible every time we raise or approach the issue of why one is required to submit to the majority of the sovereign people, while according to their principles, every citizen must recognize the other as higher than his own reason? What pitiful fictions do they not have recourse to, when they thus feel themselves pressed and contradicted by their own principles! They never manage to get out of their perpetual contradictions. The majority is after all only a new superior power, whose authority must be recognized or supported willy-nilly. The will of a plurality is certainly not the general will, and the reason of others is not his own reason. The average citizen can not be called free and independent when he is forced to submit to the majority of others, and it is absurd to argue with Rousseau that the will of others, contrary to mine, is not any less my own will. However, sense and experience explain the problem as such: In all social relations, man depends for his needs on other men more powerful than himself; and in free communities, the power is the prerogative of the majority. The majority in its turn is subject to the law of eternal justice, and this law forbids it to exercise its power against the rights and private interests of the minority. Let us add to this that each citizen in withdrawing from the association can escape this collective domination like any other. In general, this subtle question is best clarified by the following dilemma: in the absence of unanimity, which undoubtedly is always desirable, it is necessary either that the majority wins, or that the minority prevails, or that neither can decide the question. The last of these consequences would be absurd, because in this case the corporation, not being able to manifest any more will, nor to take any resolution whatsoever, would be virtually gridlocked and annihilated. The second hypothesis would be impossible in the execution. Because the plurality would not suffer not the dominance of a minority; it would seek to enforce its will by the force and it follows a struggle in which the minority could only succumb or would be in the need to give or to withdraw from the society. This leaves no other choice than to leave the decision to the majority, whether or not it is the wisest and the most useful. If these qualities are lacking in the resolution, it is proof of the imperfection attached to a common will, as well as to individual wills.”

“The majority of members present at the meeting [the quorum] is therefore the most usual. It is understood by natural law and has not necessarily been prescribed by positive laws. Because the corporation exists, in reality, only where its members are regularly assembled. As soon as the letter of invitation was sent to all those who are eligible, and want neither to exercise their right

nor do their duty, they are reasonably supposed to want to let the members who are present at the meeting come to the decision. Absent not having voted for or against such and such an opinion, their votes cannot be counted; their will not having manifested itself, cannot be conceived, and neither of the two parties has the right to presume it or to interpret it in his favor. The real majority, that of voters, excluding non-voters, is subdivided into two kinds of majorities: the absolute majority and the relative majority. The absolute majority of half plus one may gradually rise up to unanimity. The relative majority, on the contrary, consists in the fact that, between three or four different opinions, or, in the matter of election, between several proposed candidates, none alone meets the absolute majority of the voters, but has a plurality.

But we believe that the absolute majority is the only real one. It is also the only legitimate and the most commonly accepted. It alone has the strength necessary to ensure that its will is respected, and it alone can also reasonably demand that the other parties submit to it. The relative majority, apparently more economical in time, may for this reason have sometimes been preferred; but it is, by its nature, vicious and gives rise to the most serious abuses. For when it is a question of a great number of divergent opinions or of contested elections, it becomes easy for a very small but closely related faction to assert its will and to bring its friends to the most prominent jobs. This relative plurality is only an apparent majority and in fact constitutes a real minority. Often the republics establish bylaws under which it requires for objects of very great importance, that a quorum of two-thirds or three-quarters of the members be present in the assembly.”

“The limits of the legitimate power of the majority, in a republic, are therefore strictly the same as those of an individual prince. This power lawfully reigns over what is its own. The republic has, above it, the laws of justice which require it to respect the rights of others, either innate or legitimately acquired.”

IX. On the constant and equal freedom of a republic.

A republic, being a corporation, is a perpetual and undying legal person with full liberty over its affairs.

Independent corporations remain in law and in any time as free and independent as they had been previously. The successors enjoy as much of rights as their predecessors, and the community whose members can be replaced successively, remains the same legal person. Like an individual lord, it can, depending on the circumstances, change its will as much as by this change it does not infringe the rights of others. Its will remains, with this sole reservation, always legal, or to put it better, it is the law itself. For the supreme power lies in all of the community. Above it there is no rule but that of natural law, or the law of God, which imposes on it all the necessary duties, and does not prescribe any which is useless or superfluous. This is why the community is, like any other lord, bound by the covenants and promises of its predecessors, not by virtue of the will of those, but because of such pacts third parties have obtained rights that cannot be violated without injustice. On the other hand, a community is not bound to subject itself to the laws or to the statutes which its predecessors had imposed on themselves, or which they had imposed on others...

The distinction between constituent power and constituted power is absurd as soon as it is applied to the entire independent corporation. This being at the same time both, if we limit this distinction to the chosen and delegated representatives, it will certainly have some appearance of reality, but will nonetheless remain fatal and impracticable. **Because in this case, there will necessarily arise interminable disputes on what is or is not of the essence of the constitution; on what it prescribes or does not prescribe; on what it orders or forbids; finally, if it can be interpreted in such and such a way... Such [constitutional laws] contain the greatest perils, and lend themselves to all the more inconvenience because their authors, once leaving the mortal plane, cannot explain or interpret them, modify them or suspend them by dispensation.**

In all social relations whatsoever, there must necessarily exist some supreme authority, which can repeal existing laws, modify them and interpret them in an authentic manner. However, this authority can not reside in a dead letter, but it must belong to a living power, endowed with intelligence, of will and of strength. In the absence of such authority, chains of paper will soon be broken, and in this case it commonly happens that the institutions are to be tumultuously overturned. An unjust coercion always generates unbridled license, so even the river stopped in its course breaks the dikes and destroys everything in its path.

Moreover, everyone understands that the old laws and the old statutes remain in force and retain their binding force, as long as they have not been formally repealed or modified by a legal majority. As the corporation remains the same, and that its members are renewed only successively and imperceptibly, the silence of the successors and observation by them of existing laws should rightly be considered as the proof of their permanent adherence to the old laws. On the other hand, it is a principle recognized in the republic as in the monarchy, that the sovereign's will remains invariable and constant, as long as he has not expressed the contrary will.

X. On the dignity of republican magistrates.

Republican magistrates are distinguished from princely servants by the fact that they exercise power over the same people who share it with them.

“There exists between the magistrates of a republic and the sovereign corporation, or in other words, between the small ruling councils and the large councils or the assembled free community itself, a dual relation which one has seldom known and appreciated. On the one hand, these magistrates are in a way the servants and officials of the whole association; at least they must always see themselves as such in their actions. Commonly they are appointed, salaried, and provided with instructions by the corporation, as the minister is by the monarch. They swear to use their power only for the general benefit of the corporation, and not for their particular benefit. But the officials of the republic escape, under other aspects, the condition of servants, and are thus distinguished from the officials of the monarchy by fundamental differences. The magistrates of an independent community themselves participate in the collective seignury; the ministers of a king, on the contrary, have no immediate share in the rights, properties, or power of the sovereign. The former have the right to attend public deliberations in all matters, to defend their opinion by all means of eloquence, and to cast votes; the second, servants of a master, only have the right to petition, of representation, of counsel which carry no weight in themselves and have authority only through the will of another. There’s more: although in general meetings, the voice of magistrates has legally no more of value than that of any other citizen, as it manifests the view of the first and leading citizens, of those who are initiated into business and surrounded by the general consideration, it exhibits such a great weight, at least, in the normal state of a republic, that it commonly entails the general vote.

Second, republican magistrates have, in most cases, that is to say, in the dispatch of governance, no authority superior to them, since the sovereign corporation cannot and does not want to be continuously assembled. They have of a lot of funds in the republic; they appoint to a large number of places and jobs; they can reward or punish: they enjoy power, favors and graces, and reign individually even over those who, collectively and united to them, are their master; Instead the minister of a prince is always below his superior, over who he can never have any direct power, from who he receives his orders and instructions.”

“It is worthy of note, in fact, that in the old language of the chancelleries, magistrates or officials of republics are never called servants, while the word is common when it comes to key officials of a prince. The first bear the title of magistrates, elders, senators, councillors, savi (sages), honorary chiefs; denominations clearly demonstrating that such magistrates are neither comprehensive lords, nor mere servants, but they are the first in rank among their countrymen; elected colleagues, invested with a special confidence and the bulk of the supreme power.”

XI. On the common treasury of a republic.

The heart of a republic is its public treasury, the actual common deposit of goods, the *aerarium* in Roman law terms.

“The property of the republic belong to the whole community and cannot be employed except for the fulfillment of the purpose to which it has been established.”

“Commercial enterprises, which do not have a permanent end, but temporary, and whose balances consist of the capital or assets contributed by members as contributions or shares, equal or unequal; here assets always remain the private property of each member, and they should be administered only temporarily in common, in the interest of all. So when one partner wants out of the company, he has the right to claim his shares, especially since such a clause is usually added in the company charter. True communities, on the contrary, despite the continual change of their members, remain the same as a social body. Their wealth comes not from stock or from individual deposits but buildings or capital acquired in common. These goods are the property of the collective being; they constitute in some way a permanent substitution, a perpetual trust, not only for the present, but also for the future. The beneficiaries and the current heads of the company are the directors and the lifetime usufructuaries.”

“This principle of law is imposed with such force on men’s reason, that the legislators always regarded as useless to sanction it by a positive law. This is why experience shows us that no citizen leaving a village community, a city, a republic or another corporation, whether religious or secular, has never received any part of the common good, nor that it could have been demanded by the heirs of a deceased member. And if in our days erroneous ideas have arisen in this regard, if some contrary facts have occurred, it must be attributed only to the upheaval of our social state, **to the declared war on all ancient and stable existences, and to the tendency to transform all the goods of the earth into private property, absolute, perpetually mobile and given over to individual egoism.**”

“The sharing [alienation] of the common goods would dissolve the community, by the mere fact of this sharing; however, we have seen previously that the majority itself cannot pronounce its dissolution. Doubtless, nothing prevents from leaving to seek its advantage elsewhere; but it is not allowed to take away from the members of the minority the right to continue it among themselves. We also know that the public wealth is the property of neither one nor of many, but it belongs to the society as a whole, so that the many cannot ask for more than their proportionate share: this power comes through the unanimity of votes in the social body which, let us repeat, remains immutably the same legal person, in the midst of the continual changes which are taking place in its members. Let us throw a quick glance at history, we will see that all the real communities, old families, tribes, bourgeois, communes, parishes, monasteries, republics, have always rejected the alienation of their property like suicide, and they never believed it legitimate without the assent or unanimous consent of their members. It is only in our day that some corporations have moved away from this rule, proceeding by decree of majority in the division of joint property, and even the dissolution of the company itself. But such measures have not been approved or established as a rule; one had recourse to it only in order to choose the lesser evil between two inevitable evils, and thus to prevent a plunder or

other foreseen acts of violence. And when the minority made no opposition, especially when it accepted its proportional share, their consent was presumed with right, so that the liquidation of their shares was still done unanimously.”

XII. On taxes and contributions.

Harsher than in monarchical states, as equal power means equal burdens; nonetheless subjects who are not properly part of the community cannot have these sacrifices demanded of them. Haller also rejects all forms of progressive and income taxation as contrary to civic equality in a republic.

“This right is based on the fact that, in such a case, there is always formal or presumed consent, to the exclusion of any constraint. Indeed, it is the members the community who impose themselves. They dispose of their own property by their own free will, so that they can no more complain about these contributions, than any other charge dependent on their free will. And even if the contribution had only been decreed by the plurality of votes, the minority can only withdraw from it by renouncing its right of citizenship. If the minority does not make use of this right, it thereby proves that it yields to the will of the greatest number, and that, consequently, it has subsequently consented to the decree. Because it could not reasonably demand to share in the profits of the association without bearing the charges. No doubt prudence requires that a republic uses only rarely in tax law, for fear of frightening the poor citizens into a commitment to withdraw from the community. But this right in itself cannot be contested, and in fact it is recognized and if necessary exercised in all private communities, as well as in sovereign republics. **But if the republic can tax its members, it does not have the right to charge its subjects with direct taxes; its subjects, as opposed to its members. You noticed the difference in expressions; it is the people who live within its territory under the protection of its laws, without participating in the sovereignty nor the commonwealth. Well, these simple inhabitants are undoubtedly bound by the natural duties which bring man closer to man, and by the positive commitments they have made; but no one can submit them to the charges of society, since they do not share the advantages. Collective authority and individual authority have the same rights and same limits; therefore the republic has neither by its sovereignty, nor by its size, nor by its power, nor by its territorial possessions, any right over the goods of its subjects. One thing that can nevertheless be granted to it is to impose annual tributes on its vanquished enemies, either as a condition of peace, or as compensation for war, or as a ransom for greater evils. But this exception is more apparent than real; for military requisitions differ essentially from impositions proper; the more so as once fixed, they do not admit of any increase in their continuation.** In days of crisis and danger, when war is on the horizon, the dominant community may look to support the people submitted to it; but assistance must be requested as a free service, and freely given. **Who should assistance be requested from? Not from every individual, but from free people, i.e. the heads of families, municipalities, corporations immediately subject to the sovereign authority, with no other dependence.**”

“Now, if we asked the proof of our proposition, that the republic can not by authority, burden its subjects with direct contributions, it would be easy to give. Private corporations do not require points of contributions from their subordinates. In Rome, in the last days of the republic, foreigners were forced to receive civic rights in order to submit them to tax and force them to military service, an abuse by which it was claimed to elude the rule, but which proved no less that we did not believe we could demand from them such sacrifices unless as citizens. The republics of the Middle Ages, like the free cities of Italy, in Switzerland and in Germany, have always respected scrupulously this inalienable immunity, never making any binding call to the purses of those simple domiciled inhabitants. **To name just a few examples, when the cities of Zurich and Bern went to war, or they purchased land and lordships, only the citizens filled the deficits of the common fund. Same principle of public economy and of distributive**

justice in Lucerne, on the redemption of land and engaged in the acquisition of the county of Willisau. Taxes of all kinds have only begun to be introduced in Switzerland since the revolution, as a result of the squandering of the public fortune, and of the revolutionary fiction by virtue of which all the inhabitants of the territory are declared citizens, while they are neither de jure nor de facto. The republic can thus establish a tax on its members, but how? According to the principles of the republic, the tax must be established equal for all, consequently proportional not to the fortune of the taxpayers, but to their participation in the public good; because the advantages and disadvantages must be weighed in the same balance: *Eadem debet esse ratio commodi et incommodi*. This principle, though very opposed to the practice of our days and even the most modern doctrines of public law, nonetheless follows from the nature of things; also it is, generally speaking, recognized and followed in all the corporations whatsoever. Who, for example, would come to mind to tax the members of a literary society, a scientific association or a company formed for the purpose of some entertainment in proportion to their wealth and not in proportion to the advantages that aggregation offers them in that society? This would be no less unjust than if one pretended to fix the price of edibles not according to the value and the weight, but according to the personal fortune of the buyer. Well, why then what is right in communities dependent on a higher authority, would not be so in politically sovereign communities? Whoever enjoys the advantages of equality must bear the costs, or otherwise leave the community.”

It is therefore not the least of the innumerable contradictions of our modern philosophers that, in their newly created republics, they establish equality of advantages and inequality of burdens, claiming to grant the first to all men and not to impose the last than on the rich alone. A moderate and equal tax for all citizens, which we have recognized inadmissible in monarchies, on the contrary perfectly corresponds to the idea of the **republic**. At the same time as it increases the resources of the treasury, it raises the level of souls; it teaches the poor they are in a company of rights with the rich, and the rich that they do not have more than the poor; it raises the baseness of the small and lowers the height of the great; it nourishes in all the feeling of justice, the love of the fatherland, the zeal of liberty, the devotion to the public good.

Against this principle of the equality of civic contributions, and to justify the unequal taxes distributed according to the fortunes of the citizens, two objections are raised, one of which is not more justified than the other. First we repeat in chorus this sort of vulgar reasoning: “The rich have more need of protection than the poor; so they cause more expenses to the state; therefore they have to pay more.” It would be necessary to say precisely the opposite, that the weak have more need of protection than the strong. Are small fortunes more easily kept than large ones? And a trial worth a thousand francs, is it not judged any less so than a trial worth twenty francs? Then we say, “The rich can give more than the poor, so they have to pay more.” **But this is a reasoning which suits beggars and not jurisconsults; this is a motive that can be pleaded by claiming acts of charity, but not when it is a question of duties of a strict justice. Because justice does not need to know what each can do. The rich man could do**

many other things as well, which, however, no one has the right to force him to do. As soon as he is a citizen, and as such enjoys the same benefits as other citizens, it may not be required of him to pay more than the others do. From there, we conclude that a tax proportional to the wealth of each, whether it's based on a fixed and uniform rate, or on a progressive scale, both are inadmissible in either republics or monarchies, unless they are individually consented and freely accepted by each taxpayer.

But we will no doubt hear the objection: if you decree a single tax, founded on the same basis, equal for all, you will be forced to lower it to the level of modest fortunes; then what weight will there be on the balance of the budget? Lightweight, I grant; underweight, I still want it; but direct contributions are not, and I mean no offense to the politicians of the day, the only resource of republics. The republics should as far as possible, in ordinary times, live off their own domains and their own capital. They must pay their expenses according to their income, not their income according to their expenses. And if savings do not balance income and expenditure, they will resort to indirect contributions, the legitimacy of which we have shown with certain reservations in all kinds of societies. Finally, when extraordinary expenses, the costs of war imposed by the enemy, the acquisition of new domains, the purchase of onerous bonds, are depleting the public coffers, they have a much greater resource left than one might think. I am not speaking of those forced loans which prepare such a bright future for regenerated Europe, but voluntary contributions, free donations. The devotion of citizens has always been appealed to in true republics. When contributions, freely granted by the citizens, instead of being imposed by constraint, are employed without diversion for the good of all; when the public mind and the social virtues, the worship of ancestors and their authority, love of family and descendants are in the presence of the country's needs, a holy rivalry ignites and burns to be signaled by generous offerings on the altar of the fatherland.

XIII. On the constitutional form of a republic.

Who is eligible for citizenship, how assemblies are convened, rules of order, etc.

“It is only by virtue of its statutes that the company is constituted, by giving itself a determined form. This is why one finds such constitutions in all republics and all private communities, without exception. There is not a village which does not have its own settlement; not a city, not a religious or secular order, not a single scientific society, not of permanent social circle, not a guild which doesn’t have its statutes or basic laws... Also, even in the republics, the constitution clearly determines the mutual relations between its members, but it does not regulate the relations of the dominant corporation with its subjects and vassals.”

“We see from this that it is not necessary for constitutional laws to emerge fully armed and all in one piece, at the same instant, from the brain of their authors; they may equally well be composed slowly, progressively, of successive prescriptions, promulgated at different times, according to the need of one day and the interest of the next day. Let us even say that this mode of legislation is the simplest and the most natural, and therefore the most advantageous... Consequently [constitutions] must establish the political organism in such a way, that it cannot be drawn against its will, nor received in the corporation against the general will, that all the elections are made and all the decisions taken by a majority not only apparent, but real and true, so that the goods and the freedom of the state, as kept by justice and patriotism in an inaccessible fortress, are protected from any damage and from any attack; because it is absolutely necessary that the magistrates cannot divert public funds to their advantage, nor leave the position of honorable and honored officials, and elevate themselves as masters of the republic. The more a constitution achieves these ends, the more, in short, it succeeds in reviving and maintaining the spirit of concord and equal rights among all citizens, and the more perfect it is. But the great difficulty, and to tell the truth the impossibility of the solution of this problem, at least in the long term, is unfortunately attested by the history of all the republics.”

“Once the constitutional charters have been drawn up and decreed, should they be written down? This formality may offer advantages, in certain respects and with certain reservations; but it is not necessary. The customs consecrated by ancient, constant and general practice are also laws, and it is precisely these kinds of laws which are kept more religiously than all the others; however, no legislator has engraved them on marble; they are passed by fathers to children, by a perpetual tradition, as well as first truths and first principles. Indeed, the cautious and wise advise is not to write too many things down; because these written laws generate, by the imperfection of language and by the ambiguity of terms, a host of disputes.”

(In the old republic of Bern, the Red Book [Livre Rouge], which many have wrongly regarded as its constitution, did not contain the fundamental principles of the State. It did not say, for example, that the capital was free and sovereign; that it owned such and such an estate; it should be governed by two councils, one of 27 and one of 299 members; that one had to be a citizen of Berne to be received in these assemblies, and that one could obtain the right of citizenship only under specified conditions. The actual constitution, however, consisted of old customs and old requirements based on the nature of things, the rights and fundamental duties of citizens. As for the Red Book itself, it was a collection of modern regulations.)

Here is the first question that comes to our research: it is to know who is part of the independent association; how they should be successively recruited; in other words, to whom the right of citizenship belongs, and how it can be acquired or lost. Now, a community is naturally made up of its original founders, and of all those who were later admitted to it by these founders or by their descendants. Nobody is born a member of a community, and nature does not confer on anyone a title of citizen. This requires that the social body receive new members; otherwise it would die out in the course of a generation, which cannot be its will. This is why all the municipalities urban or rural, all the republics admit in principle that the sons of the citizens are admitted by right into the association, and that one cannot refuse them, except in certain cases envisaged by the law. But it is still necessary to determine the conditions under which these descendants of citizens can be recognized as voting members of the community. Ordinarily, it requires from them a proof of legitimate offspring of an effective citizen, age set by the law, and some formalities that are easy to complete. But there are communities to which this natural means of recruitment is prohibited by their very nature. Such are, for example, the spiritual and secular orders, whose members are bound to celibacy; such also the scientific or mercantile societies, where the sons did not follow the vocation of their fathers. These kinds of associations can only be perpetuated by the reception of foreigners, a means of recruitment which is also practiced by all the other corporations and sovereign republics. In these cases, it is necessary that the conditions as well as the formalities of admission are precisely fixed in advance. Usually, admission can only be granted by the society as a whole, or by the sovereign authority in a republic; because no one has the right to impose on it, contrary to its will, new members, who must participate in its authority and the enjoyment of its goods. Also, this principle is quite universally adopted and followed in practice.

“Let’s talk about the form of meetings and deliberations. When the association is constituted and the mode of its successive recruitment determined, it can however enter into activity only by the assembly of its members and can take resolutions only by the majority of the votes. However, to ensure the perfect regularity of its meetings and of their deliberations, nothing is more essential than the prescription of certain forms [i.e. rules of order], which at least determine the mode of their convocation; the location of their sessions; the Presidency, the Secretariat, the proposal of materials to process and motions to raise, the method of deliberation, and finally the way to issue and to count the votes.”

“First of all, it is impossible for all the members to know in advance the matters to be dealt with, and for all to propose and speak at the same time; for such a mode of proceeding would produce the most extreme confusion. We therefore need by necessity that a person be in charge of general management of business; that it behooves him to take prior knowledge of the parts, to convene the assemblies, to present the various matters to be treated in a suitable order, to direct the progress of the discussion, and to keep it in the way of logic, in concord. This leader, indispensable to all corporations of any kind, from the most powerful of the republics, to the smallest rural commune, is generally called President (who sits at the head), because usually his seat is placed on some platform, or at least in a place in plain sight of all; but it is also designated by other names corresponding to its principal functions, or to the primitive nature of

the community. These are the titles of : Consul (to take care, be careful) in the Roman Republic; Archon (commander) among the Greeks; Grand Master in the Orders of Chivalry ; Bourgomaster in some German cities of Belgium and in Switzerland, Ammann and Landammann, the first chief of a town, and the second from a republic, also in Switzerland; Avoyer (to call, as attorney and advocate), etc.”

“After the president, the most important official in the communities, the Chancellor or Secretary. His mission is to ensure, by fixing them on paper, the authenticity, the text and the true meaning of the decrees issued by the higher authority, and to communicate them to those they concern... It follows that, if the common resolutions were not secured and protected from oblivion by means of writing, there would constantly arise doubts and discussions about their nature and scope. This is why the chancellor or clerk appears infallibly in all communities; why his pen plays such an important role in it. It is here above all that we must quote and repeat this ancient adage: “The world is ruled by secretaries.” If the president is the soul of the body politic, the chancellor is its organ.”

“In the small communities, the president invites individually, according to the time of their aggregation, all the citizens to make known their opinion on the proposed object; in large assemblies, to save time, he addresses this invitation by name to senior officials first, then generally to other members present.”

“Two kinds of votes. The public vote is carried out with the aid of visible indications: by raised hands, as they say, the upper hand announcing the affirmative and the lowered hand the negative. By sitting and standing, some standing up and others remaining in their seats; and by separation (*discessio in partes* , as the Romans expressed it), part of the assembly siding on one side of the room and the opponents on the other. For the secret ballot, balls of different colors are placed in an urn, or ballot papers bearing the names of the candidates or the indication of the proposals. These two ways of voting each have their advantages and disadvantages. The public vote is usually appropriate in the affairs of the state, for general things that touch all individual interests. The secret ballot is more appropriate in the elections and in personal questions, for example when it is a question of exempting the great dignities and the lucrative jobs of the republic; to give graces and favors; of pronouncing serious sentences against prominent figures or magistrates; to alienate or acquire estates of considerable value.”

XIV. On representative bodies and councils.

There is a continuum from a general democratic assembly of citizens, as in the *Landsgemeinden* of the mountain cantons, to a grand council of several hundred, to a small council or ‘senate.’ Most commonly the locus of power is the grand council, which again does not represent the sovereign people, it is the sovereign body. It will coexist with smaller councils and colleges that are subordinate in power to it, even if in practice these colleges exercise most of the day-to-day business and set the agenda for meetings.

“But when republics count their members by the thousands, the distance of places, the costs of travel, the necessity of work and the value of time are barriers that do not allow them to make frequent general meetings; then these first institutions are no longer sufficient. Even more multiplied and more difficult combinations become necessary. The company is forced, by the very nature of things, not precisely to confer or to delegate, but to give up entirely or in part its power to a body out of its breast. Whatever name they are given, the members of this body are considered to be representatives of the entire community. They form a society within the society itself; a more restricted and narrow society, it is true, but which concentrates in its hand all the authority and all the power. Look at all the communes and federations: they all have their general assembly, their grand council, their agencies, their restricted commission responsible for administering common affairs.”

“Now a grand council may be invested representative powers in whole or in part, without reservation or restriction, either absolutely or conditionally. The representation is absolute, without sharing or limits, when, the community neither being able nor having to meet in general assembly, the grand council has the right to replace its resigning or deceased members, and to appoint to the highest dignities of the State. So what are the powers and prerogatives of the people? They boil down to the fact that the administration of the public thing is done in its power. The representative mandate is on the contrary conditional, when the community can and must be convened for the decision of important matters, or for the election of the principal functionaries. These two republican systems depend both on natural circumstances, or of previous historical, such as the determination of a first master and legislators who followed. Now according to whether the grand council or the people have more rights, which are two kinds of republics, according to the Greeks, some aristocracies and other democracies. Thus, the countries formerly dependent on the Germanic Empire and now forming certain cantons of Switzerland, Uri, Schwyz and Unterwalden, were considered democratic, because the whole community (Landsgemeinde) had to be assembled at least once every year, to decide major cases and to appoint magistrates. In the same country, Zurich, Schaffhausen, Basel, Geneva, etc., were described as aristo-democratic, or of mixed government, for the reason that we saw in those cities, so to speak, two kinds of power: of on the one hand the great representative council exercising sovereign authority in most cases; on the other hand, the curia or divisions of the bourgeoisie retained some electoral rights there; or the whole body of the bourgeoisie (citizenry), as in Geneva, had to be constituted as a general council of the commune, to judge certain extraordinary cases and to elect the principal officials. Finally, the cities of Bern, of Lucerne and of Friborg passed for aristocracies: here the grand council, had all the material attributes of power; so much so that it filled its own vacancies. The bourgeoisie (citizenry) and its divisions could not meet in a political assembly; they had no direct or indirect part in the administration of public affairs.”

“A more important thing still, is to fix categorically the relations of the great council vis-à-vis the directing college, the regency, the magistracy proper (1) [also known as the ‘small council,’ ‘senate,’ etc.] As, on the one hand, the grand council cannot and will not assemble for all matters; as, on the other hand, the directing college usually pre-exists the representative council,

and its attributes are initially uncertain and not very circumscribed: if the constitution did not clearly delineate the limits which separate these two authorities in their respective competence, we would soon see fatal collisions that endanger tranquility and perhaps the existence of the state. However we can not determine their attributes a priori, on purely logical basis, with general classifications, such as to speak of legislative and executive powers. When we want to mark the line which separates the two councils of the republic, it is necessary to appreciate precisely the importance of the governmental affairs, then to fix oneself invariably on this principle: “that the sovereign authority of a republic must have the knowledge of all the things which can exercise a decisive influence on the well-being and on the existence of the State.”

(1). This is the institution that we call very badly in modern language: the executive council .

XV. On the governing college (a.k.a. ‘executive,’ government, magistracy).

In which Haller capably rebukes the separation of powers, and anticipates the sprawling executive agencies of the administrative state.

“The internal organization of the governing college is not essentially different from the organization of the community or of that of the representative assembly. No other method of convocation, no other place of meeting; it has the same president, the same chancellor and the same officials attached to its service. The forms of its electoral operations and the order of its deliberative debates, to be simpler, are nonetheless based on the same rules of prudence. This conformity of principles, this meeting under the same president by the same chancellor, formed a characteristic feature of the old republics and find their *raison d’être* and their foundation in the nature of things. In fact, the governing college, the representative council and the citizens’ assembly are not distinct and separate powers from one another; they constitute one and the same authority, one and the same corporation. The citizens’ assembly and its legitimate representation are in reality only the extension of the directory. In short, these three authorities form the members of one living body. Now, as a single living body can have only one head and only one soul, likewise a single corporation must have only one president and only one chancellor. The theory of the separation of powers was invented as of today; and it was in the modern revolutionary republics that we saw for the first time the institution of two or three authorities, legislative council, senate, executive directory, entirely distinct and independent from each other, each having their own president and chancellery. But we have also seen this state of affairs engender an incessant struggle between the three powers, a struggle which ends up bringing about the fall of these republics, which one could have rightly called the three-headed Cerberus.”

“The offices and jobs are, in the small as in the grand council, subject to reelection or annual confirmation; but in fact they are nonetheless almost always in the same hand until death. The frequent rotation in charges would bear all instability, would break direction in the course of business, would destroy the experience and knowledge of government officials detached from their jobs, cause dissatisfaction and would be subject to a thousand drawbacks. Thanks to their authority, members of the government enjoy special consideration; they are surrounded with honor, not only in the hearts of the citizens, but also in the acts of the republic. They are given the first rank in all solemnities, high seats in political assemblies, and reserved places in religious meetings. They wear an official uniform and receive military honors. In their privacy, they carry a title conforming to the republican state, which reminds them less of their power than their virtues and personal merit. All these distinctions enhance the dignity of the republic and facilitate the duty of obedience.”

“The functions of the small council generally have two objects: the daily dispatch of current affairs, and the preparation of more important matters, those which must be submitted to the deliberations of the grand council.”

“We can observe this system [of the separation of powers] put to the test in the revolutionary republics of today. **One of the authorities was legislative, the other executive; but the very force of things came at the same moment to confuse these pitiful distinctions. There were perpetual disputes between the two authorities, on the question of knowing what is law and what is not; what belongs to the executive, or what is outside its competence. The so-**

called legislative council, which at bottom represented the supreme authority, took possession of the knowledge of a hundred thousand affairs which did not offer the slightest appearance of a law. It took care of what was offered, or that it liked to take care: for example, allocations of funds to specific petitions, judgment of disputes of all kinds, of graces or of privileges, of warrants, of arrests, etc. But on paper each of these resolutions was heeded and in large print given the qualification of law; and when, for example, one passed on the agenda some individual request, it was necessary that this resolution was, like a general compulsory law, printed in several thousand copies and displayed to all the pillars of the towns and the countryside.

On the other hand, the Executive Board and the authorities subordinated to it, not excepting municipalities, published every day a multitude of orders, regulations, ordinances, decrees, instructions, etc. Mandatory rules of conduct governing a great number of men, all these things formed real laws; but no one dared give them that name, because they had not been made by the legislative body. All this, however, did not happen as a result of reciprocal and intentional usurpations of one authority over the other, which could have been avoided; but by the force of things. It could not be otherwise, because, despite human error, it is necessary that daily affairs are handled, and under the influence of this need, the false doctrines fall into oblivion.”

“The declaration and conduct of the war, everyone will recognize, is not a law but a means of enforcing a natural or positive law, or an earlier treaty binding between the parties. However, why would republic at the risk of its own life, give the executive the right to declare war and to continue with the blood and property of citizens? Similarly, the creation of public employment, the appointment and the dismissal of officials, what are they? You have to answer as always: obviously these are not laws, but means of enforcing and respecting the laws. Well, who will say that this is not belonging to the sovereign council, but instead to the Executive Board to appoint or to revoke key officials of the state, its presidents and chancellors, ambassadors and generals? We can not put the alienations of territory or allocations of funds in the category of laws, since they are not guiding rules of conduct. **Should it be concluded that the grand council has nothing to do with these administrative acts or these transformations; that it should give the small council the power to sell large estates, to cede entire provinces at its pleasure, to exhaust the finances, and to ruin the state? Will it be necessary to say that the community itself cannot dispose of its property, nor order its expenses, nor regulate its budget? Here are still objects which do not belong to the legislation either: the supreme jurisdiction, if necessary in certain cases, the reception of the new citizens and the checking of accounts; to which can be added treaties of alliance and treaties of peace; because they are as much the responsibility of the external administration as of lawmaking. But all these things, prudence and we can also say necessity placed them in the attributes of the grand council.**

Note, secondly, that by strictly containing the bounds of executive power, we deprive him of any initiative and of all intelligent will. Reduced to this imperiously commanded service, confined to this rigorously defined task, what will he be able to do? He will not be able to trace the regular course by any decree of the administration, or direct by regulations or instructions any subordinates, secretaries of the chancellery, employees of the finance department of justice or of war; it will be forbidden to promulgate the simplest order of police to the security of trade, of industry, people. For these are true laws, although it tries to hide their nature of the use of other names; they are manifestations of an obligatory will, rules which prescribe certain actions to a multitude of men, and the violation of which results in punishment, and sometimes their observation is even eligible for rewards.

The separation of powers that I reject would stop the course of business short; it is physically impossible. From which it follows that the reciprocal attributions of the two powers cannot and must not be divided except according to the importance of matters.”

An enumeration of typical prerogatives held by a grand council:

Here are roughly the objects which, in the republican regulations, are reserved for the decision of the general assembly or of the representative council:

1. The admission of new citizens and the exclusion from the right of citizenship; acts which form a simple judgment and not a law;
2. The appointment and, in specific cases, the dismissal of key officials;
3. The acquisition or alienation of territorial possessions, an object of such great importance that, in several republics, the law forbade the alienation, by sale, exchange or donation of the smallest portion of land, without the consent of sovereign power. Who is the individual who, by ceding the administration of his income to his steward, still retains the disposition of capital which is the basis of his power?;
- 4 The right to pronounce on expenses exceeding a certain sum; making necessary reserves and earmarking funds, if the republic wants to remain master of its property and prevent the squandering of the public fortune;
5. The ability to establish, to amend or repeal the basic statutes and laws of great importance; that is to say that the laws which engage and oblige the whole republic, or which concern the totality of the citizens and the inhabitants, which affect their rights or their interests, which impose on them new charges, cannot be carried out without the will and the sanction of the highest authority;
6. Declarations of war and the conclusion of peace treaties;
7. The right to conclude and to terminate alliances and other treaties that commit the republic to sustainable obligations;
8. The right to make contributions or indirect taxes at the expense of citizens or subjects.

XVI. On the lordships of republics, or: on the relations of republics to their subjects.

Republics can and do possess subject territories where the inhabitants do not have full citizenship rights. The actual republic or independent corporation is often one city, as in the *pomerium* of Rome within its city walls, and the rest being the *ager publicus*, state-owned lands and colonies. The Latins and the peregrini were of different legal status from Roman citizens. The same with the city of Bern, distinguished from its far more territorially substantial bailiwicks.

During the French Revolution, there came to be a distinction between so-called ‘active citizens’ and ‘passive citizens,’ the latter having no electoral rights but similar burdens. Haller berates this as a contradiction in terms; citizenship is either held in fullness or not at all. He also criticizes the common designation of medieval republics as “oligarchies.”

“So far we have spoken of the rules of natural justice in republican states; in other words, of the relations existing between their members, of the forms and means necessary both for the establishment and for the maintenance of these relations, and the whole of which is usually called the constitution or organization of republics. But a community or an association which has, as a collective person, rights to exercise and duties to fulfill, is necessarily in relation with other persons (individual or collective), some of whom are equal to it in law, while others depend more or less on it, as a result of particular circumstances, or by various pacts and commitments of service. These relations are called the external law of the republics, to distinguish it from the internal law, which exists only between their members.”

“So when a community has become the owner of territorial property, it has thereby acquired, by virtue of formal or tacit contracts, rights over persons and things; it therefore finds itself in a seigneurial relationship with the former.”

“Imagine, in fact, a republic as popular and as democratic as one wishes; you will still see in its bosom women, children, servants, inhabitants, foreigners of all kinds who, not being citizens, cannot vote in its assemblies, and who nevertheless are obliged to obey more or less its decrees.”

“Do you wish that the community, with its domains and territories, give all its subjects the right of citizenship? But then, what becomes of this dual principle of universal law that no one may be forced to enter in an association against one’s will, and vice versa, that the association can not be compelled to incorporate in new members, and even less admit them in participation of its rights and of its properties? And see what is the inescapable strength of these principles! The corporations that have hitherto existed on earth, the republics of all names, of all forms, of all kinds, have always reigned in a thousand ways over men who, without being citizens of the community, had relations of dependence with it.”

“Not all enjoyed, as ignorance imagines it and as the publicists of the day support it to make us believe in the realization of their theory; men did not enjoy the same rights, not all were free citizens, not all belonged to the commune; it was even very difficult for them to receive and enter into the share of its assets and of its privileges. It described these cantons or rather those democratic ones, because the town could assemble in the Landsgemeinde once a year; but whoever did not have the quality of man of the country, landmann, even if he was a millionaire and by his family established in the country for centuries, could not give his vote in the common assembly.”

“In addition, the US has, by way of joint property [Ed.’s note: written before its ascension to statehood], the area of Indiana, and the Swiss Confederation common lordships; and if they prolong their existence, they will probably gain new possessions.”

“Nevertheless, the difference which distinguishes the master from the servant remained in all its rigor; and to conceal the contradiction between principle and fact, we had to resort to the artifices of language and forging of new expressions. They called passive citizens, men (and

they were the majority) who were excluded from exercising the right of citizens, leaving them the charges attached to this quality. Passive citizens were forced to pay to go to war, to receive the blows of fire and sword, or at least to endure the hunger, the thirst and all kinds of hardship for the public good, which however, they did not have the slightest share in. The right to enjoy, to speak, to deliberate, to order or to have even a word to say, belonged solely to those who had the power to order arbitrarily. And what is more remarkable still, when the new republicans had united conquered countries to their territory, declaring them outside the constitution, they excluded them from the community, and made them governed militarily or administered by commissioners, without granting to the inhabitants the least share in the advantages of the right of citizenship; so they were, despite their revolutionary principles, subjects, even slaves.

Finally, private communities also offer us relations of subordination and of dependence. Because there is not a rural commune, not a municipality in the cities or in the provinces, not a trade association or a guild of craftsmen, not a literary or commercial society, not a religious or secular order, which does not exercise any empire, which does not command a certain number of men, and does not refuse to share its authority, its goods and its privileges with those whom one considers as foreigners. The English and Dutch companies of the East Indies, do they not have millions of men under their domination?"

"Every man, we are constantly told, must participate in the power and fortune of the community, by virtue of this alone that he has the dignity of a man. Is it that the dignity of man is to be able to share in the property of others? And why do the advocates of equality not put the servants at the head of all the meetings, for example of the literary, scientific and other societies of the same nature? Why do they not allow workers in factories or commercial enterprises have the fortune of the employers; a house of trade, a factory — is it not a common thing, and according to them does it not belong to the generality of its employees?" [Ed.'s note: Most people, and even many on the 'right,' would now agree with the philosophes that yes it does.]

"Is it necessary to say that the true republic has, in its territory, the fullness of judicial authority? We also understand that it is master of its wealth, of income and of its expenses, so that it may dispose it freely without the control of its subjects; but officials are accountable to the assembly of citizens or their representatives, as in monarchies ministers are accountable to the sovereign. It can own common estates, on the sole condition of not injuring any prior and legitimate possession, lease them out at will, entrust them to managers, give them in trust, grant them by way of pay or salary, according as it finds it more convenient or advantageous; it can especially exchange, sell, alienate them with more freedom than the princes, because they were not received by wills, familial conventions, or perpetual trusts, but purchased from its own funds that were acquired completely freely. Here's another thing that we have already said: the republic may impose direct taxes on its citizens, because it is the treasury of their common expenses; but it could not, without injustice, exercise the same right against its subjects, because it would require them to contribute to the good of a corporation of which they are not members. We see, moreover, that the taxes imposed on the subjects, were they freely agreed, would be more odious in republics than in monarchies. **For, not only do the subjects of the republics**

not participate in the sovereignty of the reigning company, but we can even add that they derive from it, directly at least, little advantage, since usually the most honorable and lucrative jobs are in the share of citizens. It gives them few ways to satisfy their ambition, and all hope of acquiring wealth in public office is almost prohibited. Finally we must mention a right that nobody denies republics, because it really is up to each man: the right to establish public services, schools for the youth, hospices for the sick, asylums for the poor, etc. In describing the rights of the republic, we have circumscribed them by that very fact. They have the same limits as those of the monarchy.”

“As any free community exists by itself, as it holds the authority of its natural independence and basically administers only its own affairs, by what right could ordinary inhabitants, servants, subjects claim exercise of its sovereignty and the enjoyment of its goods, since these two things do not belong to them?”

“Why do revolutionary reformers call the sovereign authority in republics by the name of privilege, domination of families, oligarchy, hereditary aristocracy, etc. ? These are false, odious expressions, made to prepare the fall of republics and monarchies. The right to freely administer their own affairs and to dispose of the services to which other men have obligated themselves, is not a privilege of the republics, but a natural right which derives from their personality and from the possession of their common properties. **Privileges are exceptions or dispensations from the laws; they are conferred by the superiors on their inferiors, and the subjects, coming later, cannot give laws to the pre-existing community nor consequently privileges; it is the community, on the contrary, that gives laws to subjects as kings or emperors gave to the republics of the Middle Ages. The same laws cannot govern, in monarchies, priests, soldiers, magistrates, officials and the people; similarly, the citizens, who are members of the social body, and the subjects, who are not, must be governed in the republic by different laws; so the nature of things wills it, and no one will see any illegitimate favor in it. And please note it, I pray you, these multiple and diverse laws, or what are called privileges, do not always confer advantages, but they often impose burdens from which the subjects are freed. If, as a rule, one raises to the highest offices, not obscure men and of low condition, but the most considered, the richest and the most able citizens, it is not a privilege either, it is a voluntary preference cautiously made for the peace, rest and good of the community. This natural preference can still less be called familial domination. These are not privileged families, but citizens honored with the trust of the public consideration, who hold the reins of government. The Supreme Council of a republic is not a federation of families, but an assembly of citizens that knowledge, virtue, honor have recommended to the popular vote, and that a more or less large number of these citizens have the same name, or that they are more or less closely united by ties of friendship and of kinship, does not change the nature of their powers or of their duties. They sit in the assembly, let us repeat, as citizens and not as members of the same family. The votes are collected by head and not by family, and the offspring of the same stock do not always follow the same political direction; far from it.”**

“As for the oligarchy, it is the ruin of common liberty, it is the corruption of the republican government; it consists in the permanent usurpation of public power for the benefit of a small number of citizens, of a predominant caste. By what right then do revolutionaries qualify as oligarchy the communities which legitimately reign over their servants and their subjects? As such, we could brand all republics with the same name.”

“This expression ‘political rights,’ so frequently employed today was unknown previously in the annals of history and the chancelleries. Modern philosophers have introduced it into republics and monarchies only to make the subject people a monarch or a sovereign community, and thus to change the servants into lords and the lords into servants.”

On how a republican patriciate is distinguished from nobility:

“However, they do not receive the charges and dignities through inheritance by right of succession; otherwise, they could claim them as of property, out of any election; they could alienate them, sell them, exchange them, make them pass in distaff to their widows and their daughters, things of which certainly no republic has ever provided an example. There is much more. We do not strictly inherit the right of the city or bourgeois status, whatever the favor enjoyed by the son of the citizens, they do not come within the community without an act of formal reception, or at least without registration in the citizens’ list, and the admission itself is only carried out under certain conditions, after the completion of certain formalities.”

XVII. On the distinctive characteristics of collective lordship.

As fictive persons, republics do not have the same testamentary and marital means of acquiring new possessions that monarchies do. A collective lordship is still a lordship and so the same moral duties of patrimonial rulers apply to republics’ treatment of their subject territories.

“An association ceases to exist, not by the death of its members, always replaced by others, but by the breaking of the bond which united them between them, a rupture which usually takes place slowly, and which one can compare, as to the effect, to the extinction of a royal race.”

“Equal laws are not suitable for unequal positions. Citizens cannot be subject to the obligations of subjects, nor subjects to the duties of citizens. It is therefore necessary to distinguish carefully and always the laws which concern the citizens alone, then the laws which bind only the subjects, then finally the laws which are applicable to both. Inborn rights are equal for all, whereas acquired rights are unequal: these two kinds of rights therefore require specific laws for their maintenance.”

“It is indisputable that the subjects are in several respects, in private acts, much freer than the citizens. Undoubtedly, one cannot claim in their favor admission to the assemblies of the community of which they are not members; it would be as well to exclude those who belong to the social body; **but, on the other hand, they escape a host of onerous duties which weigh on those who are called the privileged. Thus one can demand of the citizen, as such, contributions, military services and all kinds of free services, because he pays them, in some way, for his own benefit; but these charges could not be imposed so rigorously on the subject, at least without compensation, because he does not enjoy the advantages of the corporation. Some laws of order, of convenience and, so to speak, of discipline [incl. sumptuary laws], facing citizens for maintaining a consistent and steady administration of their affairs; but with regard to subjects, these laws would be without object, and consequently useless.** The laws prohibiting the unequal division of the paternal succession, the right of primogeniture, as well as the alliances of family in a too close degree, etc., are if not essential, of the least wise and useful in the republic, that is to say to multiply the bonds of affection between citizens, either to prevent the accumulation of wealth in the hands of a few citizens, this accumulation being contrary to the republican spirit, at the rate of the preponderant influence which it gives.”

“The difference in religion seems, on the contrary, less dangerous among the subjects, because they are not united in a community, because they live in less frequent contact, and because they are, moreover, under a superior power capable of preventing the discord, to bring peace and unity.”

“It is also clear that the citizen has more right to the offices and profits of the republic to which he belongs. He bears the burden: why shouldn't he enjoy the advantages? However, since the sovereign community has the right to express its wishes freely, it must have the ability to enforce them according to its judgment. It can grant graces and privileges, when they depend solely on her free will and do not infringe the rights of anyone; it can and must grant them to its members rather than to others. Thus, the republic can give to its citizens, in whole or in part, the sovereign rights, the taxes or emoluments, the tolls of the bridges and the roads, all things that neither does the individual prince pay for himself. It can allow the hunting in its public domains, but not in free and private property. It can grant or refuse all of these things according to its will and in the measure of prudence. However, who will not understand? Favors and

distinctions that put a lot of people in a privileged position, among the subjects incite feelings of inferiority, hurt their pride, awaken in them envy, and make the government more or less odious to them. **But on the other hand, it must also be recognized, these distinctions flow from the nature of things; they are based on the difference of social relations and on scrupulous respect of the law, since they injure the property of anyone. Nobody has the right to free benefits, from simple favors; and in things which are not strictly due to anyone, the community as well as the individual, the republic as well as the prince, can without injustice show themselves more benevolent and more generous towards some than towards others.**”

“Moreover, the bourgeoisie in the cities of the provinces and in rural communities, often enjoy advantages and similar favors, which belong also to members of sovereign communities. The citizens of towns or provincial municipalities exclusively occupy the posts in their public establishments; they are exempt from certain tolls and other local charges; they enjoy the rights of hunting and of fishing on their communal property. Despite all this they are not called privileged. Indeed, here as everywhere, no inequality of rights between large and small, but inequality of fortune. And this inequality, at the same time as it links citizens together, binds them more closely to the common thing. If you want to mitigate the inconvenience it can offer, don’t close the community’s doors to notable men, but make it possible for them, under fair conditions, to acquire the right of citizenship. This possibility will disarm envy, sustain hope and give a wise direction to legitimate ambitions.”

“But from there it follows a disadvantage which is not found in royalty; it is because the republic rarely offers its subjects the means to rise to honors, to acquire wealth, to satisfy their ambition. Looking hopelessly into the future, removed from honorable and lucrative functions, they limit their activity to the small jobs of their village, to the exercise of industry or to the idle enjoyment of their property.”

“Here is the final difference that we must note: the republics’ means of enlargement are lesser, which is why their land is usually smaller than that of monarchies. The republics cannot acquire territory either by hereditary succession or by marriage. Testamentary or other donations offer them a bit of resources; because they are made in preference to churches and pious donations, by means of which they go more directly to the benefit of all. Secular corporations have no blood relatives. All resources are therefore left with purchases, exchanges and other onerous contracts; but they rarely have the opportunity and the means to take advantage of them. Agreements without territorial acquisition, such as favorable alliances, conditional submissions, stipulations of political servitudes, open themselves up, it is true, in front of their zeal and their activity, and can in a way offer important compensations; Rome, as well as other sovereign communities, knew how to turn them to their advantage as much by perseverance than by skill. But republics are hampered in the negotiations by the divergence of opinions in the councils, and by the more or less inevitable publicity of the deliberations; and, as indeed we experience more reluctance to submit to a collective lordship than to an individual prince, they find fewer benefits than one might think in these ways for expansion.

As for the conquests, they are not impossible in the states of which we speak: history shows it by striking facts. In the early days of their existence, and as long as they have to fight for their freedom, republics are more warlike, more turbulent and more dangerous to their neighbors than monarchies, and when they expand their territory it is usually by the force of arms. But as long as the struggle is over, the threat disappears and the time of rest has arrived; when after the defeat or humiliation, ardor and passions are turned to the affairs of the interior, republics abdicate their love of war and conquest. Their citizens are involved in the growth and the enjoyment of their private fortune, and it is seldom possible, in corporations which are numerous and more or less softened by repose, to awaken the old vigor of the public spirit and the primitive energy of characters. Let us also say that the great conquests always and so to speak necessarily bring about the fall of the republics. As they are obliged to entrust the command of their armies to one of their fellow citizens, sometimes even to a foreigner, it happens that these generals acquire, by their victories and by the numerous adherents whom they attach to their fortune, a preponderance of power that they use to command, and they no longer put up with civic equality. Sooner or later they set themselves up as masters, and many of the former fellow citizens help them in their usurpation, preferring peaceful submission, which gives them not least power and wealth, over a freedom that is stormy and often more apparent than real. We see from this that, in this respect again, modest pretensions, a territory of mediocre extent and a benevolent conduct towards neighbors, are for republics an indispensable necessity and the surest guarantee of their existence.”

XVIII. On the fall of republics.

“As the republics or independent communities rest on a double foundation, on the one hand on the artificial union of their members, on the other hand on their collective and sovereign lordship, it follows that they can perish in two ways: first by the loss of their power and of their independence, then by the rupture of the union which linked them as in a bundle, a rupture which can be compared to the extinction of a royal dynasty.”

“With republics, there is no order of succession, nor consequently of struggles for the crown. The division of the territory is impossible there, and the poor administration of the domains less to fear. The numerous employees of all ranks who flock to the kings, for the service of their person and for the splendor of their house, the republic does not care. A treasurer holding the public fund, a secretary, some clerks, bailiffs and a dozen of messengers, a guardian of the common assembly, wood and candles to light and heat the room for its meetings, that’s all that is necessary for the personal service of a small republic. When it comes to a larger republican state, it is necessary to add to these charges the management of the estates, the administration of justice, the maintenance of the troops and the diplomacy, which impose on it the obligation to have a greater number of employees.”

“We do not generally like to be governed by a master made up of a large number of men who, personally and individually, are indistinguishable from those who are subject to them. And as citizens occupy almost exclusively, as we have already noticed, honorable and lucrative employment, subjects or ordinary inhabitants are deprived of a host of advantages which they would find in the service of an individual prince. Republics must therefore encounter, much more than kings, hatreds and formidable enmities in their subjects, and they can never count on their sincere and constant attachment. Let us add that internal wars are much more fatal to republican states than to monarchical states. On the one hand, dissatisfied or insurgent subjects can easily, thanks to their connections, form conspiracies among the governing citizens of powerful parties, which more or less paralyze the measures adopted by the majority; secondly, the sovereign assemblies, once carried by passion, become more violent than individuals. Confident in their rights and in their power, they reject any measure of prudence as a weakness, and thereby prepare future calamities.”

“One cannot divide a prince against himself, precisely because he forms a single physical person; but in a large assembly, the division is easy and often unavoidable. Would you say that everyone loves the common good and the fatherland, and that all hearts come together in this generous love? These platitudes devoid of meaning, never produced peace and harmony. The common good, the love of the fatherland, what is that? We attach to the word fatherland multiple and diverse meanings, ideas sometimes broader, sometimes narrower. By homeland some mean the country and its institutions, laws and customs inherited from ancestors, property and institutions we want to transmit to the posterity; the others see under this term only the national soil and its inhabitants; still others restrict it to the reigning community or simply to the social class of which they belong; and in all times fanatics and ambitious people have met, who regarded their own cause as that of the country, and who, sacrificing everything to their particular interest, still claimed to serve the republic.”

“On the other hand, it must be admitted frankly, true patriotism does not reside among poor citizens who, in fact, have neither place nor job in the republic. In this social stratum, some envy the fortune and well-being of the upper classes; others continue to want their downfall and ruin; others provide for their needs by industry, and are content with any state of affairs which gives them, or at least seems to promise them, a secure and convenient existence.”

“The third cause of decadence and of ruin for republican states is the excessive shrinkage or the overextension of the ruling corporation; and yet it is difficult in the long run to avoid either of these two pitfalls. Everyone also understands how difficult it is that peace is maintained among men infatuated with equality, which touch and crumple at all points in a narrow space. Finally, where of the few competitors vying for power, everyone can aspire to exclusive empire, and the preponderance of a single man can be settled and consolidate almost without obstacles or challenges. Now, if we throw ourselves into the opposite extreme, if we widen the association without measure, if we admit all the inhabitants of the country into its enclosure, we deprive it of all value. The public spirit soon disappears in the face of general indifference. The noble feeling of honor, which gives birth to devotion, is only kindled by distinctions. Now, what distinction is there in belonging to an association of which everyone is a member? The traditions of the ancestors disappear to make room for a thousand different opinions. Because the very large number of new citizens recently admitted can have neither the knowledge nor the principles, and even less the traditional feelings necessary for the conservation of the republic and for the good administration of its affairs, it is also impossible for peace and unity to remain long in too large an association. The members do not know each other, cannot trust each other; instead, they necessarily conceive towards each other feelings of distrust and of jealousy.”

“But when a citizen, already enjoying a high esteem, arrives at the possession of vast estates or immense capitals; if the number of debtors and of his servants include many of the citizens, and among the subjects of the republic he has many clients; if he joined his amiable qualities, the seduction of language and manners, the intellectual and moral superiority; if moreover he occupies (which almost always takes place) the first dignities of the state, presiding over its councils and commanding its troops; in short, if he brings together in his hand the personal power and the delegated power: in this hour, the slightest jolt from the outside or from within the republic glides like an irresistible slope in the state of principality or monarchy, of individual sovereignty. Whether the state retains the form of a republic or not, it does not matter: the all-powerful man will obtain the plurality of votes in all deliberations, or else he will have his will carried out against the wishes of the majority.”

“Thus, when the individual preponderance has broken the social bond, when equality no longer exists except in memories or on paper, and when other relations have been established in the nation, the force of things encroaches from one place to another, everything has changed around it, the republic is now deferred to a principality, whether it temporarily preserves the shapes and republican phrases, or that by their removal, the public affairs become by fact and by law a *res privata*.”

“Too prolonged a rest destroys souls who care of the union. Passions therefore flow into the agitations of republican life. Ambition, rivalry, the opposition of views and interests multiply disorganizing factions. At the same time the love of work and patriotism disappear without return, and there arise the greed of the pleasures, the softness, selfishness, indifference, political and insolent pomp of pride before the fatal fall. In republics as in monarchies, the epoch of greatest fortune is and always will be the beginning of decadence.”

XIX. On the macrobiotics or wise policy in republics.

In republics, they encompass the order of succession and good (frugal) economy, the selection of employees, moral consideration, cultivating the military virtues without falling into permanent dictatorship, avoiding dissensions with subject, since collective lordships are particularly unbearable, hence a mild regiment is of an absolute necessity.

There are few means of advancement in the republics, particularly for those employees who are not in the class of citizens, and little opportunity for magnificent rewards, partly because there are neither court officials, nor standing armies, nor titles, nor orders, partly because the republican maxims are always opposed to them, and because one must doubtlessly fear in republics the extraordinary distinction of a single citizen or subject. Consequently, the zeal of its employees for service cannot be maintained among the citizens if not by giving a real share in the common good, together with honor and advantage, which is to be passed on to their children...

As an invisible person, the community cannot impose one exterior splendor, it has no magnificent dwellings, nor sumptuous domestic servants; it lives only in its meetings, and apart from these it deals with nothing; it does not frequent any society, it does not go on horseback, it does not take care of hunting or other amusements; though it can sometimes make its existence appear in the public eye with solemn pomp, with particular vestments, etc., or make known its riches, its spirit, and its good feelings with beautiful public buildings that are distinguished from all private houses, and with useful and well-managed establishments. Its consideration must therefore be particularly based on the union of its members, which increases the idea of its power; on shrewd and energetic decisions; on regular and honorable forms; on a certain stability in all things, but above all on the qualities and virtues of its citizens and magistrates.

All republics are very sensitive to any offense which can be done both to the public good and to its citizens, and the courage of each member is increased by the close bond as well as by the equality of interest. Moreover, they are by nature violent, passionate, and rarely yield, because absolute opinions find very easy access in a multitude that cannot conceive of prudential concerns; their citizens accustomed to mediocre luck have fewer needs and more easily bear the burdens; they also extend through their private relationships in all classes and in all states; they find as a consequence, even among foreigners, often many private and public friends, and all these circumstances at first make republics easily superior to monarchies by almost equal power. But as soon as they have secured their independence; as soon as the time for rest and enjoyment has come, then this force disappears; and if on the one hand too long a peace kills the common spirit, and dampens the feeling of a need to stay united, and hence peace can be considered as a subtle poison for the republics, so on the other hand every war is dangerous for them; and wars and which are not necessary for the preservation of independence, although followed by happy successes, inevitably cause their inner ruin. They must not hold organized and standing bodies troops at all, or at least in very small quantities; for since the community cannot command the army in person, nor can it guard as easily as an individual signor over the appointed generals, nor can it keep them within the limits of their duty: so these commanders sooner or later make themselves the lords of the republic itself.

“But almost all the subjects of a republic, distinguished, rich, educated, and who know each other for their own existence, almost continually harbor a secret disgust, although they do not know anything else; and the reason for this disgust exists only in that they are esteemed equal to the rulers. It is true that their dependence also rests on mutual and useful natural relationships,

and they are fundamentally not already subject to some citizens or magistrates, but only to the whole corporation, which is undoubtedly more powerful than them. But this corporation is not seen with their eyes, and in its members, the first of the country see only individuals around them, who are not superior to them in personal consideration and fortunes...”

“You can never rely on a love and a sacrifice, on cheerfulness for a collective dominion, but above all on an esteem and respect for its rights, partly on an attachment of the subjects for their own well-being under a just and sweet government. This reigned in all the republics now destroyed; the most palpable proofs of this have been seen in the times of their destruction; and the most remarkable testimonies have escaped even from their most bitter enemies. But the feeling of duty and of justice, which is still much more important, would have similarly reigned, if the revolutionary ideas, according to which all the princes and all the reigning republics were passed off as usurpers or privileged, had been less propagated in the heads, and if on the contrary they had tried to sow the true principles of political law, which derive from the nature of things, and from the experience that is perfectly in accord with it both in the scientific form and in the historical form. The drawbacks of any collective domination are compensated and balanced with other advantages. Beyond the possible acquisition of the right of citizenship, that is, admission into the sovereign community, communities, of which we will speak very soon, are to be recommended by the actions of their citizens and magistrates when they procure just and honest right, accompanied by skills and useful knowledge; the moderation and sweetness which may very well subsist with the dignity and energy of character; modesty not only within, but still outside the country; the esteem for all private rights and those of the corporation; the sanctity of contracts and promises, and with this a certain stability in all things, tranquility and trust and which is particularly suitable for republics as for a person who does not die; of the regular and protective forms, which do not prejudice the course of business at all, but they are rather advantageous; a generous and impartial justice; a strict discipline particularly towards the members of the republic or its advisors, so that the whole community is always honorable, although some of its members are not without blame; the removal of oppressive impositions, liberality in conduct, hospitality towards foreigners, refraining from persecuting them in any way whatsoever so that they feel here with more freedom and bring favorable sentiments back to their homeland; all this is much more indispensable to the ruling republics for the preservation of inner peace than to monarchies.”

“But since a republic does not naturally die and does not have a successor with other sentiments, it always retains the same maxims, consequently it is inflexible in prudent contracts; in such cases a secret rancor, mutual distrust, or a kind of alienation in spirit always reigns there. But these dissensions and internal wars are very easy to avoid. Every conspiracy, every resistance with weapons in hand on the part of the subjects is already in itself very difficult, and if the collective lordship refrains only from oppressing them and tormenting them unnecessarily, to respect and protect the customs and private rights acquired by all classes of the people, and are not generally possessed by the diabolical spirit of too much governing, but if they let God and other men govern something of their own, they will easily count on the continuation of the inner tranquility.”

A just and gentle government, however, is much more necessary for republics than for individual lords, and also indispensable for their preservation, and this important truth deserves a more particular explanation here. **Collective domination is, to tell the truth, combined with many advantages, because everything in the world compensates for itself; it is never diminishing, and it does not age, it rarely makes new things, and ordinarily requires little or no taxation; but on the other hand it has its great disadvantages, which exist in the nature of things, and which precisely therefore are inevitable.**

It cannot be denied that despite all the sweetness of the Venetian and Genoese government, and of that of the cities and towns of Switzerland, however, a secret disgust and ill contentment has always reigned among the inhabitants of their territory which cannot be attributed to anything other than envy and repressed ambition. Therefore still the ruling democracies are ordinarily more hated than the so-called aristocracies, while the members of those are less distinguished than the members of the others by their birth, riches, sentiments and a kind of vocation, consequently the distance between them and the subjects is not visible. Thus, the magistrates of the sovereign republics must not have a dangerous illusion as to the personal inclination of their subjects, and must not rely on flattery which is contrary to the nature of the human spirit.

XX. On wise policies in republics pertaining to their community of goods.

The key balancing act in a republic is to both reward private advantage and keep the public treasury undiminished and whole.

All communities are founded on almost equal strengths of their members and on a common need which must be satisfied by the gathering of these forces. Therefore they cannot exist except by keeping the spirit of the union and equality as much as possible among the members of the same. This problem is not impossible to solve, but very difficult, because the nature of things seems to be continually opposed to it, and it always struggles to isolate members. As we have already demonstrated this in the chapter of the decadence of republics, the forces and fortunes do not always remain the same, and it is still impossible to entirely prevent the growing power of some citizens. **But for what concerns the common need; this feeling disappears insensibly, and is no longer felt immediately because the primitive purpose of the community has been immediately obtained, because, for example, peace and freedom have been secured. Therefore, beyond the lively and religious feeling of duties, there are common possessions, and the advantages which derive from it, are the first and most essential requisition for the maintenance of the republics, or rather their only strong and constant means of union. They alone effect a constant and common interest, a real bond of connection, without which no corporation can exist very long. In the first place, a certain fund is already indispensable to the necessary existence of the republic, because it cannot become powerful and free except with such goods. The smallest municipality already has something of its own, by which it keeps itself united; and a true republic, that is to say an independent and self-sustaining corporation, can never be imagined without common territorial possessions. Then, the burdens and impositions of a society are compensated by honor and advantages, since their members do not always aspire to perfect private freedom. Temporal communities are precisely like spiritual communities; if they had nothing in common to satisfy their different inner needs, if they did not always have to demand from their citizens painful duties, travails, discipline and contributions, without offering them so many sacrifices in return, neither honor nor other advantages, nobody would want to be a part of these societies, and they would soon destroy themselves. The lowliest village also provides its citizens with certain advantages in wood and fodder, where it demands common troubles and burdens. Without the distinctions of commendatore in the order of the knights of Malta, the stay of that island, and the war against the infidels, it would not have been so attractive; and the same can be said of the benefits of all the other orders of chivalry. If one also had to think solely about his material existence in monasteries, he would not submit to so many painful duties and disciplines. All the republics, all the free cities and towns similarly had, sometimes larger, sometimes fewer, so-called podesterias, prefectures, which formed the survival or compensation of citizens and magistrates who sacrifice themselves in the service of the republic.**

Furthermore, it is no less necessary to always keep alive that spirit of union and equality of law, partly through statutes and laws, partly to instill it in the feelings and private affairs of all the members, and thus to make it their own second nature.

XXI. On prudent citizenship and naturalization laws.

Proper republics are highly restrictive in their citizenship, and generally do not admit those with excessive preponderance of territorial wealth. Haller is against census suffrage; taxable income is not a good proxy for screening upright citizens, which must be accomplished by other means like a record of judicious service. Either way, there is no assumption of suffrage being open to every property-owning freeholder as in the constitutional-liberal states; no one who hasn't been explicitly enrolled by the independent corporation into a citizens' register is eligible.

“Men dislike and esteem that what is difficult to obtain, and a privilege, which everyone possesses cannot be called a privilege. Therefore, in the monarchies orders, titles, letters of nobility, etc. have been so vilified because of their frequent participation, that they are no longer valued as rewards, and that almost everything must be paid for with money. The same can be said of the right of citizenship in republics. The tyrant Caracalla wanted to destroy the last remnants of the republican spirit when he declared all the inhabitants of the empire to be Roman citizens. On the one hand, the ancient Romans thus had to lose all preference and personal sentiment; on the other hand, the new ones were only subjected to military service and contributions; their right was more illusory than real, it was given to them for their own disadvantage, and in general such uniformity has since then been the maxim of despotism, for since all cannot be equally powerful and free they were all made equal servants. After all, we don’t want to repeat what has been said elsewhere about the dangers of too easy and too unlimited enlargement of the community. It in a word kills the spirit of community where it does not produce a general indifference; makes it impossible to procure these advantages for all citizens who have to make up for the burdens that are required of them, and thus produces a bitter disgust, and often still troubles in the interior. It offends and irritates the old citizens, upsets the traditions of the fathers, the fundamental pillars upon which the existence of the republic rests, and finally the interests of the citizens become so different and so opposed, that peace and unity can no longer exist among themselves; then again history proves, that republics perish sooner from too frequent than from too rare admission.”

“This is the reason why the right of citizenship in the year 1639 was forbidden in Bern, akin, so it was expressed, to put a stop to the devouring passion of governing (der verzehrenden Regiments).”

“Moreover, according to the principles of true prudence, one cannot criticize the policy used in different ancient republics, namely that the children of citizens born after the admission of new citizens cannot immediately aspire to posts in the great or small council of the republic. Its main and essential advantage is not only that it reassures the first members who have more ancient and stronger rights, over the fear of being expelled by the new citizens from possession and enjoyment; but its main moral purpose consists more substantially in this: to moderate the unhappy personal ambition, to remind new initiates, as soon as they enter society, of their own sacrifice, and the moderation of their pretensions, and to subdue them as it were to a republican novitiate; to also give the public bond a character of stability, and to provide assurance to those same people, who, from their adolescence have been nurtured and accustomed to the republic constitution, its laws, and its customs, who possess the necessary knowledge and principles of tradition, therefore they are of unanimous thought with the rest of the citizens, and they cannot consider themselves in their circle as foreigners, nor be regarded as foreigners by others.”

“So Plato wanted the number of citizens of his republic to be no more than five thousand: The Greek republics were similarly limited. Genoa took ten citizens every year, that is to say seven from the city and three from the countryside in the so-called old nobility, that is, in the circle of

those capable of governing. Berne stabilized in recent times on the number of 236 families of citizens, and decreed that whenever three families would die out, the right of citizenship would be given to three new ones.”

“And it is again that these natural rules were recognized and followed by the Venetian republic when it excluded from its deliberations in the 13th century the vassals of Cyprus. Basel in the year 1445 excluded the feudatories of Austria when they did not give up their fiefs. Aristotle already said that the citizens of a free republic should not depend on anyone, nor be accused of any crime, and not be subject to a public dishonor. In almost all republics, it was established that people who engaged in service or as vassals with powers that had hostile intentions, who went bankrupt or were burdened by debts, who were in extreme poverty or were supported and nurtured by others, or served in other people’s homes, etc, were either to lose the right of citizenship, as long as these aforementioned reasons lasted, or to be suspended from the same, or at least be barred from certain offices. The basis of these and similar exclusions, such as those of illegitimate birth, difference of religion, etc., rests upon a certain feeling of necessary equality, for the members of a free community must in every difference of outward circumstances of fortune be at least equal among themselves in political interests, as in personal liberty, and in irreproachable outward honor. It would also be desirable for the preservation of concord that they were also equal in religious belief, and that they lived according to the same principles and the same rules of morals.”

“The possession of a certain fortune, which today we want to recognize as the only guarantee of fidelity and ability, still comes less for this purpose. Not only is it very difficult to build this fortune, but besides it is of an inconstant nature; what you have today can be lost tomorrow; and an applied man, a bursar [trader] full of talents is more useful to the republic than a rich prodigal who possessed millions but who is reduced to begging in a few years; besides, there is something revolting, to ask of prospective citizens a fortune that often the older citizens do not possess, nor can they possess, and consequently to establish, that they must be richer than these. The deposit of a fixed amount of money has fewer drawbacks, as it is sought voluntarily, and that the product is often used for purposes useful to the community; but it’s not a perfect rule, because on the one hand it can only be arbitrarily established, on the other hand, because the first citizens have not similarly bought it, and mainly because the good of the corporation does not belong to each of the members, but only to the totality and its descendants; further adding that admission is no longer an honor [but rather a matter of payment].”

XXII. On prudent electoral laws.

Haller attacks the various ‘republicanized’ constitutional monarchies which established all sorts of long and onerous suffrage criteria for voting in parliamentary elections, since the root error is that a monarchy is not a corporation of equal members, and so in order to jury-rig such a form into a society marked by unequal personal status and land tenure, the right to vote had to be extended to “man” in general, thus establishing the fictional community, and upon which to avoid the ensuing deluge the eligibility to vote had to be restricted by a wide

variety of criteria. In a republic proper, the corporation is not a totality that engulfs all social relations, but a distinct company with proprietary rights of governance, to which no one is born into by default, but is admitted to it by the company's discretion. Everyone else is some form of non-citizen subject or resident. There is thus no need for poll taxes, literacy tests, etc. since there is no default presumption of eligibility to be a part of the independent corporation.

Consequently in a proper republic there are no popular elections, electoral districts, single-member constituencies or anything of that nature. The councils elect their own members like any other company; they do not start creating subdivisions of their population so that the latter go on to cast ballots and fill up council seats with "representatives," which in a proper republic do not exist; the councillors are not plenipotentiaries of sovereign power, but the 'shareholders' so to speak of that sovereign power.

Haller also rejects the idea of a hereditary patriciate, finding it contrary to the spirit of republican equality, and distinguishes this from a natural charisma and respect that certain families have by generations of service.

“As far as all the members of the entire community, who have the right of suffrage can easily be brought together for all affairs, or at least for the most important ones, there is no need for representative advice at all; since he who can exercise his rights in person does not need any plenipotentiary. Such a representation would also be dangerous in this case, since it would not only restrict society, consequently weaken its forces, but would still abrogate the rights of most of the citizens, consequently it would irritate them, and turn them into enemies of the republic...”

“Most of the independent republics, under different denominations need, now more, now less, a plenipotentiary representative council. Immediately that they count only a couple of hundreds of members, of which continuous assembly is not possible, they are then forced by nature either to formally transfer their power to a more restricted council chosen from their womb, or to abandon it and surrender all power exclusively to the larger council. Insofar as it is possible, according to the nature of the circumstances, it will be good and useful to reserve and grant here to the whole community some rights albeit limited, such as for example the ratification of laws that oblige persons and the private property of citizens, approval of contributions, election to the highest places of honor, etc.”

“But as soon as a community, due to the multitude or the distance of its citizens, is forced to transfer all or part of its power to a permanent council, or rather to have one according to the will of its founder: it must be according to the rules of prudence to have particular regard to the number of its members, under the conditions of eligibility to election, and the manner of election itself. The number of representatives must be so large that their meeting deserves some consideration and trust, that their decisions are valued by the will of the whole community, and that private interests cannot so easily be dealt with there. Consequently, this number cannot be proportionate to the population, nor to the totality of all citizens, as our political arithmetic today would have it. The determination of this ratio would be simply arbitrary, and if one wanted, for example, to admit by the same measure for a republic of two or three thousand citizens, as for another of hundreds of thousands, or vice versa, this proportional equality itself would fall into ridicule; since a small republic would only count two or three representatives while a large one could count up to twenty or thirty thousand. But here it is a question that properly the whole community itself should deliberate or decide; and justice demands to approach it as far as possible, and consequently to receive in representative council as many citizens as they can comfortably gather.”

“In the new philosophical republics, on the contrary, in which they wanted to unite by force a general immense community, all men, only because they were men, without equality of relationships and without a common need, they immediately felt the need to establish certain conditions, partly for the formation and practice of that right of citizen (which previously did not exist at all) and for the eligibility of election to the representative council; and the drafters of constitutions believed themselves to be very wise and provident, when they could prescribe a good number of conditions, for example the possession of various estates, or of a certain capital, the payment of a fixed sum of

taxes, the residence in this or that department, or even the possession of science and knowledge, a previous exercise of subordinate positions, etc. But this whole theory of distinctions that you see in different classes of citizens who have no equal rights, and which has never been adopted by any really existing community, is false and arbitrary; it is therefore almost impossible to execute it, because most conditions can never be fulfilled; it contradicts the established principle of equality under republican law; and if this nevertheless seemed necessary to prevent greater evils, it only proves that these great communities, which consist of very different elements, are simply not possible, but must be restricted by force in one way or another. All those aforementioned prudent precautions were nothing but fallacious corrective means, miserable trifles, which were to cover the radical vice of the entire revolutionary system. They might have arisen in part from the reason that the free communities were confused with the convocations of the Estates-General, and that the monarchical aspects were transported to the republics and the republican aspects to the monarchies, because the new philosophers had not so much of one as of the other but the most imperfect ideas. In the imperial and provincial estates, the nature of things brings their eligibility not from their personal quality but through the possession of certain properties, not because the same gives more eligibility and interest to the administration of the state, but because through that alone one is committed only to the prince or king, and consequently has been called by him to give counsel or approval of certain things.

In true republics, on the contrary, one has the right to exercise his suffrage and to be approved, not because one possesses a territory or wealth, but because he is a member of the society, as soon as this corporation exists, and that in any case few conditions for the eligibility of suffrage have been established; therefore as to the other legal limitations of the eligibility of election to the representative council, some are unjust, illusory and even pernicious. **One's family background does not need to be determined, since citizenship is a corporation of men and not of women; the latter are never received there as citizens.** They are not written on any register, nor obliged to any particular duty, they change with their marriages their country and their nationality, etc. **Any act of admission to the enjoyment of the perfect right of citizen is always to be requested, and for this admission a certain age must undoubtedly be established.** If, however, a few more years are required for posts in the sovereign council, this does not offend anyone, and it only happens to diminish too severe competition, to thus procure peace, to bring more experience to the councils, and to put a damper on the passions of youth. It doesn't depend on eligibility to election whether citizens capable of suffrage are rich or poor; and in all the republics we have seen certain distinguished magistrates who had little or no luck in fortune while living by employment or other profit. On the contrary, providence ordinarily compensates for their drawbacks; it gives to some more external goods, to the others more moral strength and more capacity; the poorer must excite their talents more and often provide the most essential services to the republic, while the wealthier must always be united with lively love for the fatherland, but rather often lead to selfishness."

“The introduction of a legally privileged patriciate offends the just sentiment of equality and the self-love of other citizens, necessarily awakens envy, and makes some of the citizens enemies of others, so that a republic must just as much more avoid it as dissensions with its non-citizen subjects. If this legal patriciate lasts a long time, without extinguishing families being supplied with new ones, it also destroys in the end moral strength, and annihilates every activity, every effort, both with the patricians and with the citizens themselves.”

“In the chapter where we talked about this law in general, we have shown that in all the municipalities, from the most miserable village commune to the great republics, the highest and most conspicuous citizens, as well as the most respectable and famous, have always been placed at the head of business; that as many kinds of superiority attach themselves to inherited objects, the same advantage still passes to their descendants, and therefore the natural patriciate results from it by virtue of which the same names are continually seen in the chronicles or annals of all the villages and all cities. The one who observes with insight the interior of the republics will find a certain gradation here. Without it being prescribed by the laws, much less that an exclusive directive has been made, there are in all the republics the so-called consular families whose members often hold the top positions; the senatorial families, of which one member ordinarily takes a seat on the regency council; others where this has happened rarely, or who have never had any senators; again others of which all members ab antiquo ordinarily have seats in the grand council... In ordinary life, a distinction is made between old and new families, between the powerful and the weak, between the erudite and the ignorant, although there is no prescribed law for this, nor a specific dividing line; although the old families are extinguished, and the new ones take their place, and although the small become large, and the great small, always they remain with equal rights. This difference, which is lost in insensitive gradations, is nothing other than the natural graduation of consideration founded on virtues, ability and external fortune; a natural order of things, not made by men, and of which everyone is happy... The natural patriciate produces tranquility and contentment; the arbitrary patriciate on the contrary, hatred and rancor.”

“The constitutions of the republics are mostly dealt with so superficially in our historical and statistical books that there is often no clarification, or only false ideas, precisely on the most important points, as for example on the foundation of the community, about obtaining the right of citizen, over the conditions of suffrage and election, on the formation of their large and small councils, on the relations with their territory, etc. In this way we know in an elementary way the representative councils of many republics: In Athens it happened with fate [sortition], through, so to speak, an invisible superior power and not through the citizens themselves. In Rome the senators were first appointed by the consuls and later by the censors. In Venice there was not really a true representation, but the primitive great community was in the year 1297 restricted or limited to the families and descendants of the same who attended the meeting at the time, by means of the lock of the council established by Duke Gradenigo, and every so-called Noble sat on this great council, without any other election than that of a certain age. Venice consequently, considered in its interior it was a kind of democracy, but however it had, in addition to the Signoria and the college of government, also a Senate (Pregadi) of about three hundred

members, in whose hands the most important affairs of state passed, but confirmed and dependent on the great council. In Genoa likewise the so-called great council was fundamentally the entire free community; the small council, which consisted of two hundred members, was its own representative council, and was elected by the thirty persons appointed by the Signoria or by the college of government...”

“All these truths, which however are well known to a few, are confirmed by language of the chanceries. The supreme magistrates of old Bern do not properly call themselves the grand council, but Rathe and Burger, councilors and citizens; the business of election zu Burgermachen (to admit in the number of citizens). The expressions are found in ancient documents: ‘Raeth and Burger, so mannennt die zweyhundert der Stadt Bern, als sie von der Gemeinde kamen...’”

“The following example will prove how much the wise human spirit can be upset by revolutionary principles. After the current constitution of Bern, no doubt a little extravagant, existing since 1815, the election of the two hundred members taken by the citizens of Bern, happens as before by the council and by the XVI, that is to say by the members of the small council (as they are Bernese) and sixteen citizens taken from the two hundred. The elect of the other cities are not chosen by the citizens, but by the judiciary, and the employees in the districts are not similarly chosen by the citizens, but by the superior clerks of the place and by those in charge of the community who are appointed by bailiffs, i.e. always from top to bottom. ...

Berne complained of having no representative, as if the two hundred were not citizens, or as if only the people in the country were commanded, and could not themselves elect their representatives; as if the latter were not similarly chosen by the citizens and in the number of the same, when this election happens by a respectable colleague of the council and of the XVI, as when it happens from a weak and often little frequented body... Hence there is no reasonable basis for it to represent the entire community in this business of election, since a division is not a majority, but an obvious minority; and since the plurality of votes alone decides, so the result of any election can fall into absurdity; while it is possible that in a small body the representative elected by the plurality of a single vote would have been rejected by all the other voters.” ;

“The nature of this election is no less in contradiction with this fiction; in spite of all the decrees the chosen individual will always consider himself as the representative or plenipotentiary of the district to which he owes his election; on every occasion he will represent and protect only the designs and wishes of the same; and as all the other members will do the same on their side, they will necessarily experience invariable divisions in the council, and common interest will be sacrificed to some poorly interpreted local relationships or to certain private interests. To this are added the inconveniences and difficulties of all popular elections, which are always a time of upheaval, and seldom a happy result. Most people are ordinarily not free enough to give their suffrage according to their internal conviction to the most worthy; thus their right of suffrage has no other value and purpose for them than to render a passing service to an advocate or a friend. The elected representative must not demonstrate the esteem he owes to his superiors, but

must flatter an ignorant, inconstant people, and full of passions which he often esteems little in depth, and which is ordinarily still dominated by factions. Dissimulation alone achieves victory, while precisely the most worthy and capable subjects whose faithful and open character despises the vile artifices of the demagogues, must remain behind or even renounce themselves out of modesty. And this is how popular and per-district elections corrupt the morality of citizens; everyone thinks only of his visible party, and not of the invisible common good, and he can be considered happy if he does not see a formal buy-out of votes, of the rougher or finer brigands, of banquets, and even of threats, in order to abandon the good of the republic to the casual result of the interest of drunkenness or terror. All these evils are the necessary consequences of the faulty method of making the great council or representative body eligible by means of some divisions of citizens; and here again we see instructive proof that the violation of justice is everywhere and always coupled with disadvantages.”

“According to the natural order, fathers raise their children, the magistrates their subordinates, and this true elevation is much more honorable for the latter than if they were to brigade the favor of the people, that is, of an inconstant mass which is esteemed less as it cannot give so much honor, because it itself does not possess it. Here the candidates do not need to conceal or publicly show an indiscreet ambition, to sacrifice goods, health, and customs in banquets and bacchanals; on the contrary, they are sought, and if their conduct is irreproachable they only have to show themselves as they are...”

XXIII. On forms of voting.

There is no optimal system of voting, and Haller says that sortition and drawing lots can often be the most effective choice. Nonetheless, for electing magistrates among councillors, he does speak of a system of write-in ballots which are then narrowed down in successive voting rounds until pluralities of votes become an absolute majority (not quoted here).

“The prudent forms of election both for supplying the representative council and the governing college or regency, as well as for the employment of all the other higher posts and offices, are in the republics one of the most important but also one of the most difficult points. They provide a new proof of the inconveniences which are united with the nature of a collective person. The election by the hand of a prince or up to an individual does not have the slightest difficulty, since it is his will only; the person never appears among those eligible to election, and is not attached for the execution of this affair to a council gathered at a certain time and place. In a community of people on the contrary, not only do the members have to be gathered somewhere, and the will of plurality must be carried out by means of artificial operations: but often we see the strange circumstance that the voters themselves are elected, that the councillors are at the same time eligible for re-election, and also compete together, that is, they compete against each other. Besides, everyone has his friends or relatives among the other eligible voters, and will use different requests and supplications to their own advantage: therefore the elective forms, by which the true will of the majority is obtained, can infinitely contribute to the good and health of the republic.”

“According to the rule, the right of election belongs to the whole community or to the council that represents it, as well as to the collective lordship, when it has to transfer it to other magistrates. But due to the great waste of time, it is impossible that an entire community or an assembly, which represents the supreme power in a republic, would choose its servants and representatives like an individual lord. It would have to meet almost every moment, it would ordinarily have no knowledge of the functions of the job, nor of the qualities that candidates must have, and it would also be difficult for the latter to be able to recommend himself personally in such a large multitude of members. Consequently the supreme assembly of a republic is obliged for its own good to leave many elections to its narrow council (“government”), that is, to the governing college, regency, or to other subordinate magistrates. But prudence requires that it at least reserve to itself the occupation of all the posts and services that are in immediate relation to the supreme power, such as that of its president, of his secretary, of all the members of the executive council, and of the posts they occupy, of the presidents, councilors or assistants in the main colleges and departments, the supreme commanders of the troops, e.g. ambassadors to foreign powers, senior employees in different parts of the territory, etc., Because in the republics, where the collective sovereign is not visible, it is more necessary than in monarchies, that the bond of dependence and of gratitude belong not only to the highest magistrates, but to the entire community, and the latter is always to be considered as the source of all honors and all subordinate influence...”

“In the new revolutionary republics which preserved many of the monarchical customs, we moved very far from this principle, and gave a directorate or a so-called executive council not only the disposition over the troops and over finances, but the appointment to all the posts and to all the employments without distinction. It therefore had in effect the supreme power, and was not to represent it in the eyes of the people! Not one of the ancient or true republics has had such a preponderant body.”

“But as soon as ambitious factions or only ordinary parties arise, then the drawbacks of these faulty elective forms appear to their advantage, and often produce a result which excites general disgust. This always happens when a person is elected, of which it is felt that he would not have been elected by a true and free majority, or when it is heard that another, who everyone would have desired, was excluded. So we should not be surprised, if many republics have thought in later times, to abandon the elections to fate or at least to let a lot of gamble enter into them. However, this never happened in the first place, but only after evident and often repeated abuses which could no longer be remedied otherwise. In this way they tried to keep internal peace and prevent dangerous parties, avoid the loss of often unbearable time, and react against the arrogance of some leaders, factions or families. **Among individuals who have equal rights and equal power, fate is often the only means of putting an end to collisions, because in any case it causes less disgust than the outcome of a minority vote. Thus in Athens almost all posts were drawn by lot with the exception of a few principal occupations . The same was practiced in many states of Greece, in Magna Graecia, and in Rome for the places of Scrivano in the public treasury. In Bern the bailiffs (die Landvogteien) whose administration was limited to six years and of which nearly eight were released every year, were drawn by lot among the married members of the great council, but for example, according to a certain order of rank, by virtue of which the members of a past promotion could not at all compete by lot with those of a new one or with those who had already been bailiffs, so that little was lost in waiting a little more, since almost everyone came to his turn. In all the other elective posts, the votive tribunal was reduced to two thirds by means of differently colored ballots (gilded or silvered), so that the lot fell on a part of the eligible candidates, and the votes could not justly be counted in advance, leaving them to fate, thus avoiding bitter reproaches and enmities.** In Basel almost all the jobs and also the posts of professors in the university were drawn by lot among the candidates, but so that the professors could mutually change their position. In Freiburg a similar procedure took place in many areas. They voted with small ballots gathered in different boxes attached to each other, and each of which was marked with the name of a candidate, but which had no separation underneath. These boxes were then shaken several times, then opened, and that candidate was chosen with more votes...”

XXIV. On deliberation and rules of order.

On quorums and so forth. Haller strongly criticizes presidential systems of government in a republic, and any preponderance of the executive. A republican system of government is and ought to be fundamentally conciliar in nature, with checks biased against executive power. He also criticizes the idea of a “conflict of interest” as unimportant and ultimately destructive of all collective deliberation if taken to its conclusion.

“Sometimes it happens that these decisions, under the guise of the plurality of votes, are basically only the result of a minority. Now this happens by means of a hastily convened tribunal or at an inopportune time, in which most of the members cannot attend; others, on the contrary, who have taken the bait with the president or with an ambitious faction, are cited to appear there more promptly; now the objects to be treated, the reports or other writings around the object are not deliberately deposited in the chancellery, so that most of the members either do not appear, or cannot be prepared for the matter, and consequently they must abandon the decision to a minority that has previously been able to come to a consensus... Sometimes, because of the impatience of a party, its suffrage is given too early, or the questions are not raised, or the deliberation is closed simply so as not to let the people speak...”

“In all decisions that must take place in any community, it is necessary to take care, in addition to the convocation of the meeting, first of all to the initiative, secondly to the examination, and thirdly to form the resolution and the decision.”

“If the convocation of the supreme magistrates and the proposition of this or that affair depended solely and exclusively on the president, he would obviously be the lord of the republic; it would be in his will to harm the general will, to impede every decision, which in the end would be the same as resolving it with his private will, the opposite of what plurality would have resolved. Therefore most of the ancient and true republics have tried to avoid this inconvenience. If for example in Venice four of the six supreme councilors [signori] were unanimous, they could even without the approval of the Doge make a proposition in the council. In Bern the great council could, on the Mayor’s [Schultheiss]’ refusal, be gathered for a certain object from the Heimlicher (lit. ‘secret people’). Two Heimlicher were members of the grand council, and had the right to sit and give their report to the small council in order to oversee the rights of the grand council. The eldest secretary was ordinarily moved to the first vacant seats of the council, and both represented what the tribune of the plebs represented in Rome, or what is generally called the procurator of the municipality (Gemeind – Mann). The mere existence of this rule ordinarily kept presidents within limits, so it was almost never violated. On the contrary, in the new revolutionary republics, in which there was so much talk of artificial constitutions and guarantees, but in which, properly speaking, there was nothing but the sovereignty of a sect as a goal, these natural precautions were totally forgotten; consequently their presidents were almost always despots, since they often commanded over the common interests much more indefinitely than elsewhere the kings over their own.”

“Since shortly before the so-called executive power had to be simply a slave, devoid of will, and on the contrary, since the intelligence and the creative genius had to reside only in the alleged legislative power; so immediately afterwards, with the same unnatural manner, the privilege of the spirit and of the will is granted to the executive power, and every intelligence, any manifestation of thoughts were denied to the legislative. So here, as everywhere, we fell from one extravaganza to another. On the contrary, both prudence and republican justice are proper to regularizing that extraordinary initiative that comes only from private propositions, and in line that a single faction cannot unexpectedly propose its private desires at a chosen

moment, cannot establish them in an instant under the pretext of public concern. All republics have employed similar precautions, the simplest, namely those which least embarrass their just freedom, are still the best, because they are really observed, and because free men let themselves be guided only with gentle reins. The main point is this: that such a proposition which one cannot know before, and upon which consequently no one can be prepared, cannot be deliberated in the same session, and can neither be accepted nor recognized, like all other affairs, but must be placed later in the number of affairs to be dealt with (*tractanda*), to decide, whether or not it is worthy of a more particular examination, since only one member is not authorized to decide on a relationship, and there is always a need for the decision of plurality. If they find the proposition to be of great importance, then it is done; but otherwise the same is put back to the examination of an already existing college or a particular commission, and this sends its report according by the usual forms first to the more restricted council, that is to the grand council, and then to the supreme council [regency], and so the affair, like all the others, comes according to that the circumstances require it, sometimes deferred, at other times accelerated.”

“But from the epoch of the revolution the new governments believe that they know everything, only because they call themselves governments, and even the lawyers themselves are so jealous of their power that they believe it is contrary to their honor if they ask for advice for something they don’t understand.”

“According to experience, the quorum is usually set to a fourth of the councillors. Thus, for example, in ancient Bern, where the great council ascended to more than two hundred members (but of which many were always absent due to service in dependent territories, or because of political or private affairs), the council opened whenever there were fifty members present. According to the rule this minimum should increase rather than decrease; but as soon as the council has begun, it continues and can make valid decisions with just reason, although the number prescribed for opening should decrease with the departure of some members. For those who leave the meeting out of mere convenience, and thus violate their duty, cannot prevent others from fulfilling theirs, else this would result in the revolting abuse which often a single member or a faction of a few individuals could, by leaving the room on purpose, ruin the entire meeting, prevent any deliberation, and consequently put their private will in the place of the general. This rule was also adopted in all the ancient republics as soon as the deliberation was open, it could be continued, taking care whether many or few members were present, and only in our revolutionary and arithmetical century has been it said otherwise.”

[on so-called ‘conflict of interests’]

“If one were to propose, for instance, the prohibition of the export of wheat, and one wanted (as this happened in many ancient republics) to exclude all the owners of agricultural goods from deliberation, because they find their interest in the high price of wheat: they could answer that those who consume it are on the contrary interested in the low price of grain, and must likewise retire. The same answer would have to be given in the summons of debts, or in a tax that falls on land and immovables, on capital, or on certain branches of commerce, so we would have to

exclude all creditors, all landowners, all capitalists or merchants from the right of suffrage. Since the interest of the creditor requires the prompt and just collection of his debts, and that of the taxpayer, the apportionment or the deposition of the contribution of funds or capital; so on the contrary it is worthwhile for the debtors either not to pay at all, or only when they are comfortable, and for the different classes of citizens to avoid the imposition in question, and to make it fall on other individuals. In these and similar cases, we would have to say that no member at all could take part in the deliberation.”

“The best means of avoiding difficulties [with plurality voting and lack of a clear majority] is to determine clearly, in the right order, and develop in the commission report the questions to be decided, or in resolving them by article in the planned decisions, over which it is possible to deliberate and vote from point to point. In this way the diversion of opinions is largely prevented, and the relationship itself still ordinarily has a presumption of a greater knowledge of things which gives it the preponderance almost in every case. One can therefore still simplify the operation of suffrage, by seeing all the different opinions expressed in the council itself, either as preliminary questions or as simple supplements and improvements (amendments) of the opinion, and fly over each of them to recognize if they have the plurality of votes for them, and if they surpass in weight the proposition of the commission report.”

XXV. On precisely determining reserved powers and functions.

More powerful posts ought to be frequently rotated, weaker ones can be safely held even for life terms. Balancing the various governing and directing colleges with the council. Emoluments and bounties obtained from republican posts are natural and advantageous in promoting fidelity to the republic.

“There is nothing more dangerous in free communities than those violent struggles for competence, particularly between the community of citizens or their representative council, and the executive board, where each party reproaches the other with transgression of the fundamental statutes and the usurpation of an illegitimate power. They irritate the spirit and as there is no impartial natural judge over these disputes, so they often cause internal wars and by means of them the ruin of the republic itself. In a monarchy, where the lord of the country consists of only one person, this inconvenience is very insignificant, or rather it can never take place. Although the prince cedes certain rights or powers to his ministry, and to his tribunals or provincial governors, he can, however, like any other law, revoke them, increase them, diminish them, grant them according to his feelings, and in any case reserve particularly important objects; he deals with his subordinates, but he can never be in betrayal with oneself; and as soon as he declares his will, every quarrel ends.

With a collective sovereign, on the contrary, all this does not go so easily. The magistrates of a republic are, as we have already shown elsewhere, not only employees and servants, but also associates and chiefs; they are numerous and enjoy superior consideration; they play a part of the sovereign himself; they sit with their citizens or with their electors in the same meeting, they have among them a number of partisans through their children, relatives and friends; therefore it is much more difficult than it is believed to wrest an illegitimate or badly employed power from this governing council, or even only from a distinct college. These magistrates call their functions law, and alone have rights of their own, and no one willingly lets himself be snatched from supposed or real rights. These quarrels therefore only end with a kind of internal war. If the magistrates win, they subsequently increase their pretensions and consider their fellow citizens as vanquished enemies; the others then are waiting for the right moment to strike back, or if they aspire more to the legitimate use of power, either they become indifferent above all things, or a hateful oligarchy is born which destroys all life, all community spirit, and causes the republic to go to ruin as if by putrefaction. But if the citizens win, the magistrates seek to take revenge in another way, because they have many means in their hands to do so; and therefore either they become pusillanimous, or they lose all personal sentiment, and demean themselves to the point of flattering the factions; thus all business goes upside down, the government loses its dignity both inside and outside the country, internal discord is fanned daily, and finally a foreign mediation results, which ordinarily ends up destroying the republic.”

“But [the councils and magistrates] must reserve in all branches at least the most important affairs, those on which the existence and the good of the republic mainly depend, the decision of which presupposes the supreme power or is required for its preservation and support, whether these ends are, as is usually expressed, legislative, or executive, or juridical, or of any other nature. To these belong mainly those objects that we have already demonstrated in detail, for example the admission of new citizens and the exclusion from the right of citizenship, the decisions on war and peace, the organization of the troops, as well as the recollection of the militia; ratification of all alliances and treaties which oblige the republic itself; the introduction of new offices or the abolition of existing ones; the election or deposition of the highest magistrates who are exactly determined by custom or by law; the institution, change, abolition

and authentic interpretation of all constitutional and general laws, but particularly those which oblige the cities and the subjects, as still the most important exceptions of these laws; supreme jurisdiction, at least among the citizens and magistrates of the republic itself, both in civil and criminal matters; the final judgment of all the great crimes of state; appellations from the daily council or from other higher magistrates; the purchase and sale of state property and other territorial possessions; the establishment, change or abolition of gifts; the disposition of the currency; the raising of contributions, of indirect taxation; the borrowing of loans; the approval of all expenses in money, which go up to a certain sum and consequently the decision of all objects that require similar expenses; the conclusion and final approval of the main accounts and budgets, after first being carefully examined; the handling of all propositions and admonitions that occur in the meeting, etc...

On the contrary, positive laws cannot determine everything or explain themselves, because there are always doubts and possible disputes over their meaning, or over their extension; therefore one must not, in order to follow the letter of the law, forget the fundamental principle: that a true and free republic, the municipality itself, or that meeting which is in its place, and of which the council always forms the head and an integral part, it can reserve the decision of what pleases it the most; whether all rights were first delegated by it, or that the governing council existed before, and only subsequently increased or strengthened by a certain number of citizens. In both cases the supreme power consists in the meeting of the community and its councils, of the citizens, and of the magistrates; this supreme power always has the right to change, to abolish, or to interpret the laws, and also to exercise greater or lesser rights. On the other hand, the governing council is not without the right to bring before the grand council [assembly] those objects which are within its competence, but which obtain a particular importance by means of circumstances, for example by means of the persons and places to which they belong, or by means of the time on which they fall, either to give more weight to the conclusion, or even to not take exclusive moral responsibility of the same."

"Moreover, there is a fundamental principle in republics, that important posts accompanied by honor and power must variably rotate, so that individuals do not become too powerful, or too indispensable as time goes on. In almost all free communities the praesidium (the office of president) changes every year and sometimes even more, and it is rarely or never joined with the administration of public money or with the management of financial affairs, since this weight would be, in part too heavy for one person, and it would also be impossible to resist the abuse of such a combined power. It exists in the nature of the thing as well as in the rules of prudence that the chief who is in employment, during the time of his praesidium, cannot preside over other subordinate colleges."

"In the other subordinate posts, on the contrary, term limits are not at all necessary; most of these posts can therefore remain held for life, and if any of them, particularly the most lucrative, are ordinarily limited to a certain number of years, then this happens that to divide the benefits more, to contain little by little the ambition of the majority of the members, and also to reward the previous hardships of certain active individuals with such posts. In the end, it is precisely in

the spirit of the republics to pay proportionately little for the most distinguished honorable jobs, and better for those of subordinates, so that they are never considered as mere benefits, but as an honorable distinction of merit, consequently they are desired not for reason of profit but sought after by the most disinterested people; on the other hand, so that subordinate employees find in other advantages their compensation for obedience to their fellow man. This natural order existed even before in the older republics, while it was entirely neglected in those that were formed in the time of the revolution. So for example mayors and burgomasters of the ancient cities of Switzerland had a small compensation, while the podestà and bailiffs in the different parts of the territory, or those treasurers who administered finances, had considerable income partly in fixed money, partly in enjoyment of state property, part in chancellery and court fees, etc”

XXVI. On faithful administration of the common patrimony.

Haller criticizes the idea of having a central budget, instead there should be different accounts for different colleges, bailiffs and territorial possessions. They should also be held in a diverse asset portfolio, including goods in kind (of which grain tithes were once essential). Funds ought to be clearly earmarked and appropriations be kept small, as it is always best to favor frugality over opulence.

“The main point consists in this: that the goods of the republic are 1. are maintained in their condition and substance, and rather increased than decreased; 2. that they must not be used for private advantage or with purely private designs. For this reason the loyalty of the regents and administrators is undoubtedly indispensable; meanwhile, good laws and forms can partly form a kind of instruction against ignorance, partly prevent too much haste, and place many obstacles to the designs concerned. Thus it is first necessary to make the alienations of capital and territorial assets and the handling of extraordinary revenues not intended for current expenses more difficult, and these cannot be approved or ordered except by the supreme power, and never by a simple college. The just possession of all annuities is ensured with inventories and particularly with the guarantees that every administrator of public money must provide, particularly by means of his morality and ability to pay, and this precaution still procures the great advantage of finding only honest men and treasurers, because otherwise they would not find any security. As for the expenses, not only is it necessary to prevent usurpation, but also for the faithful administration of the common property, that the considerable expenses, which ascend to a certain legally determined sum, should not be able to be resolved other than by the supreme or sovereign council, while granting a certain competence for current needs to the executive council and other colleges...

For it consists in endowing the most necessary and most important branches of administration with one's own goods and capital, such as churches, schools, hospitals, the maintenance of ordinary buildings, as well as troops, interest payments and the subsequent settlement of all debts, etc, or to assign them certain income in money or in foodstuffs, so that it is not mentioned at all in the general account, or even that the excess goes into the chest of the quaestor to serve the extraordinary and arbitrary expenses of the republic. Many ancient republics perhaps owed their well-being to this simple method; it is true that it is less pompous than the new custom [of having centralized budgeting], but it is much more in conformity with justice and prudence; it makes the republic appear less rich in its own eyes and in those of foreigners, or rather it makes it appear as rich as it actually is, since real wealth does not consist only in rents and assets, but in what remains after deduction of expenses and promises; consequently it does not awaken pride within nor envy outside; it ensures the duration and the regular course of all essential establishments and all branches of administration, which can never periliate in this way; it finally has the great advantage that the usurpers or the conquerors themselves cannot wrest or destroy everything, particularly because it is not so easy to discover so many different funds, to plunder them or to convert them into cash, just as it is easy, on the contrary, to take possession of a single large chest into which everything enters without exception, and from which again everything must go.”

“In the old republic of Bern, for example, the daily council had only a competence of one hundred scudi for the same object, and any expenditure which exceeded this sum had to be brought before the great council. As a result, a number of these were limited or entirely suppressed, simply to avoid having to represent them to the great council, and that ordinary reliefs, gratifications, etc., which are daily, never ascended to that sum. Meanwhile they were regarded as very honorable, since it was said that the government had done what it could. From

the revolution onward, the daily council could... freely dispose of state assets, alienate state property, and decree expenses, whenever desired. So from then on there are only deficits and debts, of which nothing was known in the old order.”

“Those budgets which today one believes are the epitome of due diligence, in fact are the death of every true economy and necessarily lead to the contracting of ever greater debts, or to the infinite increase in taxes. Expenses are first represented as needs and then the means are created, while on the contrary one would have to measure the expenses according to the rents and means. Secondly, every ministry, every republican college evaluates its needs as much as it can in order not to remain too short of money or to be able to dispose of as much as it can, so it insensibly accustoms itself to regard a quantity of expenses as indispensable while they are not, therefore a famous and learned politician said that in such occasions the budget of the expenses does not arise, but the expenses of the budget. If finally the desired sum is granted, each college regards itself as authorized to effectively exhaust the credit that opens before it; the claimed maximum becomes the minimum, and they believe they have done a lot if the budget is not overshot. Thus the territorial lord finds himself, as it were, under guardianship: he has almost nothing left for his arbitrary expenses, because all his annuities are assigned in advance and they already have their creditor. Since finally, on the one hand the annuities often report less than what had been calculated, and on the other hand the extraordinary needs cannot be met, so it is clear that according to this method it is almost necessary to find an annual deficit, as is confirmed by the experience of all countries where these budgets have been introduced.”

XXVII. On public and private virtues.

“In Catiline’s conspiracy against Rome, Cato, with his just severity, gave the example of true popularity. Caesar with exculpating the guilty and with his indulgence for all misdeeds gave that of false popularity. The outspoken republican consequently seldom has to wait for the approval of his fellow citizens, because he only has the invisible republic, and men do not always see that their private fortune is inseparably linked with the good of the whole republic, and cannot last long without the latter. It is undoubtedly true that approval is also a desirable good; the trust that is enjoyed, the good reputation encourages all the painful travails; it turns others on to similar virtues, and also contributes a lot to the success of deliberations and measures. Without the same it would be difficult to be faithful and zealous for a long time. But the true magistrate must consider the purchase of popular favor, like any other fortune, not as a duty, but as the reward of duty; in a word it must not be sought, but followed.”

“The magistrates must not try to draw more power to themselves than that which legitimately belongs to them, or which is necessary for the conduct of business; their maxim must be to consider themselves as the servants of the republic, and to govern according to the presumed reasonable will of the whole of society. On the other hand, citizens must honor themselves in their magistrates, raise them, support them, consider them as if they were their fathers, and have as a principle to hide some of the weaknesses of their representatives, than to shame them and thus put disunity and enmity in the republic. In a word, the magistrates must be popularly intentioned; on the contrary the citizens, if I dare to express myself thus, must be masterful (lordly).”

“Since a general tranquility would be in monarchies contrary to nature, and pernicious, since these are founded on unequal fortunes and on relations of service that derive from this inequality, and also because the other classes of the people find their nourishment and their own subsistence through the spending of the rich; so, on the contrary, republics fall into ruin through the luxury of their citizens, because this luxury would sooner or later destroy the equality before the law, and consequently cause the dominion of some and the servitude of the others.”

“That love of labor and that capacity is indispensable to the representatives and members of a free republic, because they cannot as easily as an individual lord be replaced by other men; but on the contrary they themselves must handle all affairs, large and small, and it would be neither convenient nor useful for them to choose from their womb some superior employees and servants. An individual prince is not in a position to personally attend to all his affairs, and can consequently take his subjects or strangers to help him, as he hopes to find more fidelity and ability in one or the other. This does not affect his honor at all, rather it is advantageous, because it supposes the possession of a greater force. It is not even dangerous to his existence, because one never thinks of anyone wanting to have an equal share in the rights and possessions of an individual lord. But a free community elects its first employees, for example the first secretaries, the referendaries or those who render justice, the military commanders, the ambassadors, the supreme judges, etc. out of the number of his fellow citizens and in the class of subjects; so for the superior adjutant of a republic, when he is not himself a fellow citizen, will almost always be indifferent and seldom zealous. Attachment and passion or inclination of

the heart are not possible towards an invisible corporation, but only towards some individuals, therefore there are also in all republics patrons, to whom a certain clientele of people who have need for protection and favor submit, and likely come to a quarrel with the community. From this point of view, envy must almost necessarily arise in the spirit of what he sees that he could likewise take part in the common good without doing anybody wrong, but nevertheless he remains ill excluded of its services. Moreover, we have often already mulled that the zeal of service in the subjects cannot be awakened so easily here as in principalities with the attraction of great rewards. All means of advancement are very limited for the same, here there are no court posts, smaller armies, and the most important and lucrative jobs are dealt naturally to the citizens. Orders and titles cannot similarly be practiced for republics, although Venice had introduced two, and Genoa one. The republic alone must triumph after its victories, but not the commanding general. These triumphs are too extraordinary a distinction, they awaken excessive pride and finally the dictators and tyrants of the republic come from the triumphant citizens.”

“But the usual ingratitude of the republics is generally confirmed by the whole of history. Who does not know the ostracism of the Greeks by virtue of which the most notable citizens, those most distinguished for their wealth, glory and by the number of their friends, were exiled from the republic for a certain number of years? Thus Aristides the just and the generals Cimon, Themistocles, Xenophon and others had to flee their homeland which they had repeatedly saved from its ruin; Miltiades was put in prison, Phocion was sentenced to death by an ignorant populace.”

“Patriotism bears a great deal of resemblance to the zeal of service in monarchies, and it is therefore often confused with it. Similarly, it recognizes the willingness ready to undertake aggravating and ungrateful occupations, the fidelity of the execution to the warm interest they take for the success of the establishments and undertakings useful to the community, the cordial sacrifice of their own interest, and many other signs of fidelity and attachment. But to speak exactly, the true spirit of community, patriotism itself, can take place only in true republics, and it therefore can not be sought in monarchies, nor even by the subjects of the same republics, because there the individuals do not exist together in community relations. You will find there a zeal for service, a grateful attachment to the person of the territorial lord, a feeling of honor and fidelity, national pride even, a passion for glory and distinction, and these feelings can also produce similarly useful highlights; but patriotism in that first and more restricted signification can exist only among members with whom the common thing is at the same time in part their own. Therefore the word patriotism was never before in use in monarchies, and it was introduced only in recent times, when they began to name themselves as though they were republican communities. There have also been sovereigns who have condemned this expression, and who have not without reason declared suspect those persons who frequently used this term. The expression “patriotism” is scandalously used in our days to palliate and hide rebellious and revolutionary sentiments; the patriots always presuppose a republican relationship or community, or a secret society that already exists, or is about to be born, and this society can exist closely united in a fanatical sect seeking the destruction of all superiors, calling its assembly “the homeland.”

XXVIII. On prudential orders pertaining to familial inheritance.

Partible inheritances, sumptuary laws, tougher restrictions on intermarriage are necessary in a republic to prevent the formation of dynasties that could lead to overt preponderance in wealth and threaten the civic bond.

“Among these rules of prudence necessary in a republic, belongs primarily to the possible division of private wealth among the citizens, not only because excessive riches are pernicious to the republican virtues, awaken the pride and attachment to simple enjoyment, they cause aversion to common duties and burdens; but in too great an inequality of external fortunes, the equality of law could no longer exist absolutely among citizens: some would soon become overbearing and dominant, the others on the contrary would become dependent on their subsistence and subject to others. The poorest citizens would no longer be loyal to the republic, but would only cling to this or that notable to be nourished by him. A republic composed of large and powerful lords will never and in no place subsist, because each of these satisfies his own needs himself, therefore they would only like to enjoy their private freedom, and the community with others is unbearable. Neither may be a republic made up of men who are all poor or at least dependent, because they only have to think about procuring their subsistence, and because they have neither the time nor the capacity to attend to common affairs.”

“The equal division of inheritances and prevention of consanguineous marriages [avoiding a patriciate] are sufficient to effect a certain proportion of private assets in the republics; and when even these gentle means put some obstacle to just personal freedom, one must here consent to these restrictions, as to many other disciplines, for the sake of the common good, an individual right must yield to the right of the community. After all, the citizens consent to it in some way, while it was they who introduced these laws, and they can also change them in any case; finally they are compensated for it in another part, that is to say in the duration and benefits of the republic itself, that is, in that great unitary and collective trust entrusted to their administration, which always raises those who participate in it by different ways to consideration and well-being.”

“Roman law already prescribed such [equal] divisions, at least among males, and this law was not only political, but still conformed to the presumed will of the testator, as the foundation of all *ab intestato* laws; for it is undoubtedly allowed to suppose in a republic that the father makes each of his children a free citizen with equal rights, and that for this purpose he does not want to place him under the dependence of a firstborn brother. But it is a totally different thing with the free owners in countries that are not together in community, and where it is a question of retaining the power and consideration of a single scion, and not the equality between different families. Here, the equal portions would be contrary to the presumed will of the fathers, contrary to the spirit of every right of inheritance, and also pernicious to the whole family, and this is why the Germans declared themselves against this point of the Roman laws.”

“How many poor nobles are not to be found in rich Venice! It would be astonishing if we know the number and the relationships of destitute people of both sexes who must be supported in the cities of Switzerland by municipalities, companies, hospitals, and other poor people’s funds or private associations. The same evil is seen in the countryside, where the taxes of the poor have reached an impossible degree to pay; and the greatest misery reigns in those valleys, where a large population, but without help, lives on a very narrow surface of land and where new individuals are born every day, which, after being reared with great pain, do not find

subsistence. Therefore it is not surprising that many thousands of men of all conditions, they leave voluntarily, seeking to enter the military service of a foreign prince, leave to find employment as farm workers, seasonal laborers or as servants, home tutors, workers and craftsmen, shopkeepers, etc. to acquire merit from the richest men in all the capitals of Europe, and also in the most distant regions of the earth, and to reach a stable state of fortune. The reason for this does not exist in the dissipation and corruption of customs, nor even in the lack of love for the country, but in the continuous dismemberment of territories and division of assets favored by the republican relationship and by many other laws.

XXIX. Final reflections on republics.

“All were originally small, that is to say they consisted of only a few members, and were mostly founded by territorial lords, sometimes naturally caused by common possessions and needs, but much more rarely formed by a voluntary association of some men. The purpose of this meeting is not security or the maintenance of justice between the members themselves, but desire to satisfy a common need, the defense against external enemies, the facilitation of the means of subsistence, the maintenance of common properties, the propagation of the sciences, the fulfillment of a vow, etc., and the independence obtained later did not change the purpose that the private community had, but it only favored its fulfillment. This perfect personal stability was never original among the republics, and could only be obtained insensibly, starting from the favor of the primitive lords and benefactors, starting from one’s own efforts, starting from an unexpected fortune. The rights and the obligations arising from the relationship between the members of a community were recognized everywhere, and regularly followed.”

“In all the republics of the world there are two different legal relations, the one ruling among their own members, the other among those who are in their service, or even against men dependent on them, and living under the republic’s protection. Even the revolutions of our day have not been able to tower this difference existing in nature. Therefore all free communities reigned by virtue of different titles and conventions over things and even over people; over a territory that was now large, now small, subjected to them also the same rights and the same limits as other territorial principalities. This collective domination has been regarded in all times as very useful, and modern ignorance has recently called it a privilege, an oligarchy or a hereditary aristocracy.”

“In no republic has it been denied that the supreme power did not rest upon all of its members, over the meeting of its heads and members; but this rule is valid only in the true community, and not in relations of service to others, where there is no common good, but where each one exercises only his own private right.”

“The common good belonged only to the entire assembly, and was consequently indivisible, and in urgent cases the citizens had to lend aid to the republic with voluntary or compulsory contributions, but subsidies could not be obtained from the subjects except with their approval, unless in the form of indirect taxes.”

