

Commentaries on Karl Ludwig von Haller: the Restauration der Staatswissenschaft, vols. I-IV, on independent territorial lordship, patrimonial states, and military empires

 carlsbad1819.wordpress.com/2021/08/25/commentaries-on-karl-ludwig-von-haller-the-restauration-der-staatswissenschaft-vols-i-iv-on-independent-territorial-lordship-patrimonial-states-and-military-empires

Nulle Terre Sans Seigneur

August 25, 2021

[See also the [biographical essay](#).]

Here it is: the Restoration of Political Science. This is a chapter-by-chapter commentary covering Haller's critique of the state of public law, his theory on the genesis of enlightened absolutism and revolution, the principles of the patrimonial state, and those of the military state (empire).

I have deliberately chosen to immerse the reader in long quotations of Haller's own words, not simply because this is my usual style, but because for a thinker as important yet undervalued in the English-speaking world I figured it would be best not only to relay his thoughts as they were, but to dispel various caricatures of his philosophy that have emerged from surface-level summaries.

This commentary is based on the French translation of the Restauration. The first three volumes were published circa 1825 and authored by Haller himself with the assistance of Marie-Joseph Chevalier d'Horner (1775-1849). These in fact correspond to the first two German volumes. The subsequent four French volumes were published by Haller's eldest son, also named Carl Ludwig von Haller (1807-1893), in 1875. They are significantly abridged from the original. Chapter LXV on the macrobiotics of military states was cut out, so I have taken that from the Italian translation.

In general, Haller's great contribution was in doing three things: erase the tenuous distinction between public and private law, overcome the ever-persistent dichotomy between "state" and "society" that has only gotten worse with time, and provide a non-liberal theory of liberty. The latter is especially important, and in a way he obsoleted both liberalism and post-liberalism in one stroke. Haller's total rejection of a contractual origin of political authority, the delegation of power, a lawless natural state, and the existence of a 'civil society' means that a lot of the things he says will sound jarringly 'anarchic' to weak-hearted Schmittians, Fratelli tutti pseudo-integralists, and other undesirables. He speaks of blood feuds and common brawls among men as private wars in their own right with a strict continuity to those wars between 'states,' he takes for granted that any proprietary ruler ought to live off domains and ordinary revenues first with extraordinary taxation to be used sparingly, that diplomacy is an extension of the same agents and proxies that private persons send, that legislative power and jurisdiction are in no way unique to the state, and that sovereignty is

not some abstract supreme power or ability to pass arbitrary general legislation, but rather a gift of fortune (Haller calls it “perfect freedom”) which elevates and perfects but does not substantially change the extended household relationship of lord and servant. At the same time, Haller explicitly defends numerous royal monopolies, is largely an integralist in religious orientation, defends the right of conquest and the martial ethos, criticizes armed neutrality, defends slavery and feudalism, and in no way endorses lax social mores. He says little of political economy in general, and scorns those cameralists who place economic development as a chief end of the state.

For Haller the state is not an institution that engulfs and subsumes society, that unilaterally directs all of society, much less that it constitutes or creates society out of a lawless anarchy. It is rather a natural sociable relationship between free and servant, like many others, but defined by the independence of its head which gives it greater means and a wider variety of objects to handle among its inferiors, for whom it is the supreme jurisdiction, the final court of appeal not in a uniform civil society, but in an already existing natural order marked by countless gradients of domination and subordination. Above all, Haller sought to demonstrate that contrary to the pretensions of the philosophes, the traditional monarchies complied perfectly well with distributive justice, and that no one’s right or liberty was despoiled by such an arrangement, rather that such an order followed precisely from right and liberty itself.

Haller starts by mapping the consequences of the “philosophical” (his general term for most mainstream public law) theory, how it makes “all states [into] nothing more than republics in another form, and the private thing (*res privata*) of a prince becomes a public thing (*res publica*).” Chapter VII, the longest in the entire book at ~175 pages, has Haller going on a deep survey of the influence of Roman law, Freemasonry, the dissemination of enlightened doctrines, and the rise of enlightened absolutism including more obscure examples from Tuscany and Naples, to create one of the most compelling conservative explanations of the preconditions for the French Revolution. In some ways, Haller is the precursor to *Begriffsgeschichte*. He continues with the Revolution and the rise of Napoleon as an example of a military state (IX-XI). Chapters XII-XXII cover his theory of natural superiority, limits on force imposed by justice and duty, types of states, what independence is and how it is acquired. Whereas most philosophers either go insane by the idea of power and turn to amoral realpolitik, or otherwise they idealize the state to such an extent that power is completely obscured, Haller tackles the question head-on and reconciles power with right and justice. Chapters XXIII-XXXIX are the core doctrine of the patrimonial state, i.e. the pure monarchy founded on proprietary interest in land and service compacts. War, jurisdiction, diplomacy, employment of servants, taxation, royal domains, laws and privileges — it’s all here. Chapters XL-LIII are the macrobiotics (art of prolonging the life of) patrimonial states covering princely economy, just wars, territorial acquisitions, alienation of domains, brokering advantageous treaties, personal prestige and consideration and so on. Chapters LIV-LXV cover the military state, which is founded firstly on personal authority by a chief over his warband or retinue, and fuses with the patrimonial state upon acquiring a

permanent settlement. Due to its nature the settled military state introduces various modifications to the pure patrimonial type, notably slavery, warrior nobility (noblesse d'épée) and feudal tenure.

In the preface to the Restoration, Haller boldly proclaimed that “until this very moment the Lord has aided us: It is with his help alone, without encouragement, without visible applause, without the attraction of distinctions and riches; it is on the contrary after fighting against continual pains and assaults, and much self-sacrifice, that, by the sole effect of that force which always supports the sincere love of truth, that we have come to finish a work which we believe destined, on the one hand, to destroy, with all its ramifications, the root of an error or a false and pernicious science, which has reigned for two centuries in the schools; on the other, **to demonstrate the order instituted by the Creator, to thus reestablish peace between good spirits, and to return to earth the dominion of justice which sophists have banished for too long.**”

“Providence placed me, it seems, in the most favourable position for studying with equal interest, and to embrace from a single look the different types of social relations, for contemplating them from all sides, and for being animated towards all classes by the pure love of justice. As much as I loved legitimate liberty for myself, did I equally desire to see other men enjoy it; all vexation, all useless hindrance, in a word, this mania for governing, for regulating, for interfering in the affairs of others, is opposed to my character, and appears to me as destructive, as burdensome for the superior as for the inferior. The more I hold that nobody should be deprived of what belongs to them, the more I appreciate the rights of the heart and of benevolence. No theory will prove more than mine, how little justice alone suffices the needs of the world; how much, on the other hand, it would tend to to separate, to isolate men, without love which alone can unite them. To live and work for others, even to my own detriment; to prefer the good, to leave out the bad, this is what made me happy; here is what committed me to writing this work, which I would have lived a much happier life without composing, if only it was possible to resist the impulse of goodness, the voice of God which speaks to us from the bottom of our hearts,” he continues.

I would like to thank all of my readers, and especially quaslacrimas, Michael Rothblatt, marcusmontisursinensis and fjwawak for what has been a great 4 years. I extend the same gratitude to my followers on Twitter, notably rodinrodi7 and T.A. Jackson who used to shill on my behalf at Salo Forum and MPC respectively, but many others as well, to my former Thermidor Mag co-authors like Nathan Duffy and Doug Smythe (who himself was working on a Haller commentary at one point).

Finally, I have no choice but to thank a certain weeb by the alias of DonaldGrant11 who, through my magnetic personal charm, was somehow influenced into starting a project to translate Karl Ludwig von Haller's Restoration. In fact, the quotations from Chapters LIV-LVIII are taken from the translations in Halleriana, his Substack. The man has since ingratiated me into his circle for better or for worse, but if he can actually deliver on his project, then I will admit it was for the better.

“The spirit of justice and truth does not dwell in the soul of the proud, it only lives in humble and broken hearts; because it is then that sophistries crumble, and the authority of false sages disappears; then one learns to only study the truth in the book of nature, in the revelation of the Almighty; then one’s eyes are opened, the words of the Highest strikes one’s ears, and for he who submits before the creator of nature, prideful reason is no longer the creator of things, but only a means to know them; it is the eye of intelligence, a light given by God in order to see a part of His works, and to make them clear to the world. May this book at last appear, and may the same spirit of goodness which birthed it accompany it on its path... Entire peoples will owe their safety and the many pleasures of their lives to these principles. Instructed in the nature of the social bond formed by mutual love, and discovering in them the goodness of a divine order, they will once again become content with their fate; and all while fulfilling their duties with joy and loyalty, they will be able to better recognize and defend their true rights. Vying neither for power, nor for the possessions of others, they will only seek to preserve what is theirs, and will not meddle with the affairs of their princes except by their eager assistance, and by the wishes of their hearts, so that all good comes to them, by that cry of love so universal among nations: Long live the King! God save the King!,” Haller said of his master work.

I am inclined to agree with him, and I am greatly pleased to present this commentary to you. May it aid in the mission that The Restorer started, in an age where error has only magnified to the point of complete bedlam.

Volume I

Presentation, history and criticism of previous false systems. General principles of the natural and divinely ordained order.

I. On the general existence of states and proof of the same.

II. On the scope and subject of political science.

III. On the current state of political science engendered by false doctrines.

IV. On the theoretical consequences of the false system.

V. On the practical consequences of said system.

VI. A critical survey of the literature (Grotius, Pufendorf, Hobbes, Sidney, Rousseau, etc.).

VII. On the philosophical history of the false theory.

VIII. On the attempted and unsuccessful realization of the pseudophilosophical theory of the state — the French Revolution.

IX. On the ostensibly complete triumph of the revolutionary system and its consequences.

X. On the complete failure of the whole revolutionary experiment.

XI. On the causes of the revolutionary system’s failure.

XII. On the natural origin of all social relationships.

XIII. On the origin of lordship and dominion among men according to a universal natural law.

XIV. On limitations of power stemming from the general law of duty.

XV. On the means of preventing the abuse of force.

- XVI. On what distinguishes the state from other social relationships.
- XVII. On the general definition and purpose of states.
- XVIII. On the particular definition of a prince and a republic.
- XIX. On the means of acquiring independence, the greatest of fortunes (summa fortuna).
- XX. On the general classification of states.
- XXI. On (the false dilemma of) whether monarchies or republics are superior.
- XXII. Conclusion of the first volume.

Volume II

[the German vol. II is split into vols. II and III in the French translation]

Macrobiotics of patrimonial states (i.e. principalities or monarchies)

First main piece: On independent territorial lords, or patrimonial princes

- XXIII. On the formation of principalities and independent lordships.
- XXIV. On the divisions of monarchies: patrimonial, military, spiritual (ecclesiastical).
- XXV. On the natural basis of lordship.
- XXVI. On how to deduce princely [landesherrlich] rights.
- XXVII. On princely rights.
- XXVIII. On the right of war.
- XXIX. On peace treaties and diplomacy.
- XXX. On protecting one's subjects abroad, and hospitality toward foreigners.
- XXXI. On placements and the employment, promotion and dismissal of servants.
- XXXII. On supreme lawmaking power and the right of observing laws.
- XXXIII. On immunity from laws, or: privileges and graces.
- XXXIV. On the natural origin of highest jurisdiction.
- XXXV. On real rights of the prince deriving from his domains and regalia.
- XXXVI. On taxes and emoluments.
- XXXVII. On subsidies and imposts.
- XXXVIII. On the moral duties of princes in public services and charitable establishments.
- XXXIX. On the boundaries and limitations of princely power [landesherrlichen Gewalt].

Volume III

The macrobiotics of patrimonial states proper

- XL. On the rights and duties of subjects.
- XLI. On the means subject have of guaranteeing their rights.
- XLII. On the alienability and heredity of princely power.
- XLIII. On the growth of princely territorial power [landesherrlichen Macht].
- XLIV. On the causes of states losing their independence.
- XLV. On the macrobiotics of patrimonial states.
- XLVI. On good economy and financial independence.
- XLVII. On the judicious selection of employees and servants.
- XLVIII. On maintaining personal consideration, respect and moral authority in the land.
- XLIX. On the martial spirit and military virtues.

- L. On avoiding dissensions and internal conflicts; maintaining dedicated and loyal subjects.
- LI. On concluding advantageous treaties.
- LII. On shrewd disposition in the face of unfortunate circumstances.
- LIII. Historical remarks and conclusions regarding patrimonial states.

Volume IV

On independent military commanders, or: military states (empires)

- LIV. On the natural origin of military states (empires).
- LV. On the possibility and necessity of uniting generalship with territorial lordship.
- LVI. On the natural consequences of uniting generalship with territorial lordship. Digression on slavery.
- LVII. On military organization and subordination in imperial administration.
- LVIII. Continuation of LVII: rewards of the tenants-in-chief, court dignities and expenses, territorial donations, digression on feudalism.
- LIX. On the formation of nobility.
- LX. On the convocation of the Estates-General.
- LXI. On favors and privileges gifted to the triumphant.
- LXII. On (so-called) national freedoms, franchises, and charters of rights.
- LXIII. On the reciprocal struggle or perpetual rivalry between kings and magnates.
- LXIV. On so-called elective kingship.
- LXV. On the macrobiotics of military states.

I. On the general existence of states and proof of the same.

A short chapter, understandably given that the existence of states is something fairly self-evident. What is interesting is Haller's familiarity with the ethnographic and travelogue literature of the time: "So far back that we go back in history, and so far that the knowledge of the globe extends, in all times and in all places, we find men living in society and in mutual relations where some are free and others serve, where some command and others obey. We have historical documents which cover a space of four to five thousand years, and which report the most important things that happened in all known countries. Today we have traveled and observed the globe in all directions on land and sea; everywhere and in all times, on the continent as in the most distant islands of the South Sea, in the highest antiquity as in modern times among the most savage nations as among the most civilized peoples, we find under various names princes (kings) or republics, powerful individuals, alone or associated, to which a certain number of more or less considerable men obey who, in several respects at least, freely recognize or are obliged to recognize their will for law. In vain would we seek an epoch of the primitive origin of States: we always find some, so far away that historical research is pushed forward; and although the annals of peoples give us many examples of the

birth and fall of such or such empires, nevertheless we see each of them preceded by another, and the destruction of one was always followed, without any interval, by the foundation of a new one.”

“There are hereditary and absolute kings, that is to say, independent of all human power; lords and subjects in the two Arabias, in the East Indies, in Tartary and Mogul [Mughal], in Abyssinia, in Nigeria, in all Guinea, on the coasts of Zanguebar [Zanzibar] and Monomotapa, in Ethiopia, in the interior of the North Americas, in the part of the South America not subject to Europeans, and in the islands of all the seas which bathe the two continents. Just as there has been no people, no mass of men dispersed or united, without language, without religion and without property; in the same way also there never exists a nation without social relations of freedom and dominion, on the one hand, and dependence or service, on the other. The truth of this general fact cannot be denied, and it has never been seriously denied: the very nature of man proves, moreover, that it could not be otherwise.”

II. On the scope and subject of political science.

Rhetorically asking those questions put forth by the liberals and philosophes:

What then could be the cause of this subordination or this diversity of ranks among men? Where did these relationships of freedom and domination on the one hand, and dependence or service on the other come from? According to what law do they form, extend and dissolve? Are they not contrary to the nature of man and the rights he brings at birth? How can their origin be legitimate, since every man is, in his quality of man, equal to others; and that, if we want to disregard all the other disparities, all needs and all conventions, no one can have the right to force his own will? Even today, are we not revolted to see one man exercising his empire over another, unless he can allege a just and sufficient reason? And this reason, should we, as many think, seek it only in violence and oppression? Or, if it is legitimate, on what basis is it based? How far extends the right to command and the duty to obey, without destroying the dignity of a man endowed with a free will and the faculty of acting by himself, and without sacrificing happiness or freedom of the greatest number for the exclusive benefit of a few individuals? Finally, if these relations are just, necessary and desirable for the happiness of men, what are the means of preserving them, of strengthening them, and of prolonging their duration?

Either way, these are the questions of political science. His understanding of equality is in that Christian sense as seen in Book 21 of St. Gregory the Great's Commentary on the Book of Job, meaning equally endowed with a rational soul, “but it has been added by a distributive arrangement, that we should appear as set over particular persons” and “the order of merits varying, the secret appointment sets some above others.”

For Haller what was at stake in having a proper political science, “after the monstrous errors and terrible events of our days had brought us down,” was nothing short of ensuring justice and mutual concord between rulers and ruled, lest the convulsions of the Revolution, having just been temporarily vanquished at the Congress of Vienna a year prior, repeat again. A

distinction is drawn between political philosophy and the natural history of states, as to the latter “it derives on the contrary from the mother idea of the nature of a State, an idea to which reason alone can attain, but which, as proof of its truth, and not to be relegated to the domain of chimeras and fictions, must be confirmed in all its parts by universal experience. Necessity must be proved by existence, and existence by universal testimony.”

On the exact knowledge of the nature of States, the basis of political science, depends the doctrine of the rights and mutual obligations which exist either between the members of a community enjoying equal freedom, or between a chief and those who obey him. This is the natural social law which quite simply applies the general law of justice, engraved by the hand of God in the mind or rather in the heart of all men, to these various relationships formed.

“Today, on the contrary, our philosophers call universal what does not exist anywhere; and necessary that which is impossible,” he writes.

Finally, there is the *Macrobiotics* or the Art of prolonging the life of States. “By this expression we do not mean to designate the ordinary rules of interior conduct, which do not concern the more or less wise administration of the affairs of a family or a community; because these rules depend on the knowledge of objects that extend or determine with more or less precision the natural law... This is not to say that the study of the positive public law of various states is not necessary and useful; on the contrary, we will prove, by a host of examples, that we cannot do without it: but he who knows natural and universal public law well, already knows three-quarters of positive and particular law.”

The macrobiotics of states, he continues, “in our eyes, all the virtues and rules of prudence or wisdom faithful to justice, suitable for preserving the health of empires and prolonging their duration. This art too is based on the exact idea of what a State is, on a principle which, modified in a thousand ways, is nevertheless everywhere and always the same.”

All of these must be analyzed holistically, and Haller bemoans the mania for overspecializing and subdividing the various branches of knowledge to absurd lengths.

Above all, political science has the practical end of giving “just ideas about the nature [of political association], so essential to give to everyone calm of their soul, the contentment of one’s fate and the rules of conduct in the whole course of life.”

III. On the current state of political science engendered by false doctrines.

Instead of locating the formation of states in divine and natural law, “an infinity of writers, claiming to be philosophers, have attributed the origin of human society, or that of states at least, to the arbitrary will of man, and have derived the authority of the ones over the others

of the general will of the people, that is to say, of the whole of the subjects. Wanting to surpass the Creator of all things in wisdom, they devised a system under which states would have been, or at least should be, formed.”

For a long time, political science and jurisprudence has been marked by all sorts of variations of contract theory, whether this take the form of a civil society abridging the state of nature entirely, that of a multitude transferring some rights and reserving others, or completely preserving their natural rights even in a civil society with the right to revoke consent at will. Even those well-intentioned traditionalist, conservative and anti-revolutionary writers retain the idea of there being a civil state distinct from the natural one, the former abrogating the latter at some point in time by some tacit delegation or surrender of power, even if not in the form of a pact. Many of the Tory defenses of kingship fall into this latter category, with a distinct though often uncredited Hobbesian influence. It is known that Sir Robert Filmer appreciated Hobbes’ *De cive*, for instance. In addition, the common understanding of “supreme power” is almost invariably that of a republican *imperium*, in turn founded on a *societas civilis*.

“Men, they say, first lived scattered, isolated, and without any social relations, in the most perfect equality and freedom. None of them served the other, none depended on the other: this is what they call the state of nature, that is to say, the state in which nature had placed not only that of princes, but also that of individuals, comes from above; it is a continuation of the divine establishment, which, in creating men, gave them, for their mutual advantage, various and unequal forces, consequently also acquired fortunes or unequal external goods,” Haller writes.

Due to the supposedly anarchic natural state, lacking jurisdiction, the multitude decided to conclude a *pactum unionis* to create a civil society, as a sort of mutual insurance group, “to maintain peace by uniting their forces, to provide for the general welfare, or, as in the modern expression, to protect the freedom of each, and to ensure the equality of rights against natural influence.” To endow the society with jurisdiction, it was necessary further to stipulate a *pactum subjectionis*, so that “men would, therefore, in their own interest, have sacrificed part of their original freedom, that is to say, their perfect independence, to ensure the preservation of the rest; or else, strictly speaking, they would not have sacrificed anything, but rather only sought by their very submission, to obtain a more perfect freedom.” Among some peoples, this office was hereditary, in others elected, but in any case it is usually subject to revocation, implicitly or explicitly.

Haller’s own contrasting view: “As for me, I cannot conceive that no sacrifice is made by renouncing the most eminent gift of fortune, this gift so ardently sought after by men, of perfect freedom; to every right to judge for oneself, to defend oneself; by forcing himself, moreover, to pay unlimited taxes, in order to submit to all the orders of a power of new creation, a power whose will and enlightenment alone will decide, if it must protect you or harm you. In this respect, too, the moderns seem to me even more foolish than the ancients; but the false principle from which they proceeded necessarily led them there.”

IV. On the theoretical consequences of the false system.

The consequences of this are striking:

Even the most just empire exercised by princes, and without any abuse of power, is no longer a right, but a function or a duty, not, as was once believed, towards the divine legislator, who is also their master, but to the people, to whom they alone are responsible for their administration.

This language has been carried even into family relationships; it is now only a question of the duties of parents and the rights of children, as if the parents had no rights of their own, and that they had been established by the children.

What they and their families need in order to enjoy a decent and honorable existence should only be regarded as treatment that the people grant them, by virtue of their office. All officials and servants whom princes employ like other men, either for personal safety or relief, or for the administration of their property and income, the leadership of various other enterprises, now become public servants, the servants of the State, or of the people, and this is the new fictitious master that they are responsible for their conduct. In short, all states are nothing more than republics in another form, and the private thing (*res privata*) of a prince becomes a public thing (*res publica*).

As soon as the political machine seems insufficient or vicious to him, he is free to change it or give it a completely different organization. Because what people would have appointed a supreme leader other than on this condition? Can not every employee be dismissed from the service of the one who employs him, and what generation could have condemned the following generations, to a slavery which would subject them eternally to the choice of their predecessors, despite the successive change of views and needs?

“*Constituens est superior constituto*. Grotius and Pufendorf already protested strongly against the application of this rule, for fear of appearing to be revolutionaries. But there is no way to refute it, as soon as we start from the principle of the delegation of power. They allege it is true, for example, in the case of the tutor: he is, they say, appointed in the interest of the pupil, who however is below him. But the comparison is wrong; the tutor has not been appointed by the ward, but by the parents, or by some other authority who is certainly above him.”

V. On the practical consequences of said system.

“We will show, in an absolutely opposite sense, that men have in fact never left the state of nature; but that the existence of princes is of natural law, and not of positive law, and that a corporation, on the contrary (a quality that we want to attribute today to the people), would be of positive origin, far from being the natural state of men.”

“But this whole idea is absolutely wrong. If the objects governed by the princes were really the property of the nation, the nation would always have been in a position to administer them itself, without having needed this much-vaunted ‘civil society.’ The communes, the villages, the trades, look after their own interests by themselves. The grown man does not normally have a tutor to manage his affairs; a fortiori, an entire nation could not have one. But the princes are not the mere guardians of their possessions, and that not only princes, but all men enjoy, under certain conditions, the right to make laws, that is to say, to manifest a will binding on others.”

[...]

“All places, all charges must be regulated with the greatest accuracy, and the number will be limited to the most essential needs of the public establishment. No favor can take place in their distribution, but consideration should be given only to capacity and merit... This proposition, despite its specious appearance, is still false, and cannot apply to a prince or a republic. To reduce as much as possible the number of his servants, to choose only the most worthy and the most able, is a rule of prudence. But, considering only the law alone, a free nation could establish as many functionaries as it sees fit for the service of its public good... It is because this principle has been disregarded that we see unjust discontent in all ranks of society; for each considering himself as the most worthy, also believes that he is being wronged by not giving him the job he aspires to. Besides, it is remarkable that the new constitutions, called ‘philosophical,’ far from reducing the number of offices have all doubled and tripled them; and it could not be otherwise.”

“Finally, it is clear that, if the princes are only agents or employees of the people, the inheritance of their power can no longer be supported: some have condemned it as the most palpable absurdity, while others, wanting to reconcile the system with the facts, have found only weak support. It is repugnant to common sense, it was said; the virtues and talents necessary to govern are not hereditary, and one cannot presume in any nation the will to give up the direction of its highest interests, thanks to an uncertain chance, perhaps to a child, to a vicious or foolish man... A fortiori still, purchases, sales, exchanges, donations from states or principalities, of which history offers so many examples, cannot take place without obvious injustice, since the depository of a delegated power has no right to cede it or to alienate it from his particular authority, and since men are not a commodity which can be trafficked at will.”

“If the subjects are shareholders or associates of the so-called *res publica*, if everything derives from them and must relate to them alone, it is also just that they pay for everything. But these charges are not so agreeable to the so-called citizens, especially since they can’t be reduced in practice, while the rights or the advantages exist and can only exist in theory. A famous writer has said with great reason: ‘It is the most unbearable despotism to be tormented, under the

pretext of a political freedom which does not exist.' **The peoples are now groaning under this yoke, and this is the chastisement of God, or the natural consequence of false doctrines;** punishment that will last until the world comes back from its mistakes, until it opens its eyes to this false wisdom, and a more solid science has replaced it."

VI. A critical survey of the literature (Grotius, Pufendorf, Hobbes, Sidney, Rousseau, etc.)

Here Haller embarks on an overview of prior art, tracing the dissemination of erroneous principles: "Nobody will require of me that I indicate all the writings which have treated, supported or developed public law, supposedly philosophical, sometimes openly, sometimes in covered terms, sometimes by boldly deducing the consequences, sometimes by using cautious reticence, evasive reservations and forced conciliations or interpretations, sometimes in part, and sometimes systematically. The number of these works is infinite, especially since the middle of the eighteenth century. Their titles alone would fill several sheets of printing, and their criticism would be a long, painful and repulsive task, which I have no desire to impose on myself, and which I do not even see the need for. I prefer to devote my time and my strength to discovering, developing, proving the truth, than reproducing outdated errors, and publicizing the names of their supporters. I will limit myself therefore to speak here of the most famous writers, of those at least who owe their talents, their personal qualities, or other circumstances, a more marked influence; of those whom we have commented on and copied the most, and of which all the others can be considered as pupils and disciples."

He begins with Hugo Grotius, widely regarded as the pioneer of early modern international law, and his *De Jure belli ac pacis* of 1625. He judges him to be the best of the public lawyers: "Grotius will hardly be surpassed in natural particular law, in the law of nations which is only its application, and in criminal law. The principles on which it establishes natural hereditary succession and the right to punish... his admirable deduction of the true nature and the legitimacy of war, accompanied by the laws prescribed by humanity and the rules of prudence to conduct it well, would suffice to immortalize his name." However, "in public law proper, of which he should have been the creator, and which was not the main object of his research, he does not appear to me to be strong enough or consistent enough, although there are many excellent observations in it. **Either by his predilection for republics, or the language of the Roman republic, it gives as a basis to its system, an inaccurate idea of the nature and origin of states.**"

Grotius accepted in principle the existence of a *societas civilis*, and much as he tried to avoid the implications of it with his erudition, it colors the whole work:

His love for justice revolted, however, against the dangerous consequences of this system: so he fought them with all his might, but without using true principles against them. He recognizes there may be natural social relations, legitimate empires founded on the innate power of a prince. This is how he often speaks of a *paterfamilias latifundia possidens, advenas sub obediendi lege acceptans*, of patrimonial kingdoms, which he compares to particular properties and lordships, etc. But these were traits of genius, of which an opinion embraced in advance, or the want of prolonged meditation, prevented him from taking advantage; a fault common enough even to the best minds, especially when it is not a question of the object whose development they have as their main goal. Grotius did not grasp in a precise enough way, the difference between monarchies and republics, between the relations of lord to servant, and members of a community with one another. The resulting confusion in the places where he talks about it, threw him into many inevitable contradictions; and if this great man could come back to life, I dare to believe he would do it [restore the true principles] himself.

Then comes Thomas Hobbes, and “it was he who invented, so to speak, the system of the social contract and the delegation of power, with the aim of establishing the most absolute despotism, in order, he claims, to maintain peace.”

“To believe him, men are only ferocious beasts, of course in eternal war with each other, and endowed with equal strength; they all have the same rights to all things. A mutual fear led them out of the state of nature, and urged them to come together through a social contract. Taking this contract in a pure republican sense, as J.J. Rousseau and others did later, Hobbes does not recognize a pact between the prince and the subjects, but only a true social contract between individuals (*pactum sociale inter singulos*). Then he claims that the citizens thus reunited have delegated freely and in perpetuity, to a prince, all that they possess without exception: their will, their judgment and their very strength, etc. They no longer keep anything of their own (*De Cive* VI, 15), and have become complete slaves, because otherwise there would be no peace. Thus, in Hobbes’ eyes, the state is a large artificial animal (*Leviathan*), of which the prince is the soul, and of which all other men, without will and without existence of their own, are only arms, feet, etc. The individual or collective sovereign is the people themselves; his will is the general will.”

“*Summos imperantes peccare non posse , neque cum ratione unquàm culpandos esse.* (*De Cive*, ch. XII. S 4.) All that the prince orders is by that very fact just and legitimate; all that he defends, unjust, because he is the organ of the general will, and that there is no other character to which one can recognize justice. (*Reges quæ imperent justa facere imperando , quæ vetent , injusta*, etc.) Hobbes hardly thought that his successors would draw quite opposite consequences from this same principle of the delegation of power. **But the social contract being itself a fiction, anyone could imagine the conditions as they wanted.**”

Haller’s ultimate verdict on Hobbes:

Torn between his conscience and his system, he is agitated in a circle of continual contradictions: sometimes he teaches the most revolting atheism, claiming that we are not even subject to the will of God, because we have not delegated our authority to him (De Cive, ch. XIV, S 19; ch. XV, § 2); sometimes he quotes a host of passages from the Bible, the meaning of which he tortures in order to strengthen his sophisms; sometimes he speaks of divine commands, and sometimes he recognizes outside the State, that is to say, outside his artificial monster, no right, no duty, consequently, no divine law. **Hobbes is, and will always remain, in principle, the father of all Jacobins, of all revolutionary errors, although that was not his intention.** Only for a moment does he approach the truth: it is when he speaks of a Civitas naturalis, of a magna familia, which is formed by the higher power of an individual. But he immediately falls back into a gross error, by not recognizing any rule for the use of this power, by granting no right, no freedom, no will even to those men whom nature has placed them in dependence, or who, of their own free will, have put themselves at the service of another, and thereby also reducing them to the condition of slaves. Hobbes undoubtedly found many adversaries; but unfortunately they have never attacked anything other than the consequences of this author, and not his very principle, source and cause of all the other errors.

Afterwards comes the commonwealthman Algernon Sidney. It is also here that Haller notes being unable to obtain a copy of Filmer's Patriarcha, knowing him only second-hand. Of Patriarcha, "whose title seems to me to indicate an exact parent idea, although perhaps too narrow," he writes, "if, however, the excerpts given by Sydney are accurate, it seems to me that Filmer got hold of him by several errors, which made the refutation too easy for his opponent; for he does not wish to recognize any republic; he declares that monarchies alone are legitimate; he pushes the comparison with paternal power much too far, brings everything back to this relation alone, maintains that he is in no case allowed to resist the sovereign, etc. It is remarkable that Sydney is much more angry over this with Filmer than against Hobbes, although the latter teaches a much more revolting despotism; but the principle from which Hobbes starts was more convenient for him to draw its republican consequences."

On Sidney, Haller judges him to be a disgruntled aristocratic republican:

The power of kings was instituted by the people and for the people; he can therefore at will, regulate it, limit it, withdraw it, abolish it, etc. In truth, Sydney has not proved the first part of this assertion any more than others; for the many historical examples he brings to defend it, are all false, misapplied, borrowed from the republican states, and on close examination they could all be turned against him, and prove precisely the opposite of what the author intends to prove. To mislead his reader, he constantly confuses monarchies with republics, compares kings to consuls of Rome, or to avoyers [bourgomasters, mayors] of Swiss cantons, subjects to the Roman people, or to members of a free community, etc; but that the republics or these free communities, also have their subjects, from which they do not derive their existence, and that in the false comparison from which he speaks, there is no place for them: this is what Sydney has not bothered to pay the slightest attention to. He falsifies history, in order to forcefully apply his system to the constitution of England. But despite all these mistakes, despite all the outburst, all the boldness of her expressions, there is still something noble about Sydney. He does not enter into the intricacies of the school: the great lord pierces everywhere. He shows a great predilection for the high nobility, that is to say, for possessors of francs-fiefs, but only grants them the quality of citizens. But then he is careful not to maintain that they also received their power from their inferiors, and that this power, therefore, should not be hereditary. He has a lot of knowledge, especially historical, but he circumvents and torments his examples in bad faith to support his system; one cannot deny him talents, a great vivacity of mind, and an original way of expressing his ideas; but far from using these talents to seek or prove the truth in good faith, he only uses them to grasp the weak side that his opponent sometimes presents to him, and strikes only on this part, without refuting the main thesis. His book is, at bottom, the work of a discontented great lord [grand seigneur], who adopted the dogma of the sovereignty of the people, in so far as he could flatter his ambition or his hatred against Kings; but he would not have been favorable to the consequences of the moderns, who give the word "people" a more extended meaning, and do not want to recognize the great lords, as forming by themselves the sovereign people. His Jacobinism is of the same species as it has been today... these gentlemen did not foresee that they would fall into the same pit they had dug for kings.

Then comes John Locke, and Haller does note "the simplicity and the clarity of his style, the modest reserve which he observes in the exposition of the consequences, and the mixture of some truths with the error, [that] make him rather attractive."

At times Locke seems to prefer natural societies to civil societies, but he is very inconsistent on this, and of course he erroneously posits the necessity of establishing a civil society for judges and rulers to legitimately exist. Locke's inconsistency as to whether natural rights are transferred or preserved, and his false notion of a division of powers is criticized: "According to Locke, the aim of the social contract and of the establishment of civil power was not to renounce individual property, as Hobbes claims, but to retain it in its totality: each nevertheless alienated its particular power, and his particular judgment, properties which however seem to be the most sacred; then, we already find in this author slight traces of the division of powers, but without the absurd addition of their reciprocal independence; on the contrary, and of course, the executive power must be subordinated to the legislative power.

Locke also admits a third, which he calls confederative power, authorized to make war and peace, to make alliances, etc. (ch. II); but it did not occur to him that these three powers, and many others besides, are only different emanations or manifestations of one and the same freedom, and that other men also exercise them in a narrower circle. He wants, without saying so expressly, that the legislative power be placed in the hands of the people, or of its delegates, that is to say, as he expresses it himself, of an assembly; but although he refrains from developing this idea, or from proposing constitutions similar to those of the republics, Locke already takes pleasure in a certain system of forced conciliation, in order to pass his principles off as conforming to the reality of things.”

Fifth in line is Samuel Pufendorf, who does not exhibit the same sagacity as Grotius, in Haller’s view. “Although we already find several political considerations, and precisely the best ones, in the part of his work which deals with particular and domestic law, however book VII and VIII are only devoted to public law properly speaking. The chimera of a civil society, absolutely different from natural aggregations in its purpose and in its origin, is here again the root of all errors. Pufendorf recognizes, in truth, natural societies among men, as well as the existence of the divine law of justice; he sees the innumerable difficulties which stand in the way of a voluntary and civil union; he even suspects the natural and legitimate origin of monarchies, by individual conventions, he says, as an army is formed (L. VII, ch. 2, § 9); but he does not follow up on this happy idea; and, despite nature, it still needs a civil society.”

Pufendorf was one of the first to develop a three-stage contract theory that would become standard in German jurisprudence: a *pactum unionis* to leave the state of nature, a *pactum ordinationis* to determine the form of government, and a *pactum subiectionis* to declare submission to the ruler. The insertion of a middle term only magnifies the error of contractualism. Further, Haller charges him with falsely distinguishing the public and private person of the prince, “a distinction absolutely false with regard to true sovereigns, and only true with regard to the magistrates of a republic, or at most applicable to an incomplete usurpation, as was that of the Roman emperors.”

But there is plenty of good, though tainted by false presuppositions: “As for the different rights generally exercised by the princes, he treats them in a way which obviously presupposes a specific power (*jus proprium*), and consequently he makes fairly correct observations on laws, jurisdiction, privileges, the right to amnesty, etc; but these observations are not deduced from true principles, and contradict that which the author had adopted as the basis of his system. Domains, sovereign rights, heredity, the order of succession are arranged as best as possible with this system, but they also owe their institution to the people. Pufendorf has often been copied, and the order he followed is still found in all the abstracts of natural law written today.”

Sixth is the fairly obscure in our day Justus Henning Boehmer, and this case is worth quoting in full, since to Haller he was the “least bad” of the publicists, the one in whom the struggle between contractualism and patrimonialism, falsehood and truth, is most dramatically evident:

But in the main article on the origin and nature of states, it is curious to see how much the sentiment of this witty man revolted against the hypothesis of a social contract and of a civil society that is arbitrarily formed. He fights it for all possible reasons: these companies, he says, are not at all necessary, because natural societies may suffice; we cannot even suppose civil societies, since they are repugnant to nature (“quá magis fertur homo ad libertatem quàm ad subeundum imperium civile,” p. 131) they are almost impossible, and hardly conceivable (“pactum aliquod expressum, antecedens imperium vix fingi potest,” p. 171): in a word, it is a product of ungodliness, p. 141-150, etc. Finally, he puts down his guard; and, as though out of spite of not being able to find the true and legitimate principle, he exclaims in his despair: “By going through the pages of history, one will see that the original growth of principalities is due only to violence and to the brigandage” (“deniquè regnorum præcipuorum ortus et incrementa perlustrans, vim et latro cinia potentiæ initia fuisse apparebit”) page 146.

Order and justice only came later, by the consent of the people, but without a positive contract. Nevertheless Boehmer considers the resulting relationship, in the republican sense, ‘as the union of individual wills for a common goal, which is peace and rest’ (p. 192). Democracy was not, however, according to him, the first constitution; on the contrary, it did not appear until after the abolition of royalty, or after the expulsion of the great (excusso jugo regio vel ejectis optimatibus), pag. 213. He rightly names the so-called mixed constitutions, or the fragmentation of sovereign power, a monstrum reipublicæ. As for heredity, the eternal pitfall of the so-called philosophical system, it is expressed with great reserve, saying that we must look at all empires as non-hereditary (omnia imperia in dubio non esse patrimonialia), p. 226. Its sovereign, or summus imperans, is, in his eyes, only the general or the magistrate of a republic, but it must preserve for itself the rights of independence: to generally escape the consequences of the republican system, Boehmer slices the Gordian knot, and declares that the power must be independent, and exercise power by its own particular right (potestas debet esse independens et exerceri jure proprio), p. 242.

It was enough to change one word to express the whole truth, saying: *Potestas summa est independens et exercetur jure proprio*. The limits of sovereign power are not found, according to him, in human constraint, but in natural law, in pacts, and customs (p. 300); but under the pretext of the good of the state, he abandons, at every moment, this principle which is equally true of one’s own and personal power. Consequently, and making the enumeration of the rights of the princes, he grants them, like Pufendorf, an absolute power on almost all objects, on almost all the affairs of individuals. They have, he says, the right of forced recruitment (jus conscribendi milites); however, observatâ humanitatis ratione; they can compel their subjects to other forced services, to house and feed the soldiers at their own expense; they can impose taxes without the consent of the taxpayers and in proportion to their expenses. Finally, he also attributes to them the supreme spiritual power in all its extent, as to so many sovereign pontiffs; however, as the love of justice constantly awakens in him, he seeks to temper this absolute authority with all kinds of exceptions and reservations.

On the other hand, he approaches the truth, recognizing, even to ordinary individuals, the right to enter into alliances, provided they do not prejudice the rights of princes and their subjects (pag. 344). The chapters on positive civil laws, on privileges, jurisdiction and forms of procedure, are, with a few errors, as beautiful as they are instructive. Boehmer pronounces in particular with a lot of energy against the necessity, the multiplication, the uniformity of these civil laws, it is there that the scientist and the man of spirit shows himself in all his force. He does not seem to have suspected that one would ever come to contest the right of princes to judge; and although a jurisconsult himself, he is in no way favorable, neither to the lawyers, nor to the numerous formalities of the proceedings. He was not as successful, in my opinion, in the chapter of the right to punish, which due to a pure dispute of words between *vindicta* and *punitio*, he does not want to look as of natural origin (p. 526). We can say the same chapter where he discusses the right of goods without an owner [*res nullius*], in which he also represents property as an institution of civil status, established *ob corruptum statum*. The chapters on the rights and duties of subjects contain a hard and gloomy doctrine (pag. 568 et seq.) The condition of subjects, he says, is to be all equally submissive; their rights are few, and all imperfect: they have nothing left but the glory of obedience. They have in all things subordinated their will to that of the sovereign. Their duties are to obey, never to resist, even the greatest injustices, and sometimes even to renounce the right to flee (p. 588, 592, 600).

Boehmer nevertheless tries to soften these harsh maxims by various temperaments, and says that God is considered except in his capacity as the first superior (*Deus ceteris exceptus tanquam superior*, p. 596). Between the subjects, there exists, according to him, a *societas æqualis*, which is a great error; and the duties of simple humanity are changed into obligations of strict justice: another assertion as false as it is dangerous (p. 617 et seq.). In the last chapter of *Juribus subditorum vacante imperio*, there are still many errors deriving from the hypothesis from which the author has started; thus, like Grotius and Pufendorf, Boehmer bases the laws of succession, tutelage, etc., on the real or presumed will of the people. In general, the whole work is only a continual struggle between truth and error, between his own feeling and that of the accredited system: striking proof of the dangers and contradictions produced by the idea of an arbitrarily established civil society, either that one develops it in a consistent way, or that an honest man wants to reconcile it with the reality of the things and with the tranquility of states

Everywhere Boehmer is harsh and despotic, when he reasons according to the principle of the social contract; everywhere, on the contrary, he is human and sometimes sublime, when from time to time he forgets this chimera, to bring to the nature of things that penetrating glance which is peculiar to him.

After that important coverage, seventh in line is Montesquieu, and as one might imagine, the judgment is unfavorable. It is here “that the more explicit development of false political principles begins, or rather, he reproduces for us the corollaries that Locke and Sidney had already drawn from them. The sententious tone which reigns in this work, the light style in which it is written, serves as an envelope for the most dangerous sophisms.”

“Moreover, this famous book does not deserve the reputation it has enjoyed. Except for a few ingenious observations, it generally lacks order, solidity, and connection. Full of paradoxical assertions and incoherent ideas he affects to chase after the mind and shows a disorderly taste for antitheses. Mania for systems and hatred of truth are manifested in every line where the author allows himself to torture or deny the most proven historical facts, as soon as they do not agree with his strange theories,” Haller writes.

The separation of powers is treated as follows: “His so-called discovery of the representative system, even in monarchies, of the division and reciprocal independence of legislative, executive and judicial powers; the virtue, the honor and the fear he gives as a basis for republics, monarchies and despotic states; his affectation of wanting to explain all the laws and all the ideas of justice, by the accidental influence of the climate, are so many forms of poverty, but which nevertheless contain a dangerous poison, since they tend to make us consider all monarchies as devoid of virtues; to change them into republics, to reduce all princes to the quality of bailiffs or executors of judicial sentences; finally, to deny the universality of divine laws. Montesquieu did not intend, as many people imagine, to only make a panegyric of the English constitution, and to want to transport it to France: on the contrary, he distorted this constitution itself to make it enter into his system, in order to justify it by a historical example. Because, to name just one proof, it is absolutely false that in England the king does not make binding laws or ordinances, or else that he is not the supreme judge and the source of all jurisdiction which is always exercised in his name.”

A host of negative quotations from Montesquieu’s own peers are mustered in support.

Eighth up is... Rousseau. Suffice to say, nothing good is to be found in this “morose and misanthropic sophist,” as Haller calls him. “Sovereignty, he said, must remain in the hands of the corporation of the people, it must be inalienable and indivisible. It was Rousseau who was the first to openly and straightforwardly utter and promote these frightful maxims: The people are and remain sovereign; the law is only the expression of the general will which can never err; the princes are only the officers of the people, and should rather obey than command; we can dismiss them when we see fit (Liv. III, chap. 18); republics alone are legitimate; liberty and equality constitute the supreme good (Liv. II, chap. 2). Besides, the whole is incoherent and teeming with contradictions. The first book alone has a certain air of solidity and logic, the others contain only boring verbiage on various objects mixed with strange paradoxes, and the author ends up not knowing himself what he wants. Democracy, he said, never existed; it is impossible, and is only made for gods (Liv. III, chap. 4); monarchy is only tyranny on one side and slavery on the other (L. III, chap. 6); the elective aristocracy itself (or the representative system of the moderns), which he proposes in one place as the better government; elsewhere, he calls it impossible, because sovereignty cannot be represented, and a people ceases to exist, from the moment when it gives itself representatives (L. III, chap. 15). Basically, what Jean-Jacques was saying here was truer than he thought; for, if one regards sovereigns only as simple depositaries of the power of individuals, never, since the beginning of the world, has there existed in this sense, neither

monarchy, nor democracy, nor aristocracy: indeed, one would not be better than the other; but it is quite different, if we consider these individual or collective sovereigns, as persons who only possess their own power, and who exercise their own rights.”

Nonetheless, Haller doesn't especially single out Rousseau. Ultimately, he wasn't so much the instigator as the most unfortunate inheritor of a long line of political errors.

Getting to the abbé Sieyès, however, Haller devotes more attention. This is no coincidence, since as we talked in our biographic essay, Haller was enticed by Sieyès' doctrines in the 1790s. In his own words: “After a long silence, he was appointed in 1792, member of that [national] convention of execrable memory. There he voted for the death of the king, probably out of fear, thus proving how far false principles can lead a man, perhaps naturally inclined towards justice. Be that as it may, we only want and must consider him here as a writer: in this regard, it must be admitted that he is the most witty, the most ingenious, the most consistent of all the supporters of the allegedly philosophical system. Far above all the masters and all the disciples of this school, its very language is absolutely different from theirs. On the one hand, full of hatred and gall, but on the other too educated, endowed with too much sagacity to approve of all the follies of modern philosophers, he combats and mocks several of their most vaunted dogmas, with all the superiority of his talent.”

“Besides, the style of this author is of great beauty, masculine, energetic, eloquent; strong in thought, Sieyes joins a rare sagacity and a fruitful imagination, to luminous wits, to the precision of terms, and above all to this language of the soul, which most of the sophists of this school lack. For him, theory is a serious matter, he believes in it at least in good faith; finally, the premises of his arguments once admitted, his logic is irresistible, and all these qualities make the writings of Sieyes so dangerous and so seductive, that they certainly have had more effect and done more harm than all others.”

However irresistible the logic, it is premised on the social contract, a sovereign people's community, and a public establishment. Therefore, the entire edifice falls apart like a house of cards. “Sieyes has not given a complete system, although in his various pamphlets we find fragments on almost all matters of public law. On his way he encounters the thorniest and really insoluble questions presented by this theory, for example: what are the contracting parties in the social pact? Are women and children understood in it by virtue of their participation in human rights? Why do the greatest number make everything bend to their will? How do you make the law yourself when you are forced to receive it from the majority of the people or their representatives? He skilfully skips over these questions.”

Yet there are also glimmers of truth in Sieyes: “But it would be easy to prove by a thousand passages of his writings, how many times his natural penetration has brought him very close to the truth, without his deigning to stop his gaze there. When we see Sieyes distinguish so perfectly between aggregations and associations proper (Vues, etc., p. 118); when this domination and this dependence which he finds so shocking in relations with the prince, appear to him on the contrary so simple in relations between individuals, that he calls them

the result of voluntary commitments, and a reciprocal exchange of benefits; when he maintains with so much reason and good sense that political freedom, that is to say, independence or sovereignty, cannot be maintained by charters, but only by real power, by the ability to dispose of armies and treasures; when he recognizes that individual liberty (for the maintenance of which however everything must, according to him, be constituted), has very little to fear from attacks by malicious individuals, that an ordinary authority is enough to contain them, and that on the contrary it has everything to fear of self-styled authorities constituted by the people... when, finally, his writings are full of so many other glimpses of this kind: then, one wonders with astonishment, how it was possible that he did not see the whole truth; to know, that states themselves are only natural social relations, but arrived at a perfect development and reaching a complete independence, that they also result from a set of particular and voluntary conventions? How did he not see that perfect freedom, or sovereignty, is only the natural result of a higher power; that it can therefore only belong to the one who possesses it, and that this perfect freedom is precisely the distinctive character of a prince? How did he not recognize that in order to become free oneself, it is not permissible to strip another of his power; that no one had the right to make the private thing of the king a public thing, to declare his property national property, etc.; that finally, in natural social relationships one can live with just as much freedom and security?"

"But such is, even on the strongest heads, the influence of a false principle which one adopts in youth. As soon as such an illusion takes hold of us, our eyes turn away from the truth, and even when this celestial beauty offers itself to our eyes, our dazzled eyes can no longer stop there, and borrow from this light, at most, only a few rays to color the error," Haller concludes regarding Sieyes.

A few more minor German authorities are briefly skimmed through, notably the Austrian-Jewish convert Joseph von Sonnenfels (1732-1817), who was an influential late cameralist writer. Haller blasts him: "Sonnenfels, author of a ridiculous system, teaches that the sovereign good consists in the unlimited increase of the population; vain and mindless sophist, he hides under a feigned and hypocritical moderation the most dangerous revolutionary poison; and did great harm, because, having succeeded in captivating the religiosity of Empress Maria Theresa, his work became the elementary book of all schools of the Austrian monarchy." This is an interesting note, as it shows that Haller was a strong critic of *Kameralwissenschaft* (also seen in later chapters of the Restoration), despite the superficial similarity with his macrobiotics.

Finally Haller covers Immanuel Kant, and his *Metaphysics of Morals* (1797). He regards him as something of a chameleon, trying to placate several audiences at once: "By a kind of literary coquetry completely incompatible with the dignity of a true scholar, he wants to please at the same time the partisans of the most contradictory systems. He seeks to reconcile the old jurisconsults, by a scholastic language and by old Latin formulas, to which he then gives a forced meaning and contrary to nature; the friends of order and tranquility, and even the partisans of despotism, by preaching to them that no research on the origin of sovereign

authority should be undertaken, that the most overwhelming tyranny never legitimizes any resistance whatsoever, that the subject cannot even make a judgment different from that of the head of state, etc. Finally, he paid tribute to modern Jacobins, presenting their principles on the social contract, popular sovereignty, the representative system, the division of powers, universal republic, etc., as the models that must be constantly approached. But in the end, it did not please anyone; everywhere it clashes with the truth, and had no other design than to make learned and honest people fall into the traps of Jacobinism.”

In fact, Kant’s definition of a natural state was actually quite solid, which makes his imposition of a civil/legal state all the more erroneous, but what’s more is that Haller credits Kant with being the greatest advocate of reformist liberalism, a position even more noxious than outright radicalism because it effectively disguises the same poison under a veil of moderation: “The radical fallacy from which Kant started, and which hardly anyone has noticed, a fallacy in some way new and peculiar to its author, consists in stealthily giving to the words natural state and civil state, a meaning different from that which one had attached to it until now in schools. By state of nature, he does not understand this primitive extra-social state, affirmed as fact or admitted as a hypothesis, but the social state itself which has existed until now, and which still exists today, a state, he says, where particular law is the only rule. Until then, Kant is right, but he immediately maintains that this state of nature (this divine institution) is devoid of justice (*justitiá vacuus*) , that it is a state of injustice. We must therefore leave to present to found an alleged legal or statutory state, which, deviating from received terminology, he gives the name of civil, a state that according to him has probably never existed ; but that must nevertheless be admitted as an idea, in order to introduce it little by little. (See the introduction, pag. 41 and pag. 136, 156, etc.) The first of these propositions, which presents the current state of society as that of nature, is certainly very true, it would have made it possible to discover the whole truth to the ingenious sophist, if he had sought it in good faith; but to add that we must get out of this current state is to pour out the most subtle, the most hidden and the most dangerous revolutionary poison. Indeed, this assertion has the direct aim of continually working to the destruction of states, as they have existed so far, and to poison slowly as with *aqua tofana*, to introduce so-called legal constitutions, that is to say, revolutionary ones. **Thus we have seen with the rise of Kant a new school, a new nuance or subdivision of the same revolutionary sect; a school which does not start out either from facts deemed primitive or from hypotheses, but which speaks of models or postulates of reason, of progressive reforms, of a continual rapprochement towards a so-called legal state , etc. Basically, it tends to the same goal as the other revolutionary sects, but its feigned moderation and the veil with which it covers itself, make it much more dangerous and more harmful than all the French Jacobins together.**”

Haller’s ultimate verdict on Kant:

Kant made it even more dangerous; because from time to time, Hobbes recognizes at least divine laws, Kant rejects them all in this work. Hobbes calls a state of eternal war, an imaginary primitive state, whereas Kant gives this name to the current state of society; Hobbes teaches that the natural state has been left, Kant wants us to get out of it now; **with both, the supreme law is not justice, but peace, that is to say, the lack of resistance, even should this peace consist only in the triumph of injustice, in the peace of the grave, in the most miserable servitude. Certainly, since it has been claimed that Machiavelli had satirized the princes, one could, to save Kant's honor, say, with just as much reason, that his design was to write the bloodiest irony against the idea of so-called philosophical or constitutional states; for it is impossible to imagine anything darker, harsher, more destructive of all individual freedom, than his so-called legal state [Rechtsstaat]; it is, to use its language, an illegal state, a postulate of unreason.** His right to people are based on the same dreams: here again, all rights, all possessions are only provisional; states themselves must, like individuals, enter into civil society; so that then there would no longer be any free man on earth, nor any one with the power to defend himself.

Thus ends Haller's survey.

VII. On the philosophical history of the false theory.

This is the longest chapter of the entire book, at about 175 pages. It is essentially Haller's own history of enlightened absolutism and revolution in the 18th century, and combines his critique of Roman law as well as anti-Masonic counterrevolutionary historiography to create a compelling interpretation of the events that shook his world.

"It remains for us to explain this strange phenomenon: how a theory, so strongly in contradiction with the course of nature, with universal experience, and even with the dearest interests of men, could nevertheless enter into the spirit of the learned, to perpetuate itself during several centuries, to spread also among the general public, and finally to acquire an almost absolute dominion," is the problem to be answered.

"Before Hobbes and Grotius," he says, "universal public law, like natural law in general, did not exist as a body of doctrine. The rules of natural law were written in the hearts of men more than in books, or else under the general name of divine precepts, they were part of religious teaching. For ordinary questions, the nature of the facts and an innate sense of justice made it a better judge than all of our modern bogus systems. Difficult cases were put to the decision of the wisest and most educated men. With regard to public law which in fact forms part of natural law; all the old jurisconsults had but one opinion; it is because the states or the power of princes and other superiors come from God."

Neither did anyone mean this in any occasionalist or ontologist sense, rather that "seeing either the jurisconsults or the sacred writers express themselves in this regard with so much simplicity, without the slightest pretension, without entering into any subsequent explanation, hearing them support the same of the particular power, it is clear that they

weren't thinking of anything extraordinary or supernatural then. They simply meant that neither the power of princes, nor the diversity of means and the gifts of fortune distributed among men, were created or imagined by men themselves, but that they come from the nature of things, that is to say, of a divine institution. And as they neglected to explain clearly an idea, moreover so simple, it was probably soon interpreted in an absurd manner. We came to believe that God himself, I do not know how, immediately, supernaturally and miraculously, established princes and superiors. Moreover, as long as the princes of the earth did not abuse their power to injure the rights of others (a thing which sentiment has always judged better than theory), no one thought of inquiring yet on what rests what power and where it comes from; whether it is given by nature, acquired by talents, or conferred by the people."

A transitional theory, seen in some late scholasticism, was to say that God establishes princes by means of vesting supreme electoral power in a community: "The way in which one sought later to interpret this proposition, to reconcile it with the dogma of the sovereignty of the people, by saying: *Deum imperia approbasse, ordinationem esse mediatam*, is even more absurd. God, they said, established the princes, because he allowed them to be elected by the people. According to this strange interpretation, **there would no longer be any difference between nature and art, between what comes from God and what is only from man. It would also be God who would have made all our clothes, because he allowed them to be made by tailors.**" Alas, Hobbes and Grotius were one of the first to write so specific and systematic treatises on this subject, and the die was cast.

But it was also the "exclusive study of Roman literature, the use of the Latin language generally widespread among the learned, and a certain idolatrous respect for Roman law, was not the first and almost imperceptible cause which made the essential difference between monarchies and the republics (between the lordships and the communities), and give the idea of a social contract as a basis for all empires."

Roman law's dreadful influence on the proper understanding of political authority is very memorably described by Haller:

Just as the citizens of Rome constituted a community [Gemeinde], a citizenry, a genuine **societas civilis**: all other forms of human association and relations, too, had to be called **societas civilis** or civil societies. Soon all forms of states, even principalities had to be called **civitates** or **respublicas** (republics, commonwealths), the aggregate of serviceable people was called **populum liberum** (a free people), individual subjects who amongst themselves did not form any corporation and who were not in any particular way legally bound to one another were now called **cives** (citizens), the estates, servicemen who were called into council, and vassals were called **comitia** (popular assemblies) where the majority should carry the vote; princely domains were called **patrimonium populi** (public or state domains), the treasure of an individual lord became an **aerarium publicum**, private services owed to powerful and mighty lords were called **munera publica** (public offices) etc. Thus we gradually acquired the habit of expressing absolutely opposite ideas or relations in the same words, of confusing one with the other, and of drawing from it a host of erroneous conclusions. The corruption of language, the imperfection of signs has always been, and still is today, the source of infinite errors: instead of changing the word to make it appropriate for the thing, the meaning of the improper word is used to designate it.

So it happened that “despite the superiority which the ancient customs of the Germans perhaps had over them, so close to the simplicity of nature, [Roman private law] did not fail to contain a rich mine of very reasonable principles which, in an equal position, can be everywhere put into practice. But it resulted from it that one also wanted, in spite of the nature of things, to apply the constitution of the city of Rome, or of the Roman republic to all the other social relations and thus transform Roman public law into universal public law.”

What’s worse is that the model for political authority was not taken from either the ancient Roman kings, or the republic proper, for which legal sources were scant, but from the Roman Empire, “this monstrous state of incomplete usurpation, which one could call neither monarchy nor republic, which seemed to derive from both, but no longer rested on any basis; a state of affairs in which the forms and locutions of the republic (eadem magistratum vocabula) had been preserved, but where, in fact, there remained only an absolute despotism, founded solely on military power.”

“As a result, all other princes were also supposed to come out only from earlier republics, and only hold the first job, that of the command of a republic. The essential difference between republics and monarchies was completely forgotten, for the latter were now regarded as republics in another form. The Roman emperors partly had property and income which belonged, not to them, but to the ancient republic; it was therefore also necessary to regard all the particular possessions of the princes, as domains of the State, or national properties. It is easy to understand that men can live together without being united in corporations or communities; it is even the most ordinary case; but as we had already given to all the other bonds or social relations the name of cities or civil societies, it was also necessary to suppose a so-called state of nature without society, without sovereignty. Finally, any republic, any corporation supposes between the citizens or the members who compose it, a formal or tacit

pact of society (*pactum sociale*); it was therefore claimed that it was the same where there are neither republics nor corporations; and it is thus easy to understand how the natural progression from one error to another ended up giving rise to the bizarre idea of a social contract between all the inhabitants of a country, from which, in turn, a host of other consequences have been drawn, and which has become an inexhaustible source of errors.”

Haller was quite right: the ultimate origin of contract theory is the *lex regia* from the Institutes of Justinian, where it is written: “Whatever is approved by the sovereign has also the force of law, because by the Lex Regia, from whence his power is derived, the people have delegated to him all their jurisdiction and authority.”

Another influence that Haller attributes is various Protestant theologians taking the model of the Church as *universitas* (corporation) and erroneously applying it as a model for political authority, by claiming that every social state was a *universitas*. “The Protestants neither dared nor could give their church a supreme and general head, for in their eyes he would only have been a new pope, a quality which had become odious to them; and they would never have agreed on the person to be elevated to this dignity, precisely because such a leader cannot be created by his inferiors, but on the contrary, he must hold his power solely from himself and the nature of things. To preserve the bishops or archbishops of each diocese, and to attribute to them, as in the Anglican Church, the supreme authority in spiritual matters, did not remedy the evil; for where did these bishops derive their authority? The independence of each faithful (*libertas christiana*) no more existed; only we had as many popes as before we had bishops. The republican system of consistories or synods, made up of pastors from several churches, to which the name of ecclesiastical aristocracy has also been given, does not offer the slightest resolution for first of all, it deviates even more than the others from the nature of the church, which has only one flock and one pastor; and instead of an individual pope, it only makes a collective pope. Moreover, the members of these consistories could be divided among themselves, and each party to have its adherents: who would then have put an end to these quarrels? Where finally was the true church, since in all that concerns the spiritual interests and the faith of each individual, one recognizes no majority, and that according to the very principle of Protestantism, one should not receive any other authority but Scripture? The nature of things therefore left only one decision to take, that of having recourse to secular authority, of recognizing to be born as many Christian churches as there are temporal sovereigns, to make supreme bishops, and consequently popes, the different princes, to introduce finally, instead of the papacy, the caesaropapacy, which places the church in the most precarious situation, and exposes religion itself to being nothing more than the toy of purely temporal interests.”

“So we fell from errors to errors, from fictions to fictions, because we had abandoned the ancient foundation, and it was impossible to find any other. In this disposition of minds, all that was needed were external circumstances.”

The wick had been set; all it took was the match. The first major calamity here was the English Civil War, which Haller does not paint as a one-sided story, but as a tragedy of both king and parliament overstepping their respective authority and grounding themselves on false principles. After all, it did produce Hobbes, and then Marchamont Nedham, Harrington and Sidney.

Either way, “these doctrines had already exercised on the long parliament (1640–1643) a considerable influence, whether due either to the democratic ideas of the independents on the nature and government of the church, or to the contrary application of the principles. from Hobbes; for parliament demanded that the courts should be removed from the dependence of the crown, although the king was incontestably in possession of the supreme jurisdiction, although he appointed to all the places of judicature, that the judges render their sentences in his name, and that these very sentences could only be carried out by his authority. The bishops, as enemies of the democratic system, were excluded from the parliament, of which they were members by right, as great landowners, and as heads of the church (1642); parliament attributed to itself the supreme or legislative power, because the king refused to consent to all its demands (1642). It seized the revenues and royal fleets, which he called from then on national.”

Interestingly, Haller considers the Bill of Rights 1689 as a legitimate acclamation of private rights, and not a capitulation much less a constitution of any kind; the problem was not with the bill of rights itself, but the persistent influence of false political doctrines that also wrongly colored its proper interpretation.

German jurists proceeded to take the social contract on good authority, but amidst political considerations of not wanting to be suspected either of Machiavellianism or monarchomachism, made various modifications of the contractual doctrine accordingly, though not fundamentally repudiating it. So there came two major forms of contractualism: Hobbesian despotism, tempered to one degree or another; and democratic transfer theory.

For a while all of this was kept to internal disputes among schoolmen, and did not leak out into vernacular language. That is until various Hobbist doctrines with their sensualist and materialist influences were being revived in the first half of the 18th century by men like Shaftesbury and Bolingbroke, and from there to the French unbelievers Voltaire, d’Alembert, Diderot, and the encyclopedists.

“Thus, the mad enterprise of making men depend, spiritually, only on their sole reason, could not have, and in fact had no other result, than to put the reason of Voltaire, and that of his followers, in place of the reason of all the learned and of all the previous sages, to dethrone the doctrine of some to give the scepter to that of others; an order of things which therefore always left masters and disciples, authority and faith; but now believing in error and novelty.”

“However, this is not the place to write the history of this great conspiracy against religion. It only relates indirectly to our goal; and besides so many educated men, friends and enemies of the sect itself, adepts, glorious and repentant followers have traced it in their writings in such a solid and complete manner, that they left almost nothing new to say to their successors, and that there can no longer remain any doubt as to the existence and the results of this conspiracy. Consequently, we will not dwell further on the first leaders of this sect, on their close connection with one another, on their indefatigable efforts, on their first adepts and protectors, either among the princes or among the great; on the different means which they used to propagate their principles; on the unsuccessful or insufficient attacks to which they were the object; on the victory which they finally gained, and which all these causes easily explain. We will limit ourselves to showing what is sufficient for the history of public law; how the revolt against all spiritual authority, against all dependence in the domain of the spirit or the sciences, produced the revolt against all temporal authority, against the dependence which results from physical needs; how finally, to facilitate the latter, one took again and one developed with all its frightening consequences, the fundamental error of the social contract or the original sovereignty of the people.”

“And if one believed in the possibility of making men perfectly equal in reason and in enlightenment, consequently independent of one another, why should they not be equal in external power, in wealth and in other gifts of fortune? The natural association of ideas must necessarily lead to these consequences: and this also explains how the struggle against the altar and the throne, against church and state, against priests and kings, has always gone from strength to strength. not even, conducted simultaneously by the same men and based on the same principles. In truth, Voltaire does not seem in the beginning to have had the design to attack the temporal superiors: his fortune, his tastes and his inclinations did not lead him there, and he would probably have allowed all the great ones of the earth to subsist, provided he had succeeded in lowering or destroying all intellectual superiorities.”

Soon follow Montesquieu, Rousseau, Mably, Helvetius, Condorcet, Raynal, La Mettrie, etc. The two major poles on which the social contract fell were either the Hobbist or Rousseauist interpretation, i.e. “the essential difference between Hobbes and Rousseau consists, moreover, in only one point. Hobbes, after the conclusion of the social contract, wants the originally sovereign people, delegating all their power to a prince or a senate; Rousseau claims on the contrary that the people retain full and entire possession. Hobbes says that the will of the prince is the general will; Rousseau teaches that the people manifest it themselves; but in the opinion of both, it has the right to regulate everything without exception, it is infallible. In both systems, man has also renounced all power, all will, all particular judgment; but in the first, it is in favor of one or more individuals; in the second, it is in favor of all, or at least of the majority.”

The influence of the revolutionary French sophism was widespread among Europe’s royal courts: “We know that in Spain the Dukes of Aranda, Alba and Villa Hermosa, ministers of the king; in Portugal, the all too famous Pombal; and in Italy, several other great lords, were

among the followers and protectors of the French sophists. In Denmark, King Christian VII; in Sweden, Gustave III, since fallen to an assassin, and before him his mother Ulrique; in Poland, King Stanislas Poniatowski; and in Russia, the Empress Catherine II, were in close correspondence with the French philosophers, and gave the fullest assent if not to their political doctrines, at least to their anti-religious doctrines.”

“The works of Montesquieu and Delolme had already confused the ideas of many Englishmen on the true nature of the British Empire; so that they regarded, for example, parliament as the sovereign and legislative power, and saw in the king only a first executive functionary.”

In Germany, the example of Frederick the Great and his famously liberal character, led to the widespread dissemination of Enlightenment ideas by those lesser princes who wanted to imitate his example:

As long as the storm threatened only the ecclesiastical superiors (religious authority), it was unfortunately favored and seconded by the King of Prussia Frederick II, so illustrious as a warrior, as a sovereign and as a man of wit. In truth, he never directly attacked the ecclesiastical constitution established in his states; his natural spirit and his sovereign tact prevented him from doing so; he has preserved, even with regard to Catholics, some sentiments of justice: but it is none the less true that his intimate correspondence with Voltaire, d’Alembert, Diderot, La Mettrie and other French philosophers; that the favor he bestowed on several of them in Berlin, where they entertained him like the old baladins or court jesters; that his personal example imitated by all that surrounded him; that, finally, the freedom which he granted to the most licentious writings, and all these causes together, dealt a terrible blow to religion, consequently also to the authority of his ministers, and favored more than Frederick himself believed even the propagation of revolutionary principles, which he undoubtedly detested, but which are nonetheless intimately linked to anti-religious principles. A host of other German princes, full of admiration for the victories and for the internal administration of this illustrious sovereign, copied, like all imitators, his errors rather than his great qualities, his faults rather than his virtues; but they still proved by this very fact that authority and faith are in the nature of things, and whether the higher power reigns or brings about obedience, whether it wants to or does not want it. In the most brilliant period of the reign of Frederick II, in 1765, a Berlin bookseller [Friedrich Nicolai] published the German Universal Library [Allgemeine Deutsche Bibliothek], a periodical work which has contributed more than any other to the dissemination of new doctrines. This newspaper, intended to make known and to criticize the works of all kinds, is indeed the first which, in Germany, was exclusively devoted to the systematic propagation of the subversive principles against church and state, disguised as enlightenment.

The principles start creeping in to the public at large: “The great masses still believed in the authority of others, not, it is true, in that of the most learned, but in that of the party which cried out the loudest. With the help of a legion of novels, elementary books intended for childhood, plays, newspapers, travel reports, the same spirit was spread to all classes; so that, with the exception of a small number of learned men of the first order, all the literate part of society paid a servile homage to the new opinions.”

A long digression on the Illuminati, Freemasonry and other secret lodges follows.

After this, Haller tries to explain why the revolutionary doctrine was so subjectively appealing, and why its enemies could never systematically develop the true principles:

We can easily understand that the so-called philosophical public law owed to the apparent popularity of its first principle, that is to say, to the sovereignty of the people, for an infinite number of partisans of all classes. It is so flattering for the pride and for the secret ambition of man, to regard oneself as a citizen, or member of a sovereign corporation; to consider oneself, as invested with the supreme authority or as a participant in it; on the contrary, to see in the prince only a simple officer, and thus to acquire the right to censor all his actions; finally, each one likes to be lulled with the hope of playing an important role in such a popular assembly, or in a body of representatives which would be drawn from it. But this idea, in its consequences, would be the graveyard of all legitimate freedom; that it delivers forever any particular will, any particular power, any particular judgment, any real or personal property to an imaginary public establishment, and that the pretended sovereignty is impossible to exercise without the possession of power, that it exists consequently only on paper and not in reality: this observation did not require too deep an enlightenment it not to escape the most vulgar of men. This system also seemed to have some resemblance to ancient and modern republics; it seemed to have been carried out there at least in part; he associated himself with all the great exploits, all the noble dispositions, all the lofty sentiments, so pompously described by historians of Rome and Greece.

By this means, the minds were still imperceptibly led to consider principalities and monarchies also as republics, or to desire to change them into this last form of government. But let the analogy also be false, since all the ancient and modern republics were only independent corporations, reigned over a people who were subject to them, and from whom they had received neither power nor authority; that finally, their orators or their historians make no mention of the new political principles: Besides, the logically exact way, in which the so-called philosophical theory was developed and reduced into a specious and complete system, blinded even many good heads, who could have discovered the truth, if they had rather employed their talents to examine the premises than to draw the consequences, and to seek the true principles in the nature of things rather than in books, which are only written opinions. We cannot deny that the new consequences, strictly republican or democratic, deduced from the social contract or from a delegated popular power, are not in themselves natural, logical, let us say more, indisputable, from the moment the principle is accepted; so it is only by this that is explained the approval given to this unfortunate system by so many educated and talented men, who had no personal interest in the revolution, and who for their part could be very satisfied with the existing order of things. Even their adversaries were hardly allowed to make great reproaches; for they knew nothing better, at least in theory; they started from the same principles and refused only to grant their corollaries; but in practice their feeling directed them better than their mind. Finally, there did not yet exist a solid body of doctrine which explained in another satisfactory manner the origin and nature of states, and which thus opposed truth to error. True universal public law reigned in history, and, before the French Revolution, it was generally followed in practice: in particular cases, each individual invoked its principles when they were violated with regard to him; but the philosophical part, the theory, on which it all rests, was

unknown; and whoever sought his knowledge only in books, was always brought back to the pseudo-philosophical system. Thus, the almost general illusion of the learned and of the more or less educated middle classes is easy to explain...

For the great and the nobles, whose interests this system so diametrically opposed, no one is unaware that it has nevertheless found among them a fairly good number of supporters. First of all, they are, as well as other men, subject to error, especially when they suck it from their childhood, in private education, in writings and in books. Moreover, the leaders of the sect lavished on them a heap of praise, raised them to the skies and hastened to distinguish them from all the other great ones, as soon as they favored their opinions; and we know how difficult it is to resist this adulation. It was most often by irreligious principles, reproduced in so many books with the attractions of an enchanting style, that the great were little by little led to similar political errors.

These maxims, which seemed to free them from dependence on higher laws and spiritual authorities, no doubt found more easy access to their minds, than revolutionary principles; but from the first to the second the step is easy and almost inevitable: also, these two kinds of errors, daughters of the same mother, were constantly found side by side in the same works. Add that the attraction of absolute independence, even temporal, is sometimes even stronger among the great than among the middle and lower classes, because they hope to be able to maintain it by their personal power, and they feel less need for superior protection. But they were far from thinking that by virtue of the same principles, others too would soon pretend to escape their dependence. They affected to regard the matter as impossible; and besides each interpreted the philosophical system in his own way or according to his interests, and sought, at least in his mind, to capitulate, as best as possible, with the existing order of things. Everyone willingly applied the new principles to classes above them only, but no one wanted the inferiors do the same against him.

But paradoxically, the enlightened system in a way opened up a path for the lower passions and ambitions of the princes themselves, since by making them employees and agents of a sovereign people, they were freed from being held accountable to God, and could elevate their private affairs into national emergencies:

Finally (and this was not one of the least causes of blindness), we were able to present to the sovereigns the new philosophical principles, as suitable for extending their power and freeing them from all limits that natural justice and positive conventions had put there until now. Although on the one hand it is beautiful and agreeable to be lord and master, and to command, in his own name, by virtue of his own right; on the other it is also an advantage of appearing as a functionary or employee holding supreme power by delegated authority; and to act, when necessary, under a so-called mandate that no one, however, can comment on or revoke. The employee is paid: the assumed will and the service of his master, are an excuse always ready for whatever actions are his; self-interest and injustices of all kinds are covered with the mantle of what is called the welfare of the people. **From the moment when the princes claim to be the first servants of the nation, their wars also become national wars, their debts turn into national debts, their needs into the needs of the state; conscription, arbitrary taxes, and any other kind of forced service are very conveniently justified by the idea of a public establishment and the sovereignty of the people; private rights and agreements made with individuals or bodies, no longer have any value as soon as everything must relate to the alleged ends of the state, to the interest of the majority or to the presumed will of the people, which is even given as the source of all justice. This is the language of the siren, with which we have seduced and brought down into the abyss credulous princes.** But flatterers were careful not to show them the opposite side of these principles, according to which one can also dismiss an employee or reduce his salary; much less, they were told, that the people, this imaginary sovereign, would naturally come to want to give orders to their servants, to decide on war and peace, to rule, in a word, by themselves. On the contrary, people studied to turn their eyes away from these just subjects of anxiety; they were made to believe that the people should only bear the burdens and inconveniences of their sovereignty, without enjoying any of their advantages. This explains how we have seen in our days powerful princes led astray by the principles of public philosophical law, themselves undermining the basis of their authority and digging the abyss which was to engulf them.

The first major attempt at a practical implementation of enlightened doctrines, according to Haller, was by the Portuguese minister of state, the Marquis of Pombal: "He drove out using pretexts whose falsity was later demonstrated, and even less out of greed than out of philosophical fanaticism, the entire order of the Jesuits, because these religious were the support of the Catholic religion and of public education. The property of the order and even the particular properties of its members were confiscated. Several of them, among whom were the most learned and virtuous men, were put to death; the others banished, imprisoned or deported with a cruelty, a barbarity which revolted their very enemies, and of which Voltaire, in spite of his antipathy for priests, could not hear about. Moreover, Pombal was already showing the same hatred against high nobility, which was also persecuted in all ways, violated in its rights and stripped, under the pretext of a reduction of domains, of goods acquired and possessed for centuries. However, the great of the kingdom did not always allow themselves to be slaughtered as patiently as the ecclesiastics so decried. After a tyranny that lasted a quarter of a century, the all-powerful minister was dismissed in 1774; and with the exception of Jesuits, whom an unfortunate fate had struck in this interval, in still other

countries, everything was put back on the old footing; the innocence of noble victims was recognized and their memory rehabilitated; the confiscated goods were returned to their families; philosophical despotism ceased; which caused it to be said in Europe that Portugal had relapsed into superstition and barbarism.”

In 1767, Catherine II of Russia proclaims her *Nakaz*, an enlightened civil code that causes Haller to rip into the very idea of a general civil code:

What a bizarre and absurd idea is it not already to want to draft a general, uniform and permanent code, and even for an empire such as that of Russia! What kinds of laws should it therefore embrace? To what objects, to what people, to what things should they extend? For general laws which bind all men equally, which are eternally the same, there are none other than natural laws; now these never need to be made or written; they are known to everyone, and as old as human nature. As for the special forms and determinations, which properly constitute positive laws, they arise from the very will of the person who has the right to prescribe them in the various cases. These human laws, these manifestations of an obligatory will, each man in general gives them in accordance with natural law and within the limits of his authority, that is to say, for all that is subject to his right and to his power; the Empress made it in her vast empire, as individuals and bodies do in their circumscribed domain. They are by their nature variable like the will of men, like the ends they propose, and as the means they employ to reach them.

To want to give such laws a character of universality and immutability would be to impose the most absurd yoke on human freedom. The civil laws form themselves by custom and by mutual agreements. If such and such a thing belongs or does not belong to an individual, if he legitimately possesses or not, these are facts which must be decided by proofs, by titles, deeds or by pacts, and not by laws imposed by superiors. These documents are the rule or the law according to which the judge must pronounce in civil matters. The object of particular agreements is, with few exceptions, left to the will of the parties, and consequently very varied. The forms are, for the most part, indifferent, and could no more be everywhere the same, than are the food and clothing of all the peoples of the Russian Empire.

For criminal or penal laws, they are not, strictly speaking, given to individuals; These are instructions to the judges, intended to make them know the will of the supreme judge, relative to the investigation and punishment of crimes. If the Empress deemed such laws necessary for her courts, or even wished to prescribe a form of procedure for them in certain civil cases, she had the full right to do so, and could bring together, to draw up a project in this regard, jurisconsults or other educated people, much more suited to this work than an assembly composed indiscriminately of individuals of all ranks and all classes of the empire. These deputies, should they give the laws to the Empress, and decide on cases and items that were alien to them, which they did not understand and over which they had no power; for example, on the number, the functions, and the salary of all the officers and servants of the Empress, on her troops and on the material of her armies, on their finances, income and expenses, etc.? The autocratic Czarina would probably have been careful not to receive such orders, and would in any case have reserved her freedom and convenience, as she undoubtedly had the right to do. But none of these objections were made; no one would have dared to address such questions to the illustrious lady and her philosophical advisers...

Evidently, this whole operation, announced with so much noise, remained without consequence. In the meantime, the Empress had achieved her goal; thousands of newspapers proclaimed her the protector of the enlightenment, and the French philosophers who, twenty years later,

| covered her with such gross insults, gave her the title of Semiramis of the North.

Frederick the Great famously proclaimed that “A prince is the first servant and the first magistrate of the state,” a great concession to the philosophes, since “although this isolated sentence is susceptible of all interpretations, and even tautological, if we understand by the word state, the independence of the king and his house; although it can be understood much more naturally from the simple duties of humanity, often expressed by the word *serve*; although, moreover, the whole conduct of the king was in manifest contradiction with this same phrase, and he was less disposed than any other sovereign to admit the consequences which were drawn from it later; the partisans of revolutionary public law did not neglect to seize it to quote it as a decisive authority in favor of their system.”

“Although the philosophers mortally hate all kings and all princes, and even deny them all intelligence, they nevertheless show a childish joy, whenever a word escapes from some sovereign capable of being turned in favor of their system; then this word is immediately repeated, proclaimed in thousands of writings. This is what happened to this sentence from Frederick, to that of Catherine, saying that she was created only for her people; with similar words from Joseph II, that the sovereign belonged to the country; to the rhetorical flowers of Buonaparte, when at the time of enslaving Spain he said that kings are made for peoples, and not peoples for kings, etc. Pufendorf thought very differently of these kinds of sentences, he called them: *Dicta principum, quorum non nulla ad jactantiam composita sunt*. It is curious to observe each time the occasion and the circumstances which caused such sentences to be pronounced, or rather, which made them put in the mouths of princes by their secretaries; then the views no longer seem so disinterested.”

A prominent example of how these principles undermine political authority, was to be found in the *Allgemeines Landrecht für die Preußischen Staaten*, or Prussian Civil Code of 1792, which Haller shreds with his characteristic wit:

Be that as it may, this code is the most striking proof of the incredible influence usurped nowadays by the errors of modern philosophy, even on princes or on those who surround them most closely. In general, and even at its best, it is more a book of didactic jurisprudence than a code; especially a civil code, since it extends to almost all imaginable objects and relationships; that it elevates, or rather that it causes to descend to the rank of positive laws, facts and rules which are purely of natural law; while on the contrary, for all applications, for all that is really of positive law, it is content to refer to ordinances and particular regulations, to instructions for the various officials, to provincial statutes, to titles, to conventions and customs, that is to say, only sovereign laws...

The code is purely general and philosophical; nowhere, except for the frontispiece, we do not see if it was composed rather for the Prussian monarchy, as opposed to that of China or Japan. The name of the king or the legislator does not appear in the whole work; much less still does one make him speak there himself, which however should have been, so as to distinguish the law from a simple book, to show where it comes from and why it is obligatory. The chapters on public law (which, properly speaking, were not to enter into it), are, to speak at least, quite in the spirit of the principles of modern philosophy, although veiled and reconciled with the existence of the monarchy, as far as circumstances required. The code only speaks in obscure and equivocal terms, of the State and the Head of State (which could consequently be replaced the next day by a directory); of the servants of the State, of the rights of the State and of the duties of its head: as to the king and the rights which belong to him in his own right, not a word is said. The domains and the sovereign rights are declared a common property of the State. The duties of the Head of State consist in maintaining peace and security, either inside or outside. To enable him to fulfill these duties, and to provide for the expenses necessary for this purpose, he is assigned certain incomes and certain useful rights.

The enumeration of the rights of royal sovereignty is quite complete, it is true, although this was by no means necessary in this code; and as long as it suited the Prussian state to keep King Frederick William II as its head, the latter could be quite satisfied with it; For all the rights and all the duties of the State towards its citizens and its allies, come together in the person in his own right. He can make war and peace, conclude alliances, give laws and police regulations, distribute privileges and graces, exercise supreme jurisdiction with all its attributes; he has exclusive enjoyment of domains and sovereign rights, etc.

But none of these powers is considered as a result or an emanation of his personal rights, his freedom, his property; on the contrary, they are derived from the ends of the State, from a delegated power; and the code has not dreamed of it in the slightest, that these same rights also belong to other people, in the narrower sphere of their particular authority, and that they even exercise them every day. However, we have forgotten in this enumeration the appointment of civil servants of all kinds, as well as the creation and suppression of offices themselves; finally, the code has cautiously refrained from saying that the office of the Head of State is hereditary in the House of Brandenburg by right of primogeniture, for fear of hampering changes which might subsequently occur, or of scandalizing the philosophers.

“Who does not see to what extent this code unites the two characteristics of pseudo-philosophical public law; namely: to degrade on the one hand the princes to the condition of servants of the people, by undermining the basis of all their personal rights; on the other, to destroy also any particular, legitimate freedom,” he says.

The reforms of Joseph II are also strongly rebuked: “A first decree abolished slavery, without saying what it was; he set all the serfs at liberty, in spite of themselves and without giving them any property by which they could have maintained this liberty. Soon after, with all the ignorance of modern philosophy, we removed the corvees and the feudal system, as if feudal pacts, the temporary or hereditary concession of real estate, in exchange for some services or certain fees, had been a crime against the human species. The states of Lower Austria were also suppressed, because they were composed of nobles and clergymen, but the most innocent and useful trades did not escape this rage for destruction. Despite the great words of freedom and property, repeated so pompously, there was no longer any property, nor freedom to dispose of it as it pleased. The fideicommiss and the majorats were annihilated although they formed the very basis of the emperor’s throne, and **on the contrary, an equal division of allodial goods was ordered between brothers and sisters, a division which not only deprives fathers of their freedom to test, but which is often impossible for landowners, or harmful to the whole family.** All this was not yet enough, and one saw bursting among the peasants of Transylvania and the bannat of Temeswar, insurrections against the nobles of the country, insurrections initially tolerated by the emperor Joseph, perhaps even fomented by the sophists in credit, and which, in accordance with the spirit of the revolution, were directed, not against the abuses of the nobility, but against the nobility itself; not to redress grievances, but to slaughter people and destroy property. Finally, with the burning of the castles of France in 1789, they still had this striking feature of resemblance, which the insurgent peasants claimed to act by virtue of superior orders. **After having submitted everything to the level of equality, it was equally necessary to submit everything to the same taxes, the same orders and the same human laws. In accordance with the misconception that the monarchy is a public establishment, and that all the revenues of the emperor are not more than the contributions of citizens, the nobility, the clergy and the peasants were to be subjected to the same impositions; that is to say that we did not give freedom to the serfs, but that we reduced all free men to servitude.** Under the name of a new regulation on subsidies, we undertook a gigantic operation, which was rather an abolition of debts and the imposition of taxes, than a settlement or regular fixing of existing contributions. According to this operation, and according to physiocratic principles, all land properties had to undergo the operation of the cadastre, be estimated according to their net product, and charged exclusively with a tax equal to the value of forty percent of the income, whereby any other benefit, i.e., all special fees were abolished. As in the Prussian code, one still seemed here to start from the principle that there is no natural law, superior and known to all; that it is not in the power of man to add forms to this law and positive determinations; **that conventions, documents and titles are not a law for the parties, nor a binding rule for the judges; but that all private law must start**

from the State alone. Consequently, and to conform to the spirit of the century, the Emperor Joseph II had a general civil code (1786) drawn up with the greatest haste, and just as promptly a general criminal code (1787). The latter sought above all to illustrate himself by the abolition of the death penalty (which was substituted for fines, beatings, the rod), and **by an equality of penalties, also revolting and contrary to nature, for all ages, all classes and all conditions; as if, on the one hand, the facts were always the same and accompanied by the same circumstances, or as if, on the other hand, it was the mode or the form of the penalty, and not the penalty itself that constituted in this respect the essential thing; or finally as if this form were not left to the will or to the discernment of the one who has the right to punish in his own name.**”

The Neapolitan jurist Gaetano Filangieri is also criticized: “This work, written in a declaiming style, starts from the hypothesis of the social contract, and tends to do nothing but equalize everything. Abolish large estates, the right of primogeniture, trusts, corporations, ecclesiastical property, standing armies, personal and feudal services of all kinds, tithes, hunts, privileges, jurands and masteries, destroy even the big cities; this is what the science of Filangieri consists of. Its legislation is a system of destruction of all particular pacts. He also insists strongly on the system of population increase, invented by Sonnenfels, and on the single tax of the economists.”

Leopold II, Grand Duke of Tuscany is another example of enlightened reformism.

Concluding this chapter, Haller writes that “without there being any real discontent, neither against the person, nor against the conduct of the sovereigns (because we never had in the midst of general prosperity, about which we can no longer think without pain and without tears; in the midst of a happiness which was disturbed neither by the reproaches of conscience, nor by the spectacle of the misery of neighboring nations; a frightful fermentation, a veritable moral epidemic, had spread throughout Europe. The minds, nourished by the principles of philosophical public law, were prepared to admit all the subsequent consequences; so that it was only necessary for a favorable event or occasion to give rise to the daring and foolish attempt to reduce it all in practice.”

VIII. On the attempted and unsuccessful realization of the pseudophilosophical theory of the state — the French Revolution.

From the beginning, the convocation of the Estates-General in France was done against traditional principles, and the floodgate opened for a consultative assembly held by a sovereign lord to obtain advice from his vassals, to usurp authority and proclaim itself a national assembly:

But whatever the case, from the composition of the Estates-General, the mode of their convocation, the form and the result of the elections themselves, one could already recognize the powerful influence of the new doctrines. Indeed, these states consisted previously, as in all the other kingdoms, of the nobility and the high clergy, in their capacity as large owners, vassals, possessors of fiefdoms, or immediate lieges of the king; then free towns which also fell under the king only, and that for this reason they were called elsewhere by the name of citizens, and in France commonly as the tiers-etat.

These three classes included all the free men, i.e. those having an independent existence, except their immediate relation with the king; they represented, strictly speaking, only themselves, although, moreover, they could be regarded as the natural advocates and the protectors of those who depended on them, that is to say, who were at their service, or obliged towards them to certain benefits. But instead of this simple and natural mode, we prescribed republican elections between the individuals of these three bodies only. The third estate was granted a double representation, and all those who did not belong to the nobility or the clergy, without being therefore members of the bourgeoisie of a city, were regarded as belonging to it. In addition, each of the three orders was able to choose its deputies outside its own bosom, a faculty contrary to the nature of things, which already brought about the upheaval in ideas, and made real and legitimate relations with individuals or corporations count for nothing, and to regard the subjects of the king as one body of citizens with equal rights. Besides, an immense number of writings of all kinds had already for a long time spread throughout the nation the false principles of this speculative theory. Its partisans were considered the wisest and most enlightened men in France; hence, they were preferred in most elections, so that it was easy to predict that the new doctrine would soon triumph in the estates-general themselves. In fact, scarcely had these states been united when they wanted to deliberate and vote, no longer by order, but by head, in order to give the force of law to the plurality of votes, as in a republican community. A few days later they declared, on their own authority, a national assembly, and claimed to exercise supreme power in the name of the people, thus deteriorating the king, their master, to the rank of a subject.

Followed by dechristianization and mass expropriation:

The legal introduction of indifferentism and tolerance for all religions, except for the Christian religion; the suppression of all convents, the confiscation of all ecclesiastical property, and even of the sacred ornaments and vessels of the churches; the civil constitution of the clergy, which also attributed sovereignty to the people; the anti-Christian sermons demanded of priests, the horrible treatments that were made to suffer, from 1790, the nuns of Paris; the dismissal and persecution of all the bishops, then the deportation of the priests, the massacres, cannonades and drownings of those who had remained in France, and even of those who wanted to emigrate (because three hundred were killed in the same day in Paris); the abolition of the Christian calendar; finally, the closing and the destruction of the temples, the public profession of atheism, the abjuration of all religion as of an alleged superstition, the apotheosis of a prostitute as goddess of reason, symbol indeed perfectly well chosen to designate the new philosophical reason. All these persecutions were carried out with fanatic rage and stubbornness unparalleled in history...

The freedom and equality, the first fiction of the philosophical system, which each was already explaining at will, was the watchword, and was to serve as the basis for the new constitution. Now, as this freedom and this equality did not exist, it was therefore necessary to reestablish it, to bring back what was called the state of nature; and all at once, they destroyed violently throughout the whole extent of the kingdom, an immense number of acquired particular rights, of various social relations that had bound men to each other, which mutual needs had formed, and which by a consequence of the property rights and voluntary agreements, had produced, on the one hand, domination, and, on the other, dependence or service...

In accordance with the principles of the system, one declared national property and one sold the domains, as well as the buildings of the king, and even his movable property. Other incomes and incidental rights were considered to be unequally distributed contributions, and consequently abolished or changed. They were replaced by others, to which each citizen had to contribute for his part, not as before, because of what he owed, but because of what he **could** owe, that is to say, in proportion to his fortune. As for the king himself, considered as the first civil servant of the nation, or as head of the executive power, he was only allocated a simple salary; in addition, generosity was taken to allow him to still live in some of his old estates. This king, once the master and the first legislator, the richest lord in France, and the only independent, he, whose service was once so ardently sought after, could no longer have anything of his own, nor ask for anything. Armed with force, but without will, he was only to be the executor of the laws of others, the first valet, the first serf of his subjects. To this end it was added, downward from the throne to the citizens, a new legion of employees, ministers, administrators, judges, commissioners, soldiers and external agents, which, badly disciplined and badly instructed in their duties, were still more badly united between them. But all these agents governed the affairs of the nation, and no longer those of the king. Most of them neither chosen nor paid by him: in short, they were not his servants, but those of the people. The one that we still wanted to call King, could not, most often, neither appoint them, nor dismiss them, nor reward them, nor punish them; and yet all responsibility had to weigh on him, or on his prime ministers; so that the smallest accident was attributed to him...

The heredity of royal dignity was formerly based on the inheritance of a particular personal power; but as soon as we spoke of delegated power, it could no longer take place. The king was inviolable, because he possessed the supreme power, and therefore no one could punish him or bring him before the courts. But an employee, a servant, a prisoner, cannot be inviolable. Also experience proved that he was not.

IX. On the ostensibly complete triumph of the revolutionary system and its consequences.

No sooner was a constitution proclaimed that the fiction of national unity broke down into factionalism and irreconcilable enmity between parties, as “the enemies of the new order of things, those who wanted to have nothing in common with the whole system, and instead sought to destroy it, were kept away from the electoral assemblies, or were driven out by open force. As a result, the elected members were all devoted to the principles of the new constitution; which, supposing this system to be practicable, should have confirmed it all the more promptly, since there could no longer be any disagreements except on modifications, and not on fundamental bases. Nevertheless, scarcely were these new representatives of the people assembled, when they broke down the barriers at all points, and soon they overturned the constitution from top to bottom. This result was inevitable; for at first there necessarily arose a violent struggle, either over the interpretation of the written law, or between those who wanted to maintain as much as possible the established constitution, and those who claimed to develop its principles in a still more consequent. Every moment there arose a discussion on what was allowed or not allowed, on what this obscure and incomprehensible constitution ordered or forbade.”

“To settle this Gordian knot, the most daring soon declared, and in accordance with the dominant principles, that the second national assembly [i.e. Legislative Assembly of 1791] represented the will of the people as well and even better than the first, because in the election of its members, the principles of freedom and equality had been more faithfully followed. Our predecessors, they said, had no right to impose such chains on their successors; the preservation of the people, the sovereignty of the nation, the very destinies of mankind, cannot be sacrificed to a vicious law, too precocious, born in the midst of thunderstorms and filled with contradictions.”

Then came a third national assembly, the National Convention of 1792, and “[this] convention took an oath and swore hatred and destruction to all the kings without exception; it introduced a new calendar, intended to immortalize the epoch of this triumph of philosophy, and to destroy all memory of Christianity and of the Christian era; she even banishes the word ‘monsieur,’ because it still expressed a relationship of authority and dependence between men; we should not recognize any other relationship than that of citizen, nor consequently to use any other qualification. After a formal trial only, she had the innocent king put to death, not out of a motive of hatred against him, not that he had reigned as a tyrant; but for fear of seeing him reestablished on his throne, and especially as a result of

this philosophism, which claimed that the previous authority of the king, exercised in his own and private name, by virtue of his own power, was only an attempt against the sovereignty of the people, a long oppression of the rights of the nation. For the same reason, statues of kings who had died for centuries were also knocked down, without excepting those of the best; their tombs were violated, their bones were dispersed with ignominy, and all the members of the royal family who had not yet emigrated perished on the scaffold, or were banished from that France which they had founded.”

The representatives were now at open war, “moreover, the attack on the property rights of several foreign princes, the danger which threatened all kings and all superiors, the inflexible stubbornness of this new government of sophists, their unbridled desire to establish in all other countries the philosophical system, had given rise to a formidable war abroad. The new republic was attacked and squeezed from all sides, so that it was already much less a question of realizing the pretended principles, than of defending the existence or the authority of the party which enjoyed the supreme power. On the other hand, the seven hundred and fifty representatives of the people could not agree on the organization of their political machine either, and the associates of the new republic acted against each other with more violence and rage than against their common enemies. Each one wanted to make of his will and his interests, the will and the interests of the people; each had his own particular ideas on freedom, equality, human rights, the national will or the manner of manifesting it, and finally on the salvation of the people, and it could not be otherwise.”

“The most daring and the strongest, who knew how to dominate the innumerable clubs or to foment uprisings, declared their adversaries enemies of liberty, and had them dragged by the hundreds to the scaffold. Without consulting the people, various parts of its representatives were expelled one after the other, they were immolated en masse, and those who remained always claimed to represent the entire nation alone... It was no longer a question of liberty, equality, property, security, of all the rights which the political machine should nevertheless protect better than ever. People went so far as to regard the natural superiorities of fortune, consideration, talents and virtues, as crimes worthy of death, because they feared the influence and authority which are inseparable from them.” The Committee of Public Safety is formed and the Reign of Terror ensues.

Came the Thermidorian Reaction, “to watch over the execution of the laws, a directory was appointed, chosen from among the first two-thirds, and composed of five members, and it was invested with a power already far greater than that enjoyed by the constitutional king; only each year one of the directors had to leave office. A council of the ancients, intended, it was said, to temper the foment of passions in a single assembly, had the right to reject the decrees of the council of five hundred, although twice as numerous: a bizarre weak institution correcting false principles which could well sometimes prevent the evil, but which at bottom only organized discord, subjected the majority to the minority, and diametrically contradicted the republican principles... . The formal protest of the majority of the people, as

well as the armed attempt against the legal extension of two-thirds of the members of the convention, were repulsed with cannon and grape-shot; so that the supposedly free constitution was again established by the power of bayonets, like the law of a conqueror.”

Royalist sentiment was rapidly rising, “the number of the partisans of royal authority increased daily among the people and even in the legislative councils. The moment was foreseen when they themselves would recall the heir to the last king, in order to annihilate with all its constitutions this public establishment, source of so much disorder and injustice, the fruit of violence, contrary to reason, and to renew in exchange for old natural relationships, in accordance with the rules of private law.” Thus the Coup of 18 Fructidor rises to prevent this in 1797.

The forces fighting the French republic were diffuse and unsure of themselves: “Hence it came to pass that there were, even in the cabinets, in the armies and their staffs, in the ministries and in the chanceries, a great number of powerful and influential men who, without desiring the complete triumph of the enemy, without working directly for the destruction of the throne and the altar, nevertheless paralyzed by sophisms all the measures proper to their conservation; who waged this war only with reluctance, or at least with lukewarmness and indifference; who regarded the horrors of the revolution as purely accidental, or even as caused by resistance, and who therefore wished to see this struggle ended sooner, and advised, under various pretexts, to give in to the torrent, to caress the monster, and to make peace with hell. It would be easy for us to prove that this general empire of the principles of the French Revolution, with or without their many consequences, was the first and essential cause of all the reverses of the Allied Powers, and the source of all other false measures. Uncertainty or indecision about the purpose of the war, the lack of consistency in following it, the slowness and lukewarmness of military operations, the bad choice and frequent changes of ministers and generals, neglect of political and moral means, false ideas about the nature of war, the impunity of internal enemies, the indifference or even estrangement used towards natural allies, either inside or outside the enemy country, the self-serving and secondary views which soon began to manifest themselves among the allies, the lack of union between them, the prompt rupture of their alliance, finally even, untimely and disastrous peace treaties in their conditions; everything came out of these false doctrines, or at least was colored and favored by them. Thus, the whole world seemed to facilitate the triumph of the revolution.” Meanwhile, more and more countries were being annexed as “sister republics” of the French. Switzerland would be invaded turned into the unitary Helvetic Republic in 1798.

It seemed as though the revolutionary juggernaut was unstoppable, yet...

X. On the complete failure of the whole revolutionary experiment.

Yet a military dictator would come to steer the ship, and for Haller this was an example of a military state in his threefold classification of monarchy emerging: “The alleged collective sovereignty, composed of twenty-five million men, was unable or unwilling to maintain any of its collective rights, none of the powers which it had delegated: and we soon saw, on the contrary, a single man subjugate, with the greatest ease, the whole nation, which at first itself applauded this enterprise. Strange as this phenomenon may appear, it cannot surprise a thoughtful observer. Because, to speak exactly, the system had never existed except on paper, and not for a single moment in reality. The omnipotence of nature constantly repelled it, and the whole course of the revolution was only a continual proof of its impossibility. From the states-general, convoked by the king, a great corporation had indeed formed, a new independent power; but this power was not delegated to him by the people; quite the contrary, a part of the members of the States-General had seized it, and knew how to maintain it in spite of the diametrically opposed instructions which it had received from its constituents. The presupposed association, the fictitious social contract between all the inhabitants of never existed, we did not even succeed in establishing it by force; on the contrary, this attempt, offending nature, divided the nation more than ever into two bitter parties against each other.”

The course of the Revolution had itself proved its falsity: “First, it was the states-general which exercised an absolute empire, after having reduced the king their master to being nothing more than their servant. Then reigned the legislative assembly and the national convention, both, not established voluntarily by the people, but necessarily by the clubs of Jacobins, and composed in their direction by means of measures of terror; then the different factions of the convention itself, which, in a civil war, had triumphed over their adversaries by tortures and proscriptions; and finally, the executive directory which, by an act of military violence, had freed itself from a part of its colleagues and of the deputies of the people contrary to its wishes. Each of these collective and transient governments made laws, acted, and judged at the same time. They declared their will, had it executed, and changed it again when they found it suitable to their interests. The division of supreme power was, in fact, impossible. Despite false principles and written constitutions, there must necessarily be a power superior to others; or when there is an equality of forces and opposition of interests, everything inevitably had to be decided by a war, an all-out fight, which again assured the exclusive empire to the strongest.”

“Basically, it was always the strongest who reigned; but instead of a natural power, legitimate by its origin and its exercise, providing for the needs of others, and by that very beneficent: there arose an illegitimately acquired violence, contrary to nature, without rule and without restraint.”

It was the war itself that had hastened the end of the revolutionary republic, however. This is because the military relation is innately opposed to revolutionary sophisms, following its own principles of natural law, of leadership, subordination, strength and hierarchy that no scribbler could ever oppose. “In the army, where domination and dependence are most

needed, more marked than elsewhere, there sprouted new personal power, true authority, which evidently derived, not from subordinates, but from a single individual, either that he had raised the troops himself, or that they had been entrusted to him by a higher power. Subordination and discipline reigned there, not for the freedom and interests of each soldier (of the one who is paid), but for the safety and interests of their leader (of the one who pays). Only one man there gave the law and the orders, watched over their execution, made judgements and handed out punishments.”

“Every day in the camps everyone saw how strength and superiority, valor, skill, presence of mind, etc., necessarily entail empire over other men; and although war is a violent state, during which the ideas of justice are easily disregarded or injured, each nevertheless, guided by a righteous feeling, knows how to distinguish the natural empire acquired by superiority from the abuse of power. The generals, victorious on the outside, became powerful on their own, and began to feel that they did not need to take orders from anyone... **But did we not still see here the necessary inequality of relations or conditions? Did the French soldiers pay the same contributions, did they obey the same laws as the vanquished? Did they have the same judge? They waged war against the so-called privileges; and were they not themselves the first privileged in all the countries they entered? O indestructible nature!**”

Thus, Napoleon Bonaparte arose, very tragically, but also very naturally:

Within days, and with incredible ease, the whole nation was subject to him, and perhaps still would be if he had conducted himself with more moderation towards foreign powers. Although the unbridled ambition of this man, his thirst for conquests, and his fury to subjugate everything to his individual and crushing will (true punishment of the revolution), were for all Europe the cause of evils without number, and that his final fate is a lesson for all tyrants, nevertheless the rapid establishment of this new domination in the interior of France, will remain eternally remarkable and instructive. It was formed, as any other domination is formed, by the leader's own and personal power, and by the contracts or pacts of individual services which result from it, of expenses apparently conferred in the name of the expiring republic, offices that could no longer be refused, or to put it better, a capitulation masked under the name of a new constitution, he immediately submitted to it the whole community of those who previously exercised supreme authority, as well as the crowd of their employees and their servants. They gathered over his head such power that he can never belong to an official, even of the first rank, but only to an independent lord, who governs his own affairs. The absolute command of the whole army, the supreme direction of all the branches of the administration, the appointment to all military and civilian posts, up to those of village mayor; the distribution of graces and privileges, the faculty of disposing of all the goods and revenues of the former republic, were concentrated in him alone; he had, even with regard to what were called laws, the exclusive right of initiative.

A body composed of the ancient councils, and maintained for name only, retained no power other than that of approving them; it was not even allowed to put them under deliberation. To constrain the small number of recalcitrants still attached to philosophical principles, the use of force was hardly necessary. They were expelled or removed without inspiring the nation the slightest pity, without finding any supporters. On the contrary, the people who pretended to be sovereign applauded this enterprise loudly, and they would have applauded it in the same way, even if any other had formed it. The great mass of individuals attached themselves, as everywhere, to the powerful man who could ensure tranquility, satisfy needs, distribute honors and wealth, reward and punish. The numerous class of declared enemies of the republic, which until then one had always wanted to govern by the pretended right of the majority (or of the general will), according to philosophical principles, and without any reciprocity of services, was little by little won by quite opposite means: they made her dependent, she obtained her obedience and even its assistance, by the love of rest, by the advantages offered to it, by employments and places, and, so to speak, by individual peace treaties.

As for the clergy, always persecuted until then, annihilated as a corporation, but which nevertheless exercised, either from outside or from within France, a powerful influence over public opinion, and unfavorable to the new government, it was indirectly subjugated by a treaty (concordat) concluded with its chief, or to gain it by the reestablishment of worship, by a new consideration, by benefits, etc., and change its members, if not into friends, at least into peaceful inhabitants and useful instruments. Supporters of the dethroned royal family were no longer seen as rebellious citizens, but as legitimate enemies, that it was necessary, like the other enemies, or win by force or by peace. Those who had remained in France were left alone from

the moment they laid down their arms. The proscribed and the deported were recalled to their homeland, restored to their non-alienated property, even appointed to jobs and charges, on the sole condition of renouncing the war, and of recognizing the new monarch as their master. Finally, to disarm the envy of equals, to satisfy the old comrades in arms, the only dangerous rivals, they were showered with riches, they were entrusted with great places, honors and even fiefs or lands, either to reward their services, or to ensure their attachment to the future. A series of decisive victories won outside France, and imperatively ordered peace treaties, concluded in his own name with the first powers of Europe, further enhanced the authority of this man and the idea of his superiority. A brilliant court, with numerous and lucrative offices, attracted more people every day to the service of the new master.

By degrees, and even quite quickly, we saw the disappearance of the so-called republican or philosophical scaffolding, which had been left to exist at first out of care and to reduce resistance. The impotent bodies which, according to the dead letter of the constitution, represented supreme power, but which, in fact, did not and had never possessed it, were, without the slightest opposition, changed into subordinate colleges, appointed and, if need be, chaired by the monarch. The power originally delegated, or rather taken for a determined time, was, without obstacle, first decreed for life, and soon after, under a new name, proclaimed hereditary and personal, by those very same who represented the weak remnants of the republic. The new emperor put the crown on his head himself. The so-called national sovereignty, the philosophical republic, was once again changed into a patrimonial state.

Since then we have again seen the introduction of a new feudal system, much more extensive and infinitely more severe than the old one, in its conditions and in its services; the creation of a legal nobility with hereditary titles which no longer had corresponding jobs; the establishment of birthrights or privileges of primogeniture which did not derive, as in the past, from the particular freedom or the absolute faculty of testing, but which were granted as an exception to general laws, by the grace of the sovereign. We have seen the institution of various orders which, more than all the ancients, attached their members to the person of the prince; the statutes of family, or domestic laws, by which the head of the imperial household was freed from all civil or particular laws (which no one else could enforce against him); and regulated according to his good pleasure the succession of his movable and immovable property; Finally, even the abolition of the pension or civil list, and instead the restitution and the increase of the personal domains, exempt from all taxation, by means of which the so-called national official again became a powerful and independent territorial lord, who paid his employees. Also his language and the style of his chancelleries were more monarchical, more personal than they had been elsewhere, and even in France before...

He spoke in his own name, of his throne, of his people, of his troops, of his territory*. He was the first and the last, the beginning and the end, the source from which everything flowed, the term where everything ended.

*"This is the true character of monarchy in general. These words have nothing shocking in themselves, as soon as we apply them only to what really belongs to the prince, to what is due to him, and when we assume and always reserve the divine and superior laws, the natural duties of justice and benevolence towards other men. Such is the monarchy of God, to whom everything belongs; everything was done by him and for him. Coloss. I, 16. Such is in a small, and in a subordinate way, the monarchy of each individual. In the sphere of his authority, within the limits of his rights and his power, he is the first and the last, the source and the goal of his will and actions," Haller says.

"Weapons alone cannot give victory in this struggle. A better doctrine must gradually become dominant and find powerful friends and protectors," he concludes.

XI. On the causes of the revolutionary system's failure.

It is in this chapter that Haller attacks the revolutionary theory and the numerous variations of contract theory at their core. "Would it be true, as it is claimed, that men were not yet ripe for such beautiful theories? Or would we just have extended or misapplied the principles? Has the pretended good cause only been lost by clumsy instruments? Or were philosophical principles from the outset, among their supporters, only a pretext for ambition to put themselves in the place of those they expelled?," and so they were.

"The ancient communities of Greece and Italy; the towns of the Middle Ages, whose citizens often could not read or write, and did not even know the printing press; the herdsmen of the Alps in the Swiss valleys were ripe enough for independence and for the republican constitution, from the moment when they were self-sufficient and could maintain and protect themselves, without the help of others: they were never objected to the lack of civilization, or of enlightenment, to enjoy these advantages." It is property and independence that elevates a natural bond into a state.

There is no withering away of the state:

But States such as they exist, that is to say, independent and natural social relations, commitments of service, mutual aid will always subsist, and must necessarily subsist as much as the world, that is to say, as long as men will have needs relative to the conservation of their life, and will depend on one another by the diversity of their means and their fortunes.

Haller goes on to say that the demands for formal equality presaged those for material equality, and that hence Babeuf was the most consistent member of his sect. "Could we also imagine a more awkward way for satisfying personal ambition, than to base power and authority not on one's own strength, but on the changing whims of the multitude, than to dissect sovereign power into an infinity of parts, in order to reduce it to nothing, and change it at any time by renewed elections? Never before has an ambitious man gone about it in this way: in the final analysis, all this has undoubtedly only been a change of master; but it was an

effect of the irresistible force of things; it was the necessary result of the revolution, and not the intention of its authors; so it was not for them, but for very different men that she served as a step in reaching power.”

Several prior critics of contract theory are cited: Richard Cumberland, Robert Filmer, Christian Thomasius, Johann Friedrich Horn, Pasquier Quesnel, and Albrecht von Haller.

Now the whole philosophical system can be reduced to four propositions: 1. that men originally lived without social relations, in a state of perfect freedom and equality; 2. that this state of affairs gave no guarantee to their rights; 3. that for this reason they united with each other, and delegated to one or more of them, sufficient power for the maintenance of general security; 4. that by the formation of such a civil society, the freedom of individuals is better assured than before, or at least it can be in this way.

“Here is more or less the syllogism of this system of public law: **All that one possesses is a deposit; however, one also possesses what one has acquired by oneself, by purchase, by exchange, by inheritance, etc.; so all of these things are deposits, and all owners in the world must be required to return them. Let us brag about such logic if we can!**”

And another witty quip: “If we see in the little houses fools who imagine themselves to be kings, and who speak and act according to this fixed idea, at least they believe in it and are in good faith. But by what name shall we designate the new folly of those who, while recognizing that they are not kings, that they never were, nevertheless maintain that, according to reason, they should be, and who, according to this idea, would like to wear or demand the scepter and the crown?”

The first proposition is straightforward to refute: the conjugal bond, the rearing of children, the multiplication of humans produces with it innate inequalities in talents, virtues, fortunes, possessions; between those who require services from their subordinates, and those who require aid from their superiors. The basis of authority and dominion is thus natural superiority. But so far this does not yet constitute a state. Not every house-father can be self-sufficient, and therefore it is “a contradiction in terms, that every man is the father of a family, and can live on the product of his own good. It is just as impossible that each father of a family is self-sufficient and does not need to depend on anyone. As soon as, in a country, the number of men multiplies somewhat; as soon as they gather there around a powerful individual, the latest comers cannot deprive of his rights and possessions the one who arrived first, nor claim to the empire over what belongs to him. They must either serve it, or part with it to seek new homes elsewhere, where they will either find social relationships of the same kind or the freedom to form new ones.”

(According to anthropologist Henri J.M. Claessen, a minimum threshold of around 5000 people is needed to have sufficient specialization for there to be a proper state. “Was the State Inevitable?” (2002))

As to the second proposition, about the natural state being insecure, it ignores all of moral sensibility between kin groups, the possibility of forming self-help leagues and alliances, and ultimately to flee to a different lord — realistically, this isn't any different from the state of "civil society," except that the latter fancies itself not merely as the highest tribunal but as the deposit of all rights:

Whatever may be the difference between the means, the conditions, or fortunes, each one must nonetheless respect, even in the weakest, his fellow man and the creature of the Divinity. No man has the right to harm another in that which he belongs, to deprive him of his life, or his fortune; nor to use violence to interfere with his free will, and to oppose to innocent and indifferent actions. In addition to the duties common to all men, he cannot demand of him more than the nature of the relationship or contract, whether formal or tacit, which authorizes what exists between them. If we wish to give to these principles, which have never been denied, which can and must be maintained in all circumstances, and which are recognized today as well as in the past, the names of natural rights or of natural equality of men, we do not pretend to oppose it, although these delicate and abstract ideas have been so badly understood, so falsely interpreted, that it would perhaps be desirable that they never made the matter of public education, and that for particular cases we would have limited ourselves.

It is inconceivable that Hobbes and his successors could have maintained that a reciprocal fear led men to reunite in society: for fear divides and separates them; love and trust only bring them together. The truth is, we can get together resist a fearful third party more effectively, and this happens often. But those who meet do not fear each other. They are friends and not enemies.”

However powerful a man may be, yet there never existed, and there will not be one who has nothing to fear, and who, by abusing too much of his strength, must not, sooner or later, fear retaliation; another right which has not been established by a factitious convention, but which is engraved in the nature of the child as in that of the adult, within the brute as within the man, and which makes the basis of all natural criminal law. Injustice exposes people to more dangers than the observance of justice; both lead to reciprocity in their wake; the first that of evils, the second that of benefits. On the one hand, this fear of probable retaliation, (ie, retribution); on the other, the hope of an exchange of justice and benevolence, (that is to say, of a reward), thus form the second basis of all security, and contributes still today, much more than is believed, and even more than the force of human laws, to prevent injustices, acts of violence, as well as to practice the duties of mutual love.”

“The relief given by the more powerful, in an impartial and effective manner, is called jurisdiction. It is this along with emigration or flight, by means of which one withdraws from power, when there is no longer any other resource: such are the means which beneficent nature grants to man. to ensure his legitimate freedom.”

“We challenge the philosophers to point out to us other means of maintaining justice than, 1. to observe the natural law oneself, and to inculcate it in others; 2. to resist according to the measure of his strength; 3. to invoke the help of others, and 4. to flee? Our modern jurisconsults deprive us of the first, second and fourth of these means, precisely those which lead most surely to the end.”

It is, however, the third proposition, the creation of the social contract, which is Haller’s most brilliant contribution in the chapter. What follows is the greatest refutation, logistically and juridically, of the idea that such a thing could be formed:

Now, will the servants alone enter such a society, without renouncing the voluntary relationships which have bound them until then? What motive could engage them in it? Already having a protector and a superior, they would now be obliged to serve two at the same time, that is to say, a natural master and a fictitious master; a master who already existed and another that would have to be established; one who feeds them and pays them, and another whom they would be obliged to feed and pay, and who, moreover, could oppress them as well as the first. What advantage would they find in that? And suppose again, which is against nature, that they are all without exception dissatisfied with their old lords; how will they even be able to found such a society, unless they do not first separate themselves from these same superiors, and find a territory of their own, on which they could enjoy independence?

Either masters and servants will join the same society, and (without prejudice to the mutual relations which previously bound them) will they become equal in rights as citizens from the same state? This is even less practicable; for every association wants to be composed of homogeneous elements, and above all voluntarily formed. What free man, what head of family will care to be a member of a society where the voice of his servants, his subordinates, those to whom he previously gave orders, can prevail over his own; in a society, therefore, where he risks being oppressed by them and deprived of his freedom. Or, let us admit the contrary case, which is more natural and more probable, that is to say, that all the servants will continue to obey the will of their master and will conform their vote to his in the common society: then what freedom or what security would remain with other members of the community who cannot have access to such a number of friends and servants? Will they not ask for the exclusion of the latter, in order to prevent the oppressive preponderance of a few powerful heads of families, among whom the strongest would soon rise above the others?

No, say the wisest of philosophical publicists: servants cannot be contractors; the people, the original community should only be made up of heads of families, but, without pointing out that the system again contradicts itself here and recognizes for the third time a natural dependence: these philosophers, even in this case, cannot escape nature; the difficulties recur again. Because it is a question of knowing which ones should be regarded as heads of families. Will it be any man who has a wife and children, or the one only married or not, having children or not, owns a house and land in which he lives? But are all servants then celibate? Do they all reside in their master's house? Are they not themselves heads and fathers of families? Can it not be some who, with very varied requirements, live outside of the house, but receiving the money of their master; who are fed by him, who contrary to the first principle of the system according to which the social contract must be formed not between the princes, but between the subjects of each particular prince.

In truth one would find here the possible elements of a civil community because independent sovereigns or territorial lords are equal to each other, not it is true, in power or in possessions, but in rights and in freedom. They alone could give the association this independence, without which there is no state. But what motive will now induce them to enter a society of this nature, to sacrifice their most precious possession, their most beautiful attribute, I mean their perfect

freedom? Will this be the bait of greater security, either against foreign enemies or among themselves, as some philosophers would be tempted to represent to them on paper. But then one of these princes, who has perhaps never been wronged, will say that does not see the usefulness of an association which, on the contrary, could itself offend him. Another will reply that, helped by his subjects, he is strong enough to defend himself, and that he does not want protection which he has not asked for. A third, although less strong, relies, if necessary, on devoted friends, who will lend their assistance without demanding the sacrifice of their freedom in exchange for a service that he will be able to render to them in turn. A fourth may agree to form a temporary alliance against the predominant power of a neighbor, an alliance from which he can detach himself as soon as it becomes useless to him; but he will never want to subjugate himself permanently to a power which would be just as likely to be turned against him as used to his advantage. A fifth, finally, will prefer to endure a temporary injustice, or to become attached to a powerful neighbor, his friend, or to compromise with the very one from whom he experiences offenses, than to be governed by his equals, and stripped forever of his freedom in favor of a stranger.

None will listen to the siren's voice; none need the social contract.

Moreover, the formation of corporations, although greatly useful for securing common goals and when gaining independence become republics, are hardly foolproof, and indeed a fictitious corporation that claims to represent an entire people is actively damaging to the cause of public peace: "A corporation, the union of human forces, is indeed very powerful against an external enemy, or for the execution of a common enterprise; but if, as is very possible, these same forces are employed without rule and without restraint, or turned against the very bosom of society, they become more formidable than all the others. Natural and acquired rights are then trampled underfoot with even more impudence than by individual tyrants, because passions are never more violent than between equals, because everyone hides among the crowd of accomplices, and consequently shies away from the very fear of shame and moral responsibility."

The notion of a sweeping delegation and cessation of rights is also absurd; any corporation would be formed to cooperatively elevate them, not to completely forfeit them: "A certain man holds to such a faculty which he has the power to exercise; another has a different right. One regards as necessary what is not necessary in the eyes of another; and what John can easily give up, because he does not own it, or cannot make use of it, Peter will find essential to his existence. The poor will not allow themselves to be stripped of their body, nor the rich of their property. The strong will not renounce their power, nor the weak their cunning. None will want to deprive themselves of their freedom with regard to their particular affairs and their legitimate views. Should we, for example, refrain from these wars authorized by the state of nature? But what is a war? What kinds of wars will be defended? How many men and what kind of weapons can we no longer use? Will this prohibition also extend to any personal resistance against injustice and violence, in order to give carte blanche to scoundrels, and so that good people are delivered to their mercy? Strange security!"

Haller then proceeds to lambast the idea that anyone would cede their right to self-defense, which is ultimately the basis of all war, a legitimate redress of grievances when peaceful means fail. This is subsequently elaborated again in Chapter XXVIII. But more than that, he very definitively draws the parallel between the sphere of action of every married male householder right up to the supreme power of a prince, and why the establishment of a civil society is effectively a slave compact by a different name:

Are you only allowed to defend your body and not your fortune and honor? Or will it no longer be lawful to increase one's means of defense, to help oneself with the forces of nature and man, to build fortresses, or to have troops or servants in one's pay? For the troops, the one who does not need them, or who cannot pay them, will easily give them up; but it will not be the same for the one for whom they are necessary and who can make them subsist. Besides, what are armed servants? Can we not arm every servant with some instrument? Should their weapons be cannons, guns or sabers? Do we not need armed people to defend themselves against ferocious beasts, or to undertake useful work? What is a fortress? Will no one be able to put a lock on his door, neither enclose his field, nor surround his garden with a wall? And if we are objected that these are small means of security, and not fortifications, then what is the point where the first end, where the last begin?

Will citizens who have just entered the State no longer be able to make peace, nor to conclude alliances in their particular affairs, just as they have renounced the right of war? Will they be forbidden to end disputes, to reconcile enemies, to settle amicably when their interests collide; to join forces to achieve a lawful goal, or to satisfy a common need? Any community, any contract of society and relief, any marriage even, is not it an alliance?

What alliances must we therefore defend? Innocent alliances, hostile alliances only, or both? In the first and third cases, the prohibition would be absurd; in the second, it is not necessary: because hostile leagues are just as offensive, already prohibited by natural law; and to prevent or punish them, we do not need a civil and artificial society.

In addition, will the new citizens allow themselves to be stripped of the right to create or offer in their homes jobs that require the care of their interests; to engage of people in their service, to give them instructions, to judge the accomplishment of the duties with which they have charged them; to manifest, in what concerns their personal affairs, an obligatory will, not only for themselves, but also for others; to give, within the limits of their right, the orders they deem appropriate and to carry them out; finally to impose laws between themselves by mutual agreements? **Will they no longer be able to exercise any office of judge, either in their own affairs, or in their homes and towards the people who depend on them, nor to end a dispute, nor to assist anyone in obtaining the enjoyment of a contested right? Or not contested, even though they would they have the means? Will every little domestic quarrel have to be brought before the all-powerful tribunal, and the only powerful one, of the Head of State? Or will we perhaps give up the right to punish, and delegate it exclusively to the new political power?**

Will it no longer be open to the father, the master, the craftsman, the teacher, to address exhortations or reproaches to children, servants, workers, to students who failed in their schoolwork? Will he no longer be able, even when his power would suffice, and that he would not abuse it, punish them by arrests, by light fines, by small corporal punishments, by the imposition of some work, and finally, by dismissal or expulsion from his domain? Who will consent to be deprived of all the means of action in this way? Will the state take care of all these trifles? Besides, any harm which the offender, in order to guarantee his safety

for the future, causes the offender to suffer, is it not a penalty? Will it be necessary that the owner quietly allows his property to be taken away, or the husband to see his wife dishonored, without having the right to punish the culprit at once, and to force him to a suitable satisfaction? What becomes of the right of resistance, the very right of legitimate defense in case of rigorous necessity, if it is no longer allowed to do any harm to the offender, or no longer allowed to make him do greater restitution than the offense which he has committed himself?

Finally, will we give up inalienable rights in the literal sense of the word. And even if the thing would be possible up to a certain point, and for the exercise of these faculties only, would the aim of the contract be achieved, would human rights be better guaranteed? **Will we give the name of freedom to a state of things which reduces man to having neither strength nor will, and degrades him below the brutes? Would it not be rather to make all free men slaves, so that only one can enjoy freedom?**

Will the members of the State have to pay him, except to see him fix the sums he will need? But will the citizens agree, as some publicists claim, to cede part of their land to form a domain or property to their new prince, while also obliging themselves to pay arbitrary taxes in perpetuity that he will not fail to ask them for under the pretext of state needs? **A strange freedom is that which requires the heads of families to sacrifice their independence, that they renounce the right to defend themselves, that they strip themselves of their own will and of their intelligence, that they submit their persons and their goods to indefinite services, that they allow part of their property to be taken away in advance, and that they keep their purse unceasingly open for the future. All this, not to obtain a certain advantage, but ultimately to expect chance or the goodwill of the new master that he can protect them.**

Can we imagine that a state has ever been formed in this way? And what difference would there be between such freedom and the most absolute slavery?

There is no difference between the household patriarch and the prince, except for one thing: the latter is independent, and the former is not. That is all. And the same goes for every state, an independent social relation that but for the perfect liberty it enjoys is otherwise identical.

XII. On the natural origin of all social relationships.

We therefore arrive at the need for putting political authority on a different foundation, and that would be natural superiority and dependence existing from an inequality of means and needs, existing in an unabridged state of nature: "So far from opposing the social or civil state to the state of nature, let's see if we will not succeed better by sticking to the latter, by admitting the perpetuity of its existence, and by explaining all social relations through it, young and old alike. Instead of establishing the power of the princes on rights which they would have received from their subordinates, would they not flow in a way that is both simpler and more satisfactory from their own rights (either natural or acquired), so that by that very fact, on the one hand, these rights would be established on a more solid basis, and on the other, much more limited than one thinks? Instead of assuming to explain the

sovereign's duties by contracts and fictitious mandates, are they not quite simply those of justice and benevolence, imposed on the strong and the weak? Instead of admitting, in spite of nature, the impossible independence of all men without exception, would it not be better to start from the possible independence of a few, and attach or group around them the service and dependence on other individuals, without requiring them to sacrifice their rights? Instead of having the superior created by his inferiors, should we not assume here as elsewhere this constant march of nature, which, throughout the course of human life, in all social relations, makes the superior exist before the lower one?"

"Yes, we say it boldly, the state of nature has never ceased! It is the established eternal and immutable order of God Himself; it is in it that we live and exist, and men would try in vain to ever get out of it."

"The princes themselves, who are said to live in a natural or extra-social state, are there only in respect of their equals, or in relation to other men who have no special relation to them; but they live in a social state with their subjects and their subordinates: they can consequently demand all the rights, and must fulfill all the duties which follow from the nature of this relation: and although it is more difficult to compel the princes to the fulfillment of these duties than other men, this does not change the obligation itself. **Besides, the engagements which they often take towards their equals, in consequence of various conventions, sometimes go so far, that one could hardly distinguish them from ordinary service, such as it takes place between individuals. Finally, the princes sometimes belong to communities or to particular corporations, where, despite their power and their fortune, they have no more rights than the other members.**"

Haller then explains those authors who came close, but couldn't make the jump:

Boehmer, Pufendorf and others, however, recognized natural societies; sometimes they even seemed to prefer them to factitious societies, commonly called civil. Only they did not have the courage to reject the latter entirely; they did not open their eyes sufficiently to see that even today there are only societies of the first kind, and that they are sufficient to account for the existence of governments. We pass over in silence a great number of other authors, who, without denying the relations of families, and even of more extensive natural unions, have not deigned to consider them more closely, and who embarrass themselves and contradict each other every time. that it is about marking the difference between these particular societies and those which bear the name of 'civil.'

Achenwall and Putter were on the verge of recognizing that the latter is only natural society raised to its highest perfection; but the Roman language and the authority of the former jurisconsults, who always spoke of a civil society formed by the people, etc. prevented them from remaining faithful to this luminous idea, and from drawing the right consequences from it. Finally, one of the modern writers, while falling into gross errors of another kind, approached the truth further still, by expressly saying that one must oppose the state of nature, not that of society, but the civil state; because in the state of nature, there is and there can be companies of various kinds, regulated by private law alone; but not civil societies, that is to say, artificial societies which, according to this author, do not even exist, but which he presents to us as an ideal which we must constantly approach.

For us, we will examine again, if this natural social state, if the established order of the divinity, is not preferable to the chimeras of the sophists, if there has ever been any other, and if it is not sufficient to ensure justice among men. So that there is and that there must be social relations, by the force of nature alone, it is a truth not only proved by reason and by experience, but moreover fairly generally recognized. However, likewise what form these bonds of men will take depends on the diversity of their means and their needs; in the same way also it necessarily establishes in each of them domination and dependence, freedom and subjugation, without which these relations could not exist. By a series of unequal resources distributed among men, and for their mutual advantage, it makes some dependent, others independent; some servants, others free. The young child, the weak, the ignorant, are they not subjugated by their nature, in proportion to their needs? The powerful, the rich, the wise, on the contrary, are they not naturally free in proportion to the means they have received from nature? Thus, nowadays, as in the past, the husband commands his wife and children, the master over his servants, the captain over his comrades in arms, the teacher over his disciples, the head of the family over the inhabitants of his house, the landowner over his servants, his workers and all those who live on his land. There is more: a single individual can combine several of these qualities, he will be at the same time father, head of family, general, doctor and landowner; and he will consequently exercise, in these various capacities, a more extended authority over a greater number of men. But what is the nature of these simple relationships when we examine them more closely and compare them with the law of justice?

First they are not formed by collective deliberations and meetings, but by nature alone or by individual service contracts; not from bottom to top, but from top to bottom; not at the same time, but at different times, by successive aggregation. None of these superiors received their existence and power from their subordinates; but he both derives from the blessings of nature, that is to say, from the grace of God; they are innate to him, if we can speak thus, or he acquired them by an effect of what is innate. On the other hand, the subordinates did not sacrifice either their freedom or any previous rights; they are naturally in dependence, or else, they entered voluntarily in the service of their master, not to become freer (which would imply contradiction), but to satisfy their needs, to be nourished, protected, educated, for themselves, to ensure a smoother and more enjoyable life. The inferiors gave nothing to their superior; neither one did not take anything away from them: on the contrary, they help each other and serve each other. Both have only what belongs to them; equal in natural rights, unequal in acquired rights, they both exercise their legitimate freedom, according to their own will and according to the measure of their means. The object, scope, graduation, duration of services and mutual benefits vary ad infinitum. Each one contracts as he wishes, according to his needs and the goal he proposes, subject only to the universal divine law, from which no one is excepted. Here everything is free, natural and unconstrained. There is no unjust coercion, neither at the entry of man into social relations, nor while they last, nor when he leaves them; they can be dissolved, and both parties have the option of renouncing the individual contract.

Even more; if the power of one or the need of the other ceases, if the basis of authority or obedience disappears, people themselves can change their position; the free man can fall into bondage, and the one who served can rise to freedom; the strong can become weak and the weak strong; but it is never given to all men at the same time to be free, and to the same degree. Domination and dependence, freedom and subjugation, are and always will be two correlative things, as long as men are not all endowed with the same faculties, and that they depend on each other for mutual needs. There can be no free man without auxiliaries in his service, nor servants or auxiliaries without one or more free men; one cannot conceive of a master without a servant, nor a servant without a master; one necessarily supposes the other. People can change places, but the very thing is indestructible. Make all freedom or dependence disappear from the earth; wanting to make all men equally free or equally dependent, these would be two enterprises as contrary to nature, as impossible and as contradictory as each other.

XIII. On the origin of lordship and dominion among men according to a universal natural law.

The origin of all relations of domination and subordination come from higher and lower degrees of power, that is to say unequal endowment in faculties to carry out acts, or as Haller would say, a natural superiority in some useful power to satisfy the need for nourishment, protection, education and direction in those subordinates who cannot acquire it on their own.

Man reigns over his wife, because he has chosen her, because he has taken her under his protection, because he ordinarily nourishes her, and generally surpasses her in spirit and in physical strength. The father governs his children, not only because they owe him the maintenance of life, but also because he is their superior in age, knowledge, strength, wealth, etc., and that they need this power at all times. The master commands his servants, because he can feed them and pay them, because with his fortune he provides them with lodging, upkeep and various amenities of life, which they could not obtain without him. The captain gives orders to his comrades in arms, because he surpasses them in skill, strength or wealth to pay for their services; and that they in their turn cannot do without his protection or the wages they receive from it. The master exercises authority over his disciples, because he is superior to them in the science or in the art which they need. Why do the sick submit to the doctor's empire? Why do they obey his orders, if not because of his superiority in the knowledge of diseases or remedies, and because of their need? That if the doctors themselves sometimes succeed in triumphing over the sufferings of men, is it not by opposing the force of the disease a superior force, by seeking to strengthen the friendly power, and to weaken or to remove the hostile power? Why do the litigants run to a jurisconsult, and sacrifice, according to his advice, their time, their money and their own knowledge? Where does this authority come from, if not from the need of some and the superiority of others to satisfy it?

This is true meaning of "empire of the strongest," i.e. "to the one who is superior in means; or, to express ourselves more precisely, that where power and need meet, a relationship is formed by virtue of which authority becomes the sharing of the first, and obedience or dependence that of the second; a relation which is nonetheless absolutely in accordance with justice, and in the interest of both parties."

Further elaborations on this principle:

“In men, whose forces are of a more elevated and varied kind, the same law is still found, but only in more noble forms. Man, born without tools, generally reigns over animals, because he is superior to them by the power of the spirit, and by that admirable instrument of the hand which enables him to convert into tools, for his service, so many forces of nature. However, he does not always reign, nor over all animals; his empire is confined to those whom he has tamed by favors (that is to say, by a useful power which provides for their needs); to those over whom he has proved his superiority in war and combat, or finally, to those over whom he has triumphed by the means of some other power of nature.”

“Let the greatest potentate in the world fall ill, he will immediately obey his doctor, whatever he commands him for everything else. Entire armies often follow a poor countryman whom they have taken for their guide, and obey his orders, although they can annihilate him in the blink of an eye. In short, whenever a man makes himself necessary or indispensable to others, whenever he can save them from some evil or procure them some good, he will reign over them and give them laws.”

“In the same way, finally, that all domination rests on a superior power, so also it ceases with this superiority. Let the rich become poor, the strong become weak, or the wise foolish, so that they are no longer able to feed, protect, rule other men, as soon as their empire falls; and from the child who comes out of paternal power, when he himself can provide for his existence; since the enriched valet, who leaves the service of his master; from the disciple who is made a doctor in his turn; from the sick person recovering to health, to the powerful vassal who ends up being strong enough to protect himself; everywhere dependence ceases with need.”

“No: no one on earth suffers without repugnance from the empire of his equal or of a lesser, that is to say, of a man less powerful than himself. Everyone wants to serve only a real superior, and from the last mercenary to the minister and general of the armies of the greatest monarch, each one willingly obeys only that which he recognizes above himself. The youngest son of the farmer, when death comes to steal from him a father whom he served with pleasure, leaves the plow and the paternal roof, to be the servant, not of his brother, but of a stranger who is superior to him. The servant in the towns thinks himself higher and more elevated, in proportion as his master is distinguished from others, by a more considerable rank and fortune; he prefers to serve a great than a small lord, although the latter paid just as well and maybe treats him better. The disciples crowd around a distinguished and celebrated master in the arts or sciences, and thousands of imitators copy him not only in his qualities, but even in his faults. The power of what we call fashion, of this fashion which often orders insane and painful things, where does it come from, if not from influential places, courts and large capitals, inducing everyone to imitate his example, even without having to?”

“Well! Despite the cooperation of human will, and wherever it is necessary to entrust or delegate a power or a common force to a single or to several individuals, the law of nature retains its empire. From the treaties of alliance and peace between the greatest potentates, to the vulgar contracts of sale, purchase, service and rental between the lesser individuals, is it not always the strongest who dictates the conditions, and that without being able to reproach him,

neither injustice, nor violence? And don't the weak consent to these conditions, as they become more destitute? Why are all the conventions of the poor and the weak always disadvantageous and painful for them, even when treated with the most gentleness, if not because they have many needs, and except their bodies and the work of their hands, they have almost nothing to offer? Why, on the contrary, do we always transact in a cheaper and easier way in proportion as we have more power? That we can render more services and that we are better able to do without the help of others? Do you believe perhaps that at least in the republics it is not the strongest which dominates, and that one can escape there from the law of nature? But consider all the corporations, all the republics, from the smallest country commune, to Rome, which was the mistress of the world; and you will find without exception that everywhere the great and the principal, the richest citizens, the most remarkable, the most illustrious, those finally who are the first among their equals, and consequently still the most powerful, are placed with preference at the head of business. Although a law of Aristides authorized the Athenians to choose their magistrates from among all classes of citizens, they always stuck to the noblest to the most illustrious; and although in Rome the people had wrested, by open force, the right of raising plebeians to public offices, they could not, however, resolve to appoint them there. The same happens without exception in all towns and villages. Although it often happens that a powerful citizen prefers rest to dignity, we see the people begging him, almost on their knees, to receive a further increase in power, and to unite a delegated power to that which he already enjoys in his own right."

"Moreover, this eminent wisdom is not always or everywhere necessary. The first and most universal need of men is to live; the second, to be protected; the third, to be educated. The poor therefore serve the one who gives them bread; the weak, the one who protects him, rather than the one who tells him the precepts of a true or false wisdom. In general, the power most needed is always the one that reigns. Thus, in war it is the most skillful or the bravest who dominates; in peacetime it is usually the noblest or the richest, and in the arts and sciences or those great works from which one can only help oneself by superior enlightenment, by doctrines and universal rules it is there also that men seek the wisest, and obey him as a decisive authority."

"That it is enough for us, in the meantime, to consider the beneficent character of this law of nature, and to recognize how much the divine institution is wiser than the foolish reveries of man. It is precisely in order to make the abuse rarer, so that there would be less injustice and violence on earth, that nature handed over the empire to the most powerful. For, in order to do good, it is not enough to know and to want; it is necessary to possess ability above all the rest. How much wisdom and simplicity is there in this divine establishment that no one commands except by virtue of a real superiority; may he alone protect his fellows, who can in fact protect them; that when an order is needed, it is not given by the one who lacks the means to make his will effective; finally, that the superior power reigns only because it provides for the needs of others, and that it can preserve evil or procure good? In this way, the strong becomes the friend of the weak, and the weak in turn becomes the friend of the strong. It is not by a forced and absolute submission, such as the sophists teach us and which they dare to call freedom; on the

contrary, it is through love and a reciprocal exchange of benefits that nature forms social bonds. It is in this way that it produces states and societies, that it establishes order and peace, without the need for men to seek these indispensable goods by long and painful detours.”

“Finally, and this is the most important remark of all, nature, in her admirable wisdom, has ordered things in such a way that the feeling of superiority ennobles the soul and develops, in the superior, precisely the kind of virtues which the inferiors need most. That if you doubt this truth, then explain to us why you demand always of the master, actions nobler than of the servant, and why you censure so mercilessly in the great all that resembles baseness? Is it not because this vice is unnatural with them, and consequently rarer, because they have fewer motives and pretexts to indulge in it? Examine the habitual life and the ordinary actions of men among themselves, and tell us whether the weak are not more frequently seen attacking the rights of the strong, than the strong are seen to offend the weak... Why, for example, so many laws against domestic theft, a name used to designate the fairly frequent crime, by which a servant steals his master? But where does it come from that no law was made against this other domestic theft, where a master would steal from his servant?”

“No, it is the weak and the ignorant who, without strength of mind, get involved in talking about spiritual matters; who, impotent even in words, and devoid of any auxiliary science, carry the dreams of their imagination into the writings of their master; give their madness and their pride the name of reason, and forge themselves arbitrary divinities, because they are too weak to rise to the knowledge of the truth. They are, in a word, those mediocre or inept men, who do not know how to distinguish the figure from the reality, nor the means from the goal, and who are poor and stupid precisely in the things where they should be rich and strong. Among the jurisconsults, who are the lawyers and the quibblers who deceive the hope of their credulous clients, who regard all causes as equally good, who call white what is black, and black what is white; who make human laws intended to be only a means of ensuring the observance of justice, into a veil or even the instrument of iniquity; which prolong protests instead of speeding up peace; leading those in need of protection to misery; and who, like rapacious vultures devour the innocent lamb.”

“It is especially strikingly true among the Roman emperors, who only borrowed their power from the republic, which had never been formally abrogated. Their own existence was not assured, their authority still bore the character of usurpation; hence the fears which any particular power inspired in them; hence the mistrust of a Tiberius and a Nero. They also lacked the power of wealth; hence, confiscations, etc... **What a fearful, weak and suspicious man was Robespierre, and his National Convention, what a frail base he was standing on! Everything frightened him; he had no time to think of anything other than his own preservation. This is why almost all great oppressive measures amount to arbitrary taxes and forced recruitment. The princes sometimes need money and troops; then it is they who are weak, or destitute. However, depending on whether they seek to satisfy these needs by the goodwill of their subjects, or by violence, they themselves must make disadvantageous conventions or concessions (that is to say, they become dependent in**

certain respects), or become tyrants. Truth which will furnish us with material for interesting developments when we deal with high politics. Excused by necessity, they say, in such cases. But what is necessity, if not a lack of power, a need?”

“Strictly speaking, it is therefore not man who reigns over you, but the power that he has received, the force of nature that he can use for or against you, but that he should only use for you. And if you examine things in an exact and philosophical way, you will see that God is and remains the one and only master, either as creator, or as legislator and regulator of all power distributed among men.”

XIV. On limitations of power stemming from the general law of duty.

It is in this chapter that Haller rebuts the contention that his theory of natural superiority is simply a might-is-right philosophy, the interest of the stronger in the sense of Thrasymachus and Callicles. Thus, he draws a clear distinction between a power or a natural superiority (potentia), and an evil force (vis); between the empire which is conferred by nature, and the abuse which is the fault of men. A moral law engraved in the hearts of all men, not always fulfilled but always recognized even in the fact itself of transgressing it, consisting of two precepts: justice and benevolence. “Avoid evil, do good, do not offend others, be useful to your abilities; do not prejudice the property, possessions or rights of others; but increase them according to your power” — this is the law known to all. The former (justice) is negative or prohibitive, the latter (benevolence) affirmative or imperative; one defends, the other orders; one embraces everything from which one should abstain, the other all that one should practice; one does not impoverish, the other enriches; one does not take anything away from anyone, the other still gives its own.

The source of this law is not: a) reason, which serves well to discover the law, but which did not make it, b) nor is it the public good, of which it is so difficult to judge, which is indeed the certain result of the observance of the law, but it is not the source. It is still less c) the fear of power of men, or of punishment, because this power is only a means of carrying out the law, and besides it does not always exist. It is not d) the particular interest, which, no doubt agrees very well with this law, but which very often also appears in opposition to it, and on which, moreover, each one has his ideas. Neither is it to be found in the general will of the people, a will which has never been and cannot be manifested, which would be variable by its nature, and would not bind either the minority or future generations.

Therefore, it was given by the divine lawgiver.

It is one thing to say that the strongest is the master, and another thing to say what use he should make of his strength. Power and violence are distinguished from each other, like power pure and simple, and the action of evil; like the physical faculty, and the mode of its use. Everything is reciprocal between men; it is only useful power that reigns in a legitimate way, and not harmful violence.”

“Will the father be able to plunge the dagger into the bosom of his children? Will it be open to the head of a family to mistreat it, to prostitute it, to rob it? To the master, to deliver to hunger and misery the servants whom he must feed and protect; or order them up to criminal actions? Will the doctor be allowed to poison his patients? The tutor to teach his disciples deceit and error, instead of truth and solid knowledge? Ah! undoubtedly, there is no doctrine, so holy and so true, of which the ineptitude or the malice of men cannot abuse by distorting it.”

“Very far away that everything belongs to a powerful man, nothing belongs to him except what he possesses by right of property; and he has, just as much as any other, duties to fulfill, either towards men, or even towards animals.”

“This law could not come from men, because they would never have come to an agreement with it; moreover, their will alone could never have given it such a universal and permanent sanction.”

“Without acts of benevolence, without a reciprocity of good offices, neither the smallest family, nor even any social bond whatsoever could survive a day or a quarter of an hour only; let those who doubt it give it a try, if they can.”

“If necessary, force can be used to compel someone to perform the duties of justice; for by that, it is a debt that is demanded of him, and not a wrong that is done to him. To obtain acts of charity, on the contrary, force is not permitted; for it would steal from another what belongs to him, and would therefore be unjust. These kinds of duties should rather be advised and solicited than ordered; nevertheless nature has left us an indirect means of recalling the egoist; it is to deny him similar duties, and also to withdraw all benevolence from him.”

“It is still less the fear of power of men, or of punishment, because this power is only a means of carrying out the law, and besides it does not always exist. Finally, it is not the particular interest, which, doubtless agrees very well with this law, but which very often also appears in opposition with it, and on which, moreover, each one has his ideas.”

“Let us add only a small number of examples: the righteous man wants peace, and he obtains it; we give back to goodness what it wishes, that is to say, love and benevolence; the industrious and thrifty man seeks the goods of fortune, and succeeds in finding them; the brave is crowned with victory; the sage desires consideration and confidence, they do not fail to follow him, etc. On the other hand, the voluptuous only runs after pleasures, he finds illnesses and pain; the prodigal only wants to enjoy, and he is soon reduced to lacking what is necessary; the impostor

desires to gain confidence, and he loses it; negligence or carelessness is punished by calamities; pride is caused by humiliations; injustice, through enmities; selfishness, by the deprivation of all assistance from others, etc”

“We have the right to demand justice from both the strong and the weak, provided that we ourselves observe it towards them; as to acts of charity, we can hope for them from the noblest part of the human heart; we must seek to merit them or to give them back, by dispositions and actions of the same nature, that is to say, by reciprocal kindness. In short, to leave the circle of one’s rights, whether natural or acquired; violently encroaching on the field of his neighbor, injuring the rights of others, creating in the end of the needs in place of the meeting, it is injustice, it is abuse or despotism on the part of the sovereign as that of the smallest servant or individual. These principles have been recognized in all times, and by all men; the rulers themselves have never denied them. Although the jurisconsults have not applied them to States, or to so-called political power, in a manner as clear and as rigorous as we will do later.”

XV. On the means of preventing the abuse of force.

Has nature left us defenseless against superior power, unless we enter into the artificial covenants and guarantees of a public law, known as civil society? That the natural state is not one of permanent enmity has been satisfactorily shown, but it also gives us means of preventing the abuse of power, of which there are in the main four. The first “is observing self-same and to inculcate constantly to the very the law of nature, to strengthen, to revive it unceasingly, the intimate feeling of duties, considered as the commandments of God; to apply it to the cases and objects that present themselves.” A vicious people are more likely to have a vicious ruler, as has been pointed out all throughout history. Haller cites the English idea of ‘ancient constitutionalism’ as a deeply ingrained ethos of respect for right and liberty. “There is more: supposing that by mistake, by necessity, or by bad intention, some powerful man wanted to injure justice, and that on the other hand the true law was known, keenly felt and respected by all the others, or only of the greatest number: this man, in spite of his power, can never do great injustices; he will find neither aids nor instruments for that; he will be strictly reduced to his personal strengths, which do not surpass those of a simple individual. No one will advise him in his act of violence, nor will he want to color them with sophisms; no one will support them, nor will they favor them; each, on the contrary, will endeavor to moderate, paralyze, and prevent its execution.”

The second means is that of self-help, or resistance. In sharp contrast to the theorists of passive obedience, Haller’s Germanic spirit boasts loudly that “by such constraint, man requires only what is his, and does no harm to anyone; he only maintains the natural or divine law; which is a lawful action, and even obligatory for every man, according to the measure of his means. Moreover, this right of resistance, this right to take justice into oneself, is so deeply engraved in the nature of man and of all living creatures, that neither sophisms, nor laws or human institutions will succeed in destroying it or having it repealed.”

The proper difference between a natural condition without states, and a natural condition with states, is that the latter “does not consist in the fact that, all particular judgment, all personal defense is suppressed, but in that, in addition to these two means, one still enjoys the advantage of superior assistance.” Superior assistance being jurisdiction.

The spirit of resistance and avenging one’s right has always been a deeply aristocratic sentiment. One example I can cite is *The Justification of Tyrannicide in the Chronicle of Dalimil. The Czech Nobility as the Mystical Body of the Realm* in the 14th century, or also the *Charter of Kortenberg* concluded in 1312 by the Duke of Brabant and his cities.

Haller goes on to brilliantly argue against the idea that all forms of private war or taking justice in one’s hands are ipso facto illegitimate in a political society:

“Also, that our modern sophists preach as much as they want the absolute prohibition of the right to make justice to oneself; that, for that, they unceasingly oppose to the natural social state, their fictitious civil state, which does not exist; that they are based on vain and ridiculous distinctions, between the struggle to defend rights which are not yet enraptured, and that which takes place to recover lost rights; that they seek by a thousand subtleties, in effect to suppress, or to render illusory and impracticable personal defense, even in cases of rigorous necessity; finally that, to escape the inevitable contradictions, the awakening feeling of truth, involuntarily with them, and with the constant opposition of nature, they pile up as many exceptions and subterfuges as they like; that they say, for example: that the right to defend oneself sometimes comes into force, that it can be tolerated or authorized by the State, when the help of the civil Government is either impossible, or too remote, etc.: in spite of all these sophisms, it will remain nonetheless true, that the right to protect oneself in just causes and in just limits, belongs to men, according to the divine and human laws; that they indeed enjoy it, as universal experience proves, and that they exercise it everywhere without contradiction, subject only to possibility, equity and prudence.

Without stopping on the right to avenge the death of a murdered relative, a right nevertheless recognized by all peoples of antiquity, to whom has it ever been, or is it nowadays forbidden to use force against a murderer, against the seducer of his wife or his children, against the sequesterer of his property, not only before the execution of the crime, but also after its accomplishment, not only to divert the danger, but also to guarantee its future absence? Who was ever forbidden to stop the thief and wrest the stolen goods from him? To use force to remove injuries and assaults from their home and land? To retain an object in his possession, as a pledge of a legitimate claim; finally to refuse the duties of strict justice, to one who refuses to fulfill similar obligations towards him, and thus to defend himself by means of reprisals? Also, there is, at least to our knowledge, no code of laws which has prohibited an absolute personal defense or the right to do justice to oneself; and if ever there has been a provision of this kind in a few modern codes, it only came from the particular opinion of the drafters, it was furthermore immediately refuted by general usage and by other laws which contradict it.

This prohibition, contrary to nature, subsists only on paper and not in reality; each does justice to himself, however, according to the measure of his strength, that is to say, as much as he wants, or as he can do, without danger to himself. On the contrary, there is a large number of positive laws in which the right to take justice is expressly recognized and enshrined, not only in certain exceptional cases, but as a general rule, which is self-explanatory, so that public assistance is only represented in these codes as purely subsidiary, that is to say, in the event that the offended is unable to assert his rights himself, and in the case where prudence would advise him not to do so. This was in general the spirit of all the old codes, more faithful to nature.”

“Besides, what reason would the princes and the magistrates have had to forbid men the right to help themselves, or to do justice to themselves? To whom would this prohibition have been advantageous? Certainly it is not for the injured individuals, who would have seen themselves stripped first of the surest, and the most prompt means of defense; even less to the judges and

magistrates themselves who, annoyed with an innumerable crowd of complaints and disputes over all kinds of trifles, would have been obliged to sit day and night all year round, and that the immense accumulation of these small trials, would have made it physically impossible to do justice to the disputing parties. Such an order of things would only serve to make injustice reign; the scoundrels and their instigators alone would find their advantage. We go even further, and we maintain that not only divine and human laws, reason and experience enable men to help each other in just causes, and that this faculty is necessary and useful for the safety of people, but still that the exercise is in some way a duty, and that in all times it was rightly regarded as a virtuous action, because in fact it accelerates and maintains the empire of the law of God.

Whoever does not try to help himself as much as he can first does not deserve to be given help; he who can prevent evil and does not prevent it, must be considered as authorizing it; and to the damage he experiences, there is also added the just reproach of cowardice. Already in common life, don't we see children and men made to despise those who never know how to be self-sufficient, and who for every trifle annoy others with their complaints and their requests for help? How can someone who never knows how to protect himself want to protect his fellow man? Far from the right or the particular duty to procure justice for oneself and for others being suppressed in the social or civil state, it has on the contrary been frequently recognized and commanded, even by princes and magistrates." ...

In Egypt, whoever, seeing murder or mistreatment of a man on the highway, did not save him, when he could, was punished with death. Abbas, king of Persia, ordered by law, that if someone was killed or robbed, without the perpetrator of the crime being known, the inhabitants of the nearest village would be held responsible. Among the Spartans, it was accepted to regard as an accomplice of the offender, the one who did not punish, at least by words, an injury committed in his presence. And still today are there not many similar laws and customs? To whom is it forbidden, or, to put it better, to whom is it not ordered, as a duty, to help oneself, and to come to the aid of one's neighbor against robbery and violence, to divert from others all damage and danger, to break up fights, to prevent criminals from committing unlawful actions, or even to guarantee against them for the future? Will we make the most infamous egoism a general rule?

Will modern philosophers still claim to forbid us the right to extinguish the fire which consumes a house, on the pretext that personal and self-help is forbidden? Or will it be necessary to wait for the decision of a court, as the one and only authority to decide that it is indeed a fire and not a simple glow of light?"

"It is a ridiculous assertion of our modern jurisconsults, to claim that by admitting personal defense, there would be no judges, or that the existence of a judicial power implies the prohibition of personal defense. We help each other, we do justice to ourselves when we can; and when we cannot, or do not want it, we call a superior to his help. Also, since the beginning of the world, personal aid and legal aid have always existed together."

The third means is to invoke the protection and relief of a superior. “For if the author of nature has linked men to one another and given them various strengths, it is precisely so that they help each other in all things, so that the weak may be protected by the strong, and that he can, if necessary, protect himself. It is permissible for any aggrieved individual to call on another to his aid, because he does not do wrong to anybody, he only invokes the charity of his neighbor to protect his property; moreover, he does not need any instruction to do so; nature alone and the feeling of his weakness teach him enough. Likewise, every man has the right to help his fellow man in righteous things, since in this way he only maintains or fulfills the divine law.”

Soliciting the help of others is by no means just for the weak, “on the contrary, there is no man powerful enough to be able to do without all foreign assistance in the defense of his rights. Only we ask it just as often from our inferiors or equals, as from our superiors. The help received from men weaker than oneself, and which one can dispose of, is called service; that given by equals is called friendship, alliance, amicability; finally that given by superiors, more powerful men, is designated *jurisdiction*.”

These three kinds of external help: service, friendship, and jurisdiction, depending on relative strength, are at root of the same essence: “All assistance is necessarily preceded, in the mind of the grantor, by any judgment: judgment subject to the general rule of noting the facts, and comparing them to natural law, although it is often pronounced with rapidity, at the very moment of action, and without being accompanied by many forms, nor conceived in a great number of words. Nature does not require this, neither as a necessary condition, nor for all cases; because injustice usually only lasts longer, and receives only more growth and strength in that time. Even the servant and the friend can sometimes refuse their help, when, in extraordinary cases, they fear of bestowing greater evils for themselves and for other people. Nor should they lend their assistance except for just and lawful causes, and not for the triumph of iniquity, under pain of becoming its accomplices. The difference between this kind of help and the one we call *legal aid*, consists only in that equals and inferiors cannot always execute their judgment, and that their assistance is not always effective; while the superior can carry out the sentence he has passed, and, if need be, force those who refuse to obey. The servant who invokes the assistance of his master is, it is true, more dependent on the good will of the latter, than the master who requests the assistance of his servant, although, in either case, the obligation is the same.”

The fourth and final means, is flight and emigration. It is as natural as taking refuge under the shade on a hot and sunny day, in Haller’s words. That is how one tames all superior forces of nature; not by reigning over them, but by conforming to their laws, by making them serve to our advantage. “We often separate from our friends: why not leave our enemies? Now, this means of flight, of separation or of emigration is naturally permitted to all men; and moreover it is almost always possible, at least when one has not been guilty of any crime.” Obviously this is dependent on whether anyone will take you in. Today it helps to be non-white, for instance.

Ultimately, if men are impious and irreligious, nothing can turn force into justice.

XVI. On what distinguishes the state from other social relationships.

If we dispense with the idea of a civil state that abrogates a natural state, and the notion of *societas civilis*, then what differentiates the state from other social relationships is the independence of its head, whether it be an individual or a corporation, with independence being founded on the possession of both tangible domains and other intangible judicial rights, which confer that quality of supreme jurisdiction, the privilege of which is to be subject to no one but God (excepting the binding nature of any treaties, alliances, charters and confederations).

A crucial thing to note, and which early modern jurisprudence sadly blundered on, is that supreme jurisdiction is not the same as *sole* jurisdiction. The state does not engulf, much less constitute all social relations on its own; it is the highest and most perfect of social relations, but still exists on the same plane as all other private rights, of which the sovereign is the guardian and not the author.

The necessity of there being a perfect freedom:

First of all, it is easy to discover, by simple reason, that since there are, by the sole fact of nature, social relations; superiors and subordinates, free men and others who are dependent; it must necessarily come sooner or later, in every such meeting, someone who is the first and the most free of all because we can not imagine a progression to infinity. Consequently, the true state of nature contains and must contain not only societies of various kinds (as several authors have taught), but also necessarily states or sovereignties. Indeed, it cannot be otherwise; for power or superiority, domination and subjugation, freedom and dependence are relative ideas; they do not indicate a thing in itself, but only a relation of one to the other; **so that a man, powerful and free in one respect, may be weak and dependent in another respect; he reigns over other men, in proportion as he is naturally superior to them, and that he can do them good or evil by the power at his disposal; but on the other hand, in proportion as he himself has needs, he depends on more eminent superiors, who are in a position to satisfy them. Thus, the father of the family commands, it is true, his wife and his children, the master over his pupils; but often both serve a higher master, from whom they in turn receive nourishment and protection. The owner of a house also commands all those who live there in various capacities; but the house may be on the land of another, to whom it owes a royalty, or to whom the owner himself is indebted in certain respects. The possessor of land already has in his dependence a much larger number of men; but he often received these funds in exchange for some reserved services, or some obedience; it may be that he himself depends on the effect of service commitments, particular promises, or finally only by his relative weakness. The captain commands his soldiers or his comrades in arms, but he is in turn subject to the orders of the one who took the troops into his service, and who pays them out of his own income. The teacher is authoritative for his schoolchildren and his disciples; he is in a way the author of their principles and their actions; but often he believes in and himself serves a more eminent teacher (master), to whose school he professes to belong, or from whom he has received his doctrine...**

Such an individual can even unite several of these qualities at the same time, and reign, in various capacities, over a great number of men; but he will never be a powerful individual, as long as he has a superior whom he serves, and towards whom he has obligations to fulfill. However, this natural sequence and this necessary subordination, which we meet all over the world, must necessarily cease in some individual who is completely free, or who has no other superior than God. And where we find this free or independent man, there the social bond is perfected or crowned; the state (a being existing by itself) is accomplished; the sovereign power results, not from an external delegation, but from the very nature of things. This is why the ancients said with reason in this sense, that states, like all the other social relations, are the work of God, and not of men.

The analogy between states and all other social relationships:

“Between states and subordinate social relations which we call private, either seigneuries or communities; for example, between a landlord or a king, and any other rich territorial lord; between a republic and all the other communities and corporations, there exists, in almost all respects, such a striking resemblance, that we hardly understand how so few publicists have seen it, or whether they have seen it, how it did not lead them to discover the whole truth. In either case, with the simple landowner as with the prince, we find a territory, a domain separate from any other. We already meet with the simple owner a master and a people, with various reciprocal obligations, sometimes natural, sometimes agreed; we see hostile or peaceful relationships with the neighbors; and, on a small scale, all of what is called the law of nations/international law; we see servants and employees, the inhabitants and simple domiciles and residencies held under very different titles; laws, that is to say, manifestations of the obligatory will of the common master, according to the extent of his right and of his power; the exceptions to these laws, and other favors or exemptions; we see jurisdiction or assistance to obtain justice, sometimes exercised in person, sometimes by officers, often in a very eminent degree, and sometimes even without appeal; of domains, and so-called regalian rights, that is to say, the manorial goods and income of various kinds, perfectly similar to those of princes; a financial administration of said goods; several establishments of charity and open foundations devoted to the benefit and convenience of the inhabitants without belonging to them alone, etc.; finally, with the simple landowner, the power and the authority which result from it, are hereditary and alienable, just as in sovereign houses, and often according to the same laws of succession. What does the private seignury lack to become a principality, if not independence? Or, if one considers this relation in itself, is it not already a State, but a small and less powerful State, enclosed in another more considerable one? Likewise also, we find in every city, in every corporation the perfect image of a republic; we see there an association between men of relatively equal strength, produced sometimes by one cause and sometimes by another; a common goal, equal rights and burdens all members of the community; a certain constitution, either natural or positive; public affairs; admissions into society, or exclusions; assemblies, which represent the community, or else exercise only specific functions; communal properties, and, by means of those, a common territory, within the limits of which the corporation exercises over persons and things a collective authority absolutely similar to that of individual lords. Add to all this independence, and you will have accomplished the republic. Now, the same resemblance is found again, albeit on an even smaller scale, in each father of a family, in each rural commune. It is neither the size of the territory, nor the multitude of inhabitants that constitutes sovereignty; for no one can determine the extent of land, or the number of subjects necessary to form a state. Often small societies are free, while larger ones have a master.”

“Sovereignty does not consist either of certain exclusive powers, either isolated or united; for there does not exist, as we shall soon prove, any right called sovereignty or majesty, which cannot equally be exercised, and which is not often exercised by individuals in a narrower circle; the legitimate exercise of which finds no other obstacles than the lack of opportunities and means... But, according to reason as well as according to history, sovereignty consists solely in independence, in the good fortune to have no human superior above oneself, and to owe account of one's actions to God alone.”

“Imperator, on the contrary, relates to the republican office of general-in-chief, a quality which constituted the essence of the first Caesars, and which has since been falsely applied to other princes who had never usurped a republic, and who commanded their own troops, not those of others.”

“Independence, which happens in addition, and which consummates the state or the sovereign social relationship, does not change the goal of the private relationship either; they are distinguished from each other only as what is large from what is small, what is perfect of what is not, what is supported by itself of what still needs support. It is even to be desired that this expression of “civil society,” which slipped from the language of the Romans into ours, is soon banished entirely from science; for just as it was, with its consequences, the source of innumerable errors, as it was the first to confuse ideas, and imperceptibly lead minds to consider all states, all social relations, as corporations of citizens properly speaking, or to give them this form, or at least to judge them according to this alleged model: likewise also the obstinate attachment to these false locutions, is the only cause that led the best minds astray, those who moreover come closest to the truth, and who often recognized it in passing... but they themselves, carried along by the forms of language, they endlessly fell back into the opposite error.”

XVII. On the general definition and purpose of states.

The state, as a social relationship perfected by the independence of its head, nonetheless has no singular goal, such as the “common good” which has become such a popular slogan in recent years. The emergence of states increases the means by which pre-existing social relations can achieve their ends and goals, but does not create them. A corporate body founded for mutual insurance among merchants can become a republic once it acquires landed possessions, raises troops and builds fleets to protect them, and becomes strong enough to judge itself independently of the lord who first chartered it or assented to its charter. Any corporation serves a common need and interest, clearly, but not necessarily the ‘common good’ as the summum bonum or the good common to all rational animals. Any household patriarch puts his family first, a prince included. Serving the common good is not so much a matter of living in the so-called “perfect civil society,” it is rather a moral disposition of public-mindedness, a personal virtue, rather than an institutional character.

“States are not, as most publicists define them, public establishments for the defense of rights, associations of citizens, communities formed to secure justice, to guarantee human rights, for the realization of primordial rights, or for any other similar purpose. But they are only independent social bonds, that is to say, subsisting by themselves and for themselves in those accomplished and perfect men, either as relations of service, or independent communities.”

Jean Bodin's definition of the commonwealth as "the rightly ordered government of a number of families, and of those things which are their common concern, by a sovereign power," is dismissed by Haller, who affirms that an unjust state is still a state even if we should demand it be set right, that "we do not govern what is common to several families, but only what belongs to the prince, to the sovereign power itself," and finally Bodin being quite ambiguous on what sovereign power actually consists of, a major weakness of his book.

As to justice and its maintenance, it "although it may be, with mutual benevolence, the most universal need of men, cannot be the proper end of States, because no conventions are made that societies should not be formed for things which understand themselves, and which an innate law obliges each one to observe, independently of any pact; and because all the means of ensuring respect for justice, even when one wishes to restrict them to positive laws, judgments and punishments, already exist in every natural society." Justice is a given for any proper social relation, it cannot be what essentially distinguishes the state.

Most definitions "sin both by excess and by default; they are, on the one hand, too extensive, since they apply to a host of societies, which are not states; on the other, too restricted, since they do not have the essential and distinctive character of states, namely independence."

Besides, it is as entertaining as it is instructive, on the one hand, to consider how uncertain modern philosophers are when it comes to determining the purpose of the state, and, on the other, to recognize the cause of this insinuated diversity of opinions. Just as they do not know, by whom must have been founded their civil society, their political association, so also they do not know why it should have been founded at all. **One adopts the law of justice for the purpose of the state, as if none had existed before, or there had been nothing else to do in the world, than to fabricate codes and judge trials.** A second sees it in the public good or general happiness, something about which everyone has their own particular ideas, and that the former regard them as the pretext for all injustices, and the most fruitful source of the evils of humanity. A third finds it in the population, in the indefinite multiplication of the human species, so that we should only be concerned with building cities, and, in the final analysis, there could no longer be any animals nor plants, consequently also, no men on the earth. **A fourth places the object of civil society in agriculture, as if one could neither drive a plow, nor reap the fruits of the earth, without an artificial body of citizens; following a fifth, it is the progress of enlightenment and morality, so that all sovereigns should no longer be but priests, sect leaders, and schoolmasters; and, remarkably, this opinion was precisely preached by those who, moreover, did not want to suffer either priest or church, or who claimed to replace them with their own gloomy clubs.** According to a sixth the end of the state would be the dignity of man or of humanity; two expressions which, in their modern formulation, indicate only the absence of any superior, the supposedly liberal education, the training of every man for absolute independence; **so that the design of a social bond would be the very destruction of all social bonds.** Finally, if you believe a seventh, the government should aim to give to the individual the character of the species, a phrase with ridiculous pretension, whose only meaning was that he had to give up all that is individual, to no longer be a citizen of such and such a country, but only a man, which is precisely the opposite of a society, which always produces something of its own and particular.

“The independence which raises them to the rank of states is only a superior power, a glory, a fortune, which distinguishes them from other lordships, other corporations; and this is also why their names never refer to any object or function, but only to the idea of a higher power. Besides, nature itself usually leads men into social relations: and if it is not rash to want to guess the immediate plan that she proposes to herself in forming them, this plan, to judge by the results, could only have been to tame the deranged inclinations of men, and make their life sweet and pleasant, by means of mutual love and mutual assistance,” Haller concludes.

XVIII. On the particular definition of a prince and a republic.

In brief: a prince is an independent lord who commands others, and is himself at the service of no one. A republic is an independent corporation.

The possession of considerable patrimonial power is not sufficient on its own: “We see, for example, in several countries, great lords, who possess much more extensive lands, more considerable revenues, and who command a greater number of men than sovereign princes

do elsewhere. However, they are only regarded as noble and distinguished individuals, because they are not independent, because they have received their land, either as fiefs, or as a gift under certain charges, or finally, because accidentally their lands are surrounded by those of a much more powerful man, with whom they were obliged to compromise to keep the peace, and whose authority they had to recognize in certain respects. Likewise also, there are in all countries, cities, corporations, orders, etc, which have more numerous, more extensive domains, and which have authority over a greater number of men than the ancient free cities of Greece, Italy and Switzerland, and yet these were placed in the ranks of states and republics, while the others are not, because they still recognize a superior.”

Authority precedes independence. Commanding others is the common link; obeying no one is the hallmark.

“The publicists of old suspected the same truth when they established that the prince is the only one in his country who is entirely free and *sui juris* in all respects; only, led astray by the republican language of Rome, they did not remain faithful to this idea.”

“According to the political theory, which has so far reigned in schools, the name of king or prince should be given to the person who enforces the laws of others, or to the person responsible for ensuring that justice is observed; a definition according to which any lackey or any village mayor would also be a sovereign, and the absurdity of which is therefore obvious.”

“It is just as inaccurate to give to princes and republics (as has been done for thirty years), only the names of governors and governments. These semi-revolutionary expressions, deliberately substituted for the true and ancient names, have first of all the defect of not being deduced from the main object, but only from an accessory circumstance and a consequence; because the government is not a being apart, it is a simple flow of the particular rights of the one who reigns, the natural consequence of its power and its property, from which one can no longer separate the authority.”

“It used to be said: The King of France, the King of Hungary and Bohemia, the King of Prussia, or better still the House of Bourbon, the House of Austria, the House of Brandenburg, the city of Venice, the city of Bern, etc. By means of this, the true idea entered all minds; and the most common sense of justice made it easy to imagine that they could no more be stripped of their liberty and their property without injustice to other families or other corporations. But since we only hear about the government of France, Austria, Prussia, Venice, etc, quite different ideas were formed. We have seen incredible consequences of these false locutions; they seduced those very same who became the victims, and who would have had the most interest in opposing it. Men took part in revolutions, who would have died of shame and repent, if we had shown them the injustice of it. **How ridiculous would it be to find someone who would not want to give a particular lord any other name than that of government of his house or of his lands, and who, after that, maintains that by taking it away from him, no one does him any wrong, but that we have only established a new government?”**

XIX. On the means of acquiring independence, the greatest of fortunes (summa fortuna).

Independence, a better synonym for sovereignty, is a natural consequence of personal power. *Maiestas*, with its implication of “highness,” is particularly appealing to Haller. See also: the French use of ‘seigneur souverain’ in old royal charters, which effectively has the same meaning as the German ‘Oberherr.’ *Landeshoheit* (superioritas territorialis) is the traditional German designation for the independence of a territorial lord.

It is “a power great enough so that one no longer needs to serve a master. It is therefore a good of fortune, and even the first of all (summa fortuna), which, like all other goods, can be acquired or lost in various ways, sometimes legitimately, and no doubt sometimes also by illegitimate means. It is in the religious sense and language a blessing or a grace from God. Every man has the right to enjoy it, if circumstances favor it; but only a small number achieve it as with any great fortune, and for the most part it would only be an unbearable burden, because without sufficient strength it is impossible to keep it and it requires too many privations.”

Haller describes the means of acquiring independence, e.g. through inheritance by purchases, wills, marriages, donations, or by military means:

“Suppose on the other hand, which is exceedingly rare, that a colony which has come to occupy new residences, is composed of free and equal men with regard to each other, but united in a corporation to serve common needs: it will form a republic, as is claimed to have taken place at the founding of Marseilles and Venice. But even where all the lands are occupied and already have their masters, as in our modern Europe, there are nevertheless still several means of acquiring independence, for the sole reason that it rests only on the possession of property and of physical forces, and therefore transmissible. As long as we can, by wars and by treaties which terminate them, or by other voluntary agreements, either expensive or free, such as purchases, exchanges, marriages, donations, wills, etc., to obtain from a previous master, the ownership of land sufficiently vast and entirely free, of the wealth and the power which is inseparable from it, one thus immediately comes into possession of perfect freedom, and consequently in the condition of princes.

History is so full of examples of this kind that it would be pointless to report a single one. Each accession of a prince to the throne is a proof of this on a large scale, and each opening of a private succession is a small one. Before the death of the father the children were in dependence and subjection; they become powerful and free from the moment they take possession of the paternal property. We still arrive at this same sovereignty, when without acquiring new goods, we manage to free those we already have, from all the obligations and all the servitudes with which they were burdened, either by virtue of their status as a fiefdom, or by other conventions, and that we find ourselves in a position to maintain this freedom continuously.

Such emancipation can also be obtained either by arms, or by all kinds of onerous agreements or finally by donation. The struggle undertaken with the intention of completely freeing itself from a higher bond, when it is crowned with success, bears the name of defection. It can be just, when the servitude itself rests only on a subjugation due to violence (without subsequent treaty), or when, even in the event of a well-founded dependence, serious encroachments on the private rights of the subject give rise to this one sufficient motive to undertake a just war, a case in which he can demand in the peace treaty not only the reestablishment of his original condition, but also a more advantageous condition which can guarantee his safety in the future. And if to this is added the consent of the old master, there is nothing more to be said against such independence, although conquered at the point of the sword. Who would not recognize it, as soon as it is recognized by the very one who alone had an interest in contesting it?

But the defection is unjust, and is withered by the name of revolt or rebellion, when by failing in fidelity and in the duties of justice, it is undertaken with open force, without reasonable motive, either against the existence, or against the legitimate use of the power. And how many princes and republics are there which owed their origin only to such defections, sometimes legitimate, sometimes illegitimate, and most often mixed with justice and injustice? However one can always call it a freedom and a power acquired by one's own efforts. History provides no less examples of great landowners, either dynasts or vassals, or opulent communities, who, having obtained from their former masters, in return for a loan in money, or for other services, more and more privileges and exemptions, thus ended by being freed from all superior bond,

and by this completely legitimate mode of acquisition achieved perfect independence, or received it as a free gift with certain properties. **Independence can therefore be granted by a superior, but it can never be delegated by inferiors, because no one can give what he does not have.** One can indeed receive from the hands of a more powerful man than oneself, lands and goods, or be freed from duties towards him, but such a concession could not emanate from weaker men, who never have owned these lands, or to which no obligation was charged. It is conceivable that inferiors or equals grant another man certain powers over them, that they choose him for their leader, for their president, that they enter his service, that they finally submit to his orders, but they cannot give him independence, or make him a sovereign only by their will; because for that it would take that they had previously possessed this sovereignty, and in that case, they would not be subordinates, but superiors or at least free men, and they certainly would not voluntarily renounce this freedom in favor of another.

“It is on purpose that we say only by their will; for they can help him well, assist him in his efforts to make himself independent. In this sense, many rulers owe the throne to their feudatories, just as a general owes victory to his soldiers. But this is not, however, an election of king, an office conferred, it is a simple assistance; the prince always remains master, and does not become a servant.”

When a ruler dies without issue or is no longer capable of protecting his feudatories: “Finally, independence being only a gift of fortune, a blessing from God, it often also happens of itself, as a kind of inheritance, when a previous higher bond loosens or disappears; when by a fortuitous event the superior towards whom one was charged with certain obligations, perishes without leaving a successor, or when he is too distant to exercise his rights, or finally that he abandons them and neglects them; for, it is clear that in such a case, the obligation ceases with the person who was the object, and that, consequently, one finds oneself quite naturally in a state of independence. Thus, we have often seen in history a host of smaller kingdoms and republics suddenly rising from the ruins of a vast empire. Thus the successive loosening of the bond of the Germanic empire, or of the imperial suzerainty, gave birth in Germany and in Italy, to the more or less complete freedom, of a crowd of princes, prelates and cities. So again the weakening or the estrangement from their former masters or protectors, have a thousand times abandoned to themselves vassals or subject communes, and have placed them willingly or unwillingly, in a liberty deprived of all support; freedom advantageous for them, when they could maintain it, but fatal when they found themselves too weak to defend it, since then it had no other effect than to deliver them to the mercy of a foreign and often hostile power.”

“However, although independence and sovereign power may be acquired by the sole efforts of one who reported to a master, or granted by the benefit of a superior, or finally present themselves as a sort of succession; for the most part these three means are found united. It is with sovereign power and perfect freedom, like great private wealth, both are rarely acquired suddenly, or by a single route; we almost always owe part of it to our own talents, another to the favors of others, a third to what we call happiness, that is to say, to the benefit of an

invisible higher power. But these three means, after all, boil down to divine blessing, which gives talents as well as friends and favorable circumstances. Only the imperfection of human intelligence, the need for a clearer exposition, forces us to separate what nature has joined, and what science, its imitator, must again unite.”

XX. On the general classification of states.

There are two: monarchies and republics (a.k.a. free communities).

“Just as there are only two kinds of persons, one physical, and the other moral (collective), so there are either individuals, or associations composed of several men united together, and in the same way there cannot be anything other than independent individuals, or independent corporations; consequently all states are either principalities, or republics; monarchies or polyarchies. It is impossible to imagine a third species. This division, the only exact one, is still found confirmed by universal experience, and all good minds have constantly recognized it.”

The Aristotelian trichotomy of monarchy, aristocracy and democracy is dismissed, since aristocracy and democracy are simply particular electoral laws and orders of a republic.

XXI. On (the false dilemma of) whether monarchies or republics are superior.

Neither; both are natural outgrowths of the divine oeconomy, of the secondary efficient causes by which Providence governs free moral beings, and so to talk of their abstract merits is to imply that they are mere mechanical contraptions that can be reassembled. As “independent persons, individuals or free corporations, whose authority is based on their own power, and their own rights as limits: if it is therefore proved that the state of nature has never ceased, but it still exists today,” therefore “this question, unfortunately too famous, falls on its own, or is reduced to a miserable and useless subtlety.”

Of course, monarchies and republics do each have advantages and disadvantages where one is evaluating what principles contribute to the longevity of either forms (republics cannot marry themselves into power *jure uxoris*, for instance), but in no way should it ever be implied that a legitimately established republic is somehow “less” of a state than a monarchy, or vice versa.

“Freedom is always the last goal of anyone who does not need to serve in order to live; and independence, as far as possible, is for him the supreme good.”

“Because, as soon as sovereignty is legitimate in itself, and that it is based, as we have proved, not on delegated rights, but on the sovereign’s own rights: it does not belong to the subjects of it to pronounce on its nature, to decide whether it should be composed of a single man or of several; but they are obliged to respect the rights of the one who possesses them. Here circumstances produce a principality, an independent lord; there they give birth to a republic, a free corporation. Both can be legitimate in the origin and in the exercise of their power. Consequently, all else being equal (which is not possible), it would be beyond doubt, that in general one or the other was more advantageous, the subjects would nevertheless have no right, neither to change principalities into republics, or republics into principalities, nor even to increase or decrease at their discretion the number of citizens of a republic, because neither were made by them, but that they existed before them, and independently of their will. In truth, it is permissible for subjects to complain about the abuse of power, if such abuse exists at all, and even to use against it all lawful means, because it offends their own rights: but as to the nature of the social relation, they have no other legitimate freedom than to leave the bond, if they are not content with it, and to enter into another which better responds to their views. One prefers an individual lord? Then he establishes himself in a principality; the other prefers to live under a senate? Then he enters the service or goes to live in the territory of a corporation; it is open to them. What more can they want? It is in this real sense, but also in this unique sense, that the plurality of subjects, and even each individual, are free to choose between the various superiors and between the various legitimate social relations; they can neither create nor reform them arbitrarily; but nothing prevents them from taking service with one who pleases them more. So it is for this reason again that emigration should never be prohibited, especially since this prohibition made to free men, is irreconcilable with the laws of justice, and that we have only succeeded to color it with the help of the false political principles of those who, always speaking of liberty and the guarantee of rights, end, in fact, by introducing into the world an absolute and universal servitude.”

XXII. Conclusion of the first volume.

“A principality, even when it is large enough to bear the name of monarchy, is not a public thing (*res publica*), but it is essentially a private existence, a seigneurial relationship, a large family (*magna familia*)... The expression of republic (*civitas*), only suitable for a society in the strict sense of the word, as a corporation where ownership is common and in which there must be equality of charges and benefits.”

“For everything that is property has its limits, whereas what one claims to be delegated has none; and the possession of power and independence does not give any right or pretext to abuse it, as does the false idea of the foundation of a universal supreme power extending to everything. The modern doctrine which considers the princes as the representatives and the agents of the whole people, or as the interpreters and the executors of the general will, is much more dangerous, and even only dangerous for the sovereigns and the peoples. Because, on the one hand, it undermines the basis of the authority of the former, it upsets the nature of the existing relations, and prepares the ruin of the princes; while on the other hand, it gives them, under the pretext of the general good, imaginary ends of the State, or an alleged destiny of mankind, absolute authority over property and over persons; so that there is no injustice that this pretext cannot be used to color and practice.”

“The princes are neither the administrators of a *res publica*; for, in a relationship between master and servants, there is no community, consequently no public matter; nor the first servants of the state, because, to them the state is nothing, their independence alone makes of the social bond what is called a state; nor the first officer or functionaries of the people, for this would make masters out of servants and servants out of masters; nor simply the heads of state, more or less like a mayor is a head in his commune. All these modern expressions, and contrary to nature, are basically synonymous; they all emanate from the same revolutionary spirit, and presuppose the same false principle, of the social contract, of the sovereignty of the people and of the delegation of power. On the contrary, the princes are people who entirely free and independent lords, who, like other lords, essentially govern and rule well, not the affairs of others, but only their own. All their powers must be explained by that of what is theirs, by the natural rights of man, which belong both to them and to the rest of mortals, and by acquired private rights; in other words, by their freedom and by their property: so we will see that these two principles suffice to explain everything, and that there is no need to look for others.

The power and exercise of government is therefore their right and not a duty. Because every man has the right to dispose of what belongs to him, to exercise a legitimate freedom in proportion to his means, to make himself useful to other men and to lend them assistance; thus, this right belongs to those who are independent, as well as to those who are not. Only the manner of government is a duty because it should never injure, but, instead, promote the rights of others. In this sense, supreme authority is rightly regarded as an office received from God, just as the strengths and talents of individuals are called a deposit which He has entrusted to them, and which they must use to maintain and practice His laws of justice and benevolence.”

XXIII. On the formation of principalities and independent lordships.

“Since it must be admitted, as we proved in the first volume, that a sovereign is nothing but an opulent, powerful owner, and himself reporting to no one, in a word, an independent lord; that his principality rests on a personal power great enough for him to command other men, and not himself to be in the service of any; it necessarily follows that principalities or monarchies are, of all states, the first in the order of time, the most natural, the most numerous and the most durable; for they are born from the very force of things, without positive will, without artificial convention of men. Indeed an individual exists by the sole fact of nature; each family already forms a small monarchy, although enclosed in a larger one; each individual is king and monarch within the circle of his domain and his power; only he is a small and weak monarch subject in some respects to a greater, either by the effect of his natural position, or either by pacts. And to become a prince or a king in all the force of the term, this man needs, in the beginning, only to maintain on the part of the globe which he occupies or which he cultivates, this independence, or to acquire it later, by his own efforts or by legitimate contracts.”

“They [the ancients] unanimously agreed that all the ancient peoples had begun by obeying kings, and that originally Rome and the cities of Greece had been subject to princes. According to the nature of things it could not even be otherwise; for corporations or republican associations are formed only as a result of extraordinary circumstances or special needs; and as long as these needs do not exist, nothing tilts man towards such community relations. Finally, just as monarchies are the oldest and most numerous societies, so also they are the most durable; for their root is in nature which, by conforming to its invariable laws, can indeed make some of these connections disappear, but always reproduces new ones and the like. On the other hand, republics only appear later and more rarely in history; Usually their duration is shorter, because they are only the work of men, and they always end by reverting to the monarchical regime.”

“It is conceivable, it is true, that independence precedes authority, as for example would be the case with the first occupant of an uncultivated and uninhabited territory which would only receive servants and subjects later. But usually authority precedes independence; for one is almost always a particular master or superior before becoming sovereign. In either case, however, the empire or the lordship is formed from top to bottom. Consequently, any man who finds in his own power the means to nourish, protect, direct other men, to place them thus in his dependence or to receive them in his service, founds a sort of seigneurie; and any man who with this lordship achieves personal and complete independence, either by his own efforts, or by the benefits of others, or by some favor of fortune, founds a principality that he will transmit to his heirs or other successors with the power and independence that served as its basis.”

“Would it not be ridiculous to claim that a hundred different peoples separated by immense intervals, different in language and mores, for example, the inhabitants of Kamchatka and the Tartars on the frontiers of China, met with the Livonians and the Courlanders, and the latter in their turn with the inhabitants of Crimea and Georgia beyond Mount Caucasus, to agree together to appoint for their common leader a Czar of German race; that the Spaniards in Europe have entered into civil society, on the one

hand, with the Mexicans and Peruvians of the New World, on the other, with the inhabitants of the Philippine Islands; that finally the English on the banks of the Thames, the Indians on the banks of the Ganges, the inhabitants of Canada and the natives of so many islands in the ocean have formed by common accord a public establishment? The absurdity of such an assumption would be obvious, and history would teach us nothing at all about the birth and progress of these states.”

XXIV. On the divisions of monarchies: patrimonial, military, spiritual (ecclesiastical).

The three kinds of monarchies correspond to the three principal ways of exercising power or superiority, analogous to the three estates: those who work, those who fight, those who teach (pray). Thus, they are a) hereditary and territorial monarchies, founded on the relationship of a head of family or a territorial lord with his servants and other people under his dependence, or *patrimonial states*; b) military monarchies, founded on the relation of a captain or a chief with his comrades in arms, his soldiers, a.k.a. an *empire* or *generalate*; c) spiritual monarchies, founded on the relation of a doctor or doctrinal leader with his disciples and followers, i.e. *theocracies* or *hierarchies*. Respectively these correspond to a) the *principes* and *paterfamilias*, b) the *duces* and *imperatores*; c) the *pontifices*.

These can overlap and be held by one and the same monarch at various points in time; the Pope was both a patrimonial and spiritual monarch for over a millennium.

The same kinds of superiorities are also noticed in private relationships. We find in a small way the territorial sovereigns in all the heads of families, in the owners, and in general in all those who by their possessions, their capital or their industrial establishments, procure for a large number of men work and security. food, and thereby maintain them in their dependence. To the military states correspond all the subordinate commanders in the circle of their authority, all the conductors of colonies, leaders of caravans, captains of ships, leaders of insurrection, etc. Finally the spiritual states reproduce themselves on a small scale among all free or salaried doctors in relation to their disciples and their faithful, among all the servants of any church, particularly among all the founders of doctrines that have become dominant, which are also called schools; finally, among all the sect leaders, etc. But as such meetings are, on the one hand, too numerous, and, on the other, they enjoy neither complete independence nor stability; they resemble those vulgar and fleeting phenomena which one hardly notices, and they are never counted among states, that is to say among the powerful and free societies, although their leaders exercise more or less the same rights as the princes, and they lack nothing but independence to be true sovereigns...

For after all, no one can remain independent, unless he owns a territory, by means of which he can do without others. And although we have seen nomadic states, warlike and wandering hordes, which would seem to be an exception to this rule, it must be observed that the country which they temporarily occupied was equivalent to a temporary property, although soon after abandoned. Also the whole of history proves that the military and spiritual states always end up being confused with a territorial superiority and find only in this one a guarantee of their stability.

XXV. On the natural basis of lordship.

The first ground is marriage and the conjugal bond, which Haller does not exclusively base on the propagation of children, but on a more general instinct of union: "Man seeks and engages woman, he nourishes and protects her, and that is why he is the first, the superior, the master; the woman on her side consents, she promises faithful assistance, sincere attachment; for this reason she is obedient or subjugated, not, it is true, as a forced slave, but willingly, like a companion both loved and loving. So marriage is of divine or natural origin, no human legislator has neither invented nor introduced it; on the contrary, it is universal, necessary, indestructible like all divine institutions."

The patriarchal household perfectly mirrors monarchy, simply add in extended household relationships and independence:

With the exception of the independence of a superior, each family already presents us with the perfect image of a monarchical state. The father or the head of the family is independent in his house, none of his inhabitants has orders to give him; taken collectively, even they are not above him; on the contrary, he reigns over them, not by virtue of a delegated power, but by virtue of his own power, and only within the limits of his natural or acquired right; therefore he does not command everyone in the same way or in the same scope. Unless promises or special covenants are made, he can refuse entry to his house to any stranger, or fix at will the conditions under which he wishes to receive him there. Here we already see a master or a superior who is not made by his domestic people, **children of the house (princes of the blood) who enjoy more advantages and favors, who do not serve, but who depend on him only, and who even have rights or hopes of future succession**; we still find the various classes of subjects, several officers and servants appointed, advanced and dismissed at the will of the chief; of workers, debtors, tenants, those owing royalties, those simply visiting or foreign guests in the house; finally up to a domestic nobility or domestic estates, that is to say those who have an immediate relationship only with the head of the family, and on which other men in turn depend; we find domestic legislation, the manifestation of an obligatory will, sometimes to ensure respect for natural justice, sometimes to protect particular interests and those of the house; the power to supervise the execution of these laws, to judge them, to change them, to suppress them or to derogate from them according to the circumstances; a jurisdiction, wherever the head of the family can provide, either to himself or to the inhabitants of his house, effective help. In truth we do not find there any forced contributions, but finances freely administered by the owner, various income from capital or lucrative businesses (domains and sovereign rights), and even indirect taxes whose product is employed for the benefit of all the domestic people; in a word, the reciprocal rights and duties within a family are identical with those which exist between a prince and his subjects...

However according to the nature of things it is not possible that a simple father of a family, that the master of a house without landholdings is completely free, and consequently a true prince; because, either his house is surrounded by a territory belonging to him, and in this case he is already a landlord; or it is built on the territory of another, and in this case it depends on this one, as much by the force of circumstances as by a multitude of free commitments which are ordinarily formed in the same way.

Haller then proceeds to explain the natural origin of private land ownership, after a memorable quip about the philosophical zeal to make all of “marriage, property, language, society, mutual dependence between men, the authority of the father and the subjugation of the young child, everything, up to the inequality of forces according to them, is arisen from [positive] laws and human institutions; they leave almost nothing to do with the author of nature. **We must be surprised that the philosophes do not also claim to have made the sun, the moon and the stars; because it would be agreed in the social contract that these luminous bodies would serve to enlighten the citizens.**“:

“The true title of the original acquisition of a property does not rest on the physical occupation itself, but on the fact that this occupation is a sign or a testimony which proves the will to use henceforth of the thing which was without master, as of an exclusive property, and that the execution of this will does not injure anybody in his rights. Likewise, the permanence of the right of property is not founded on the continuity of physical power or of bodily possession, which is only possible for a moment and for a very small number of objects, but on the permanent will to keep the thing occupied as his own. And since this will is in the interest of the owner, it must be constantly presumed as long as this same owner has not, by clear and indisputable signs, manifested an opposing will. Now to disturb a man in his legitimate will, to rob him of the object or the fruits thereof is just as much an injury as to exert an act of violence on his person. We only make these reflections to refute Kant’s subtle distinctions, between a physical possession and an intellectual possession (*possessio phaenomenon*, *possessio noumenon*), the latter of which according to him is not obligatory for others, or only has provisional legitimacy. To respect the exercise of this right, are two correlative things, and one cannot grant this one without admitting the other. As long as it is recognized in fact that a person has used the right of occupation and that his will is to keep as his the thing occupied: it is an obligation of strict justice for all other men, to abstain from this thing and to leave him free to enjoy it, because it has ceased to be without a master, and it has become the property of others. For this obligation to exist, we need neither their consent, nor human law, nor convention, much less the idea or the supposition of a tacit and general pact. For if the exercise of the natural right to occupy things which do not belong to anyone and to enjoy them exclusively depended on the consent of others, it would follow that the former could be excluded from the enjoyment of these same things by the latter, that is to say that the latter would be masters of things which, however, are not to have masters, which is absurd and implies contradiction. The right of occupation would no longer even be a right, or else it would be altogether illusory and useless if it could not be exercised without the consent of others; because such consent or the goodwill of a third party is necessary only for actions which would otherwise be unlawful, only to acquire foreign property and not vacant things. The falsity of the doctrine that we are combating and the truth of this proposition: that the consent of other men is not necessary or that it is a duty of strict justice; are also proved by the actions, the feeling and the judgment of all men, consequently by the voice of nature itself. Indeed, universal experience teaches us that without any pact whatsoever (a pact which, moreover, has never existed, and is not even possible), the obligation to leave to others what they have occupied in a legitimate way, has been recognized and respected everywhere and always, as a general rule, and that those who violate it, are not only regarded and punished as brigands, but that they themselves judge themselves as such, in their own conscience.”

“If there are exclusive hunting and fishing rights, it is not because animals, birds or fish have owners, unless they are confined in forests or waters closed, but because the territory on which we hunt, the shore on which we fish, have a master who can prohibit the use of it to other men, as soon as he expresses the will. Hence it also follows that, according to natural law, each person is entitled to hunt only on his own property or on that which does not belong to anyone, but never on the territory of another, unless the owner agrees. However,

one does not ordinarily enforce the exclusive right of hunting in all its rigor, nor on all the objects whatsoever, but only on rarer or more useful animals. Who has ever been forbidden to take harmful or vulgar animals, to go hunting for butterflies or other insects, to seize reptiles, snails, frogs, etc., to collect shells and stones, to pick wild plants, violets, strawberries, etc. Nothing is more curious than to observe the industry of the lower classes of the people. The raw material of their labor usually costs them nothing; they draw it from the very bosom of nature, and no one denies its occupation to them.”

“Land ownership itself is frequently divided, and passes ceaselessly from hand to hand, either by the death of those who owned it, or by all kinds of agreements; finally, that an innumerable crowd of objects, products of nature and the arts are constantly abandoned again, thrown back into the mass of things without a master, and, so to speak, returned to universal occupation. There is more, there are quite frequent examples of abandoned lands and dwellings, when the inclemency of nature or the injustice of men have deprived possession of its charm or its price. Also the history of so many hermits and colonists proves to us by thousands of facts that the landed property, like the movable property, owes its origin to the primitive occupation, and even nowadays it is frequently born in this way; for in this respect, as in any other, the true state of nature has not ceased.”

Another gross error is to confuse *res nullius* (unowned property) with common property; the latter would require some notion of a corporate body, which in any case could only be pooled from pre-existing lots and shares.

Concluding:

“This practice is called demented, when one acts according to a misconception that one believes to be true. Our philosophers, to be sure, have hitherto limited themselves to theory; for it has not come to our knowledge that any of them asked for the consent of everyone to keep an acquired property, or renounced bequests and inheritances, because he was looking at wills and hereditary succession as absurd and unjust; or has refused a good job, a lucrative service, on the pretext that any service is contrary to human dignity; or finally disdained to accept a benefit or an advantageous fief, for the reason that, according to him, the feudal system is the scourge of the human race.”

“That’s why, provided that the occupation is physically possible; that it actually took place; and that the thing occupied was indeed ownerless at the time of the occupation. It follows from the first of these rules that non-corporeal things cannot be occupied, and that the sea, the air, etc. can never be entirely owned, although this is very possible and very legitimate for certain parts. So we cannot conclude that navigation, fishing, etc. must be free everywhere and for everyone... Likewise, property does not derive from governments or from the social state, but on the contrary states and empires are born of natural and acquired property: for from the moment a man occupies or possesses by right a more or less extended territorial property, a domain which gives him the means to live in complete independence, to offer advantages to other men, and which he can finally defend this same domain against all, without foreign help: we find with him all the elements of a monarchical state, much more than with a simple head of a family.”

“The landowner therefore reigns naturally and by right over his family, over employees, officers and servants of all kinds, destined to serve his person, to govern his house, to cultivate his land, to administer his income, etc; moreover he reigns over farmers and subjects to whom he has granted part of his land, either for royalties in money or in kind, or for certain specific works; he reigns over vassals and holders of fiefs, when he abandoned the enjoyment of such property, in exchange for their support and loyalty; on workers and mercenaries; on simple inhabitants who settle in his domains, because they find there their means of existence; on strangers temporarily domiciled, etc. All these people with their retinue, that is to say with their families and their servants, who may have them in their turn, are in various capacities and in various degrees subject to the territorial lord; they depend on him, either because they receive the maintenance and amenities of life, either because they are committed to his service by formal pacts or because they are subordinate to those who have contracted with him; or finally, quite simply, because they inhabit his lands where he is the strongest, the lord, the master; where they need peace and protection, and cannot clash with his will without harming themselves. **But after all, what is this authority and domination? It is not an absolute and arbitrary right to rule over all things, but only a more elevated existence, a superiority of means to use a legitimate freedom. Based on the personal rights of the master, it is limited by them; ennobled and tempered by the law of charity, far from stealing freedom from subjects, it is basically only reciprocal assistance, and an exchange of blessings.**”

XXVI. On how to deduce princely [landesherrlich] rights.

This is a very brief chapter sketching out the prerequisites needed to deduce sovereign rights, that being the aforementioned theory “according to the principle we have just demonstrated, the sovereign in general and the patrimonial sovereign in particular is nothing other than an opulent, powerful and independent man, a lord who reports to no one; as soon as, in the beginning, he existed before his people, far from having received the power of them; as soon as his authority rests on his own power and on his own law, on the double basis of independence and land ownership, and when he basically only governs his own affairs; it is necessary that all his powers may be deduced from his own rights, that is, from the natural rights of man which belong to a sovereign as well as to the rest of mortals, and from acquired rights; in other words, of his freedom and his property, the latter being taken in its broadest sense, and in so far as it embraces, in addition to material objects, the actions and works to which men undertake by conventions.”

There can be no complete enumeration of all sovereign rights, else one would have to include “the right to walk, sit, eat, drink, sleep, dress, etc.” One must deal with generalizations.

XXVII. On princely rights.

“For, after all, as the sovereigns received only from God alone the power or the goods of fortune by which they reign; they must therefore use this power according to His will and for His glory, just as every individual is also obliged to it according to the measure of his strength. To be animated by the love of good and the hatred of evil, not to commit injustice, to protect others in the enjoyment of their rights, to use one’s power to help others, to encourage, to favor, to reward the fulfillment of the mutual duties of humanity between men: this is what is called respecting and ensuring that the divine law is respected, accelerating and enlarging the kingdom of God, finally to be His faithful lieutenant on earth; this is what is on a small scale the duty of every man, with the difference only that the princes have more means and more opportunities to fulfill it, they are called, after an image borrowed from other social relations, ministers or the lieutenants of God. But from the moment that they no longer do his will, that they exercise neither justice nor mercy, they cease to be his lieutenants, and are nothing more than ungrateful sons who revolt against their father, their sovereign, and their master. So far that this title is suitable for flattering the pride of the princes, it likewise imposes on them great duties...

Pacts or conventions are the only positive laws which bind sovereigns; they must respect them, not because their will made them, but because in any pact the other contracting party acquires a right which can no longer be deprived of it without injustice, and that consequently the duty to fulfill the treaties derive from the natural law. It is therefore quite true that kings are subject to a law, but only to divine law and not to human law. God is the King of kings, his law is the supreme law. It is obligatory for sovereigns, not only because it is imprinted in their hearts as in that of other men, not only because it proceeds from a will and a higher power, and that observation is followed by advantages and the infringement of disadvantages; but they are all the more bound to recognize it the less they can be forced to observe justice, and that with less interest in doing evil, they have more means or opportunities to practice good.

XXVIII. On the right of war.

Haller's understanding of war is distinctly and deliberately pre-modern. See the definition of the 14th century scholastic John of Legnano in his *Tractatus de bello*, who defined war as **“a contention arising by reason of something discordant offered to human desire, tending to exclude the discordancy.** I said “contention.” This I give as the genus, for it contains in itself both warlike contention and all other contentions ; ff. I said “by reason of something discordant,” and this is the cause whence any contention arises. I said “to human desire,” to differentiate it from a contention of brutes. I said “to exclude the discordancy,” &c., and this is the final cause of any war; for any war tends finally to destroy the displeasure which introduced it,*and so wars are made for the sake of peace.”

Thus, there were both corporeal and spiritual wars. For a corporeal particular war “one form is waged for the protection of one's own body and property.” “But to all material things defence is allowed by natural first principles, since they are accessible to suffering ; and such defence proceeds from natural law, which is a force inborn in things, creating like from like. For by creating its like a thing preserves itself in its kind, which cannot be done for ever in the individual ; and also by its individual action, it strives to destroy its opposite, which resists it, and conversely. And this is the first mode of natural law,” Legnano writes.

Duels, feuds and private vendettas are as much acts of war as those between states (in fact they are the same but on a miniature scale), and indeed in the pre-modern sense war is far from being some exclusive domain of states. This can be seen in the legalized private wars of the *Coutumes de Beauvaisis*, showing that war emerges naturally, is simply the mirror image of the right to self-defense, of restitutionary justice, and it is with this in mind that Haller analyzes the right of sovereigns to wage wars on their behalf.

In Haller's words: “War is nothing more than a personal defense, a resistance to real or imminent injustices; its essence does not consist in the nature of the weapons nor in the number of auxiliaries, but only in the struggle of forces, in the struggle to ensure respect for justice. However, this war is probably not waged against superiors or stronger men, because we cannot, nor against inferiors or to weaker men, because it is not necessary; but individuals, like princes, make it to their equals; and there is perhaps no man on earth who, in the course of his life, has not often fought for his rights, sometimes with a certain species of weapons, sometimes with another, sometimes without auxiliaries, sometimes with the help of his friends; in this respect again there is no difference between princes and individuals except from large to small.”

“By what title do the princes have the right to regulate their relations with neighboring States, with free princes or corporations, to make war and peace, to conclude alliances and other treaties of all kinds? Under what conditions can or must they exercise it? Why are subjects required to assist their princes in such enterprises? Finally, is this power to make war, peace and treaties an exclusive right of sovereigns, or does it not belong to all men in a small way? Here are again questions insoluble according to the false doctrines received in our schools, while according to the true principles they decide themselves in the most satisfactory manner.

Indeed if the princes were only officers of the people, established only for its business, more or less like a mayor for his commune; certainly we would not understand why they could be allowed to declare wars with their private authority in the name of this people, to lead them, to end them without their consent, much less that they could be entitled to start a war for their personal interests, to use for this purpose all the forces of the nation, to oblige the latter towards foreign states, to stipulate on their own behalf on its rights and interests, to sacrifice them perhaps, etc.”

“But the question presents itself under a completely different face and all the difficulties disappear from the moment that one recognizes in the prince an independent territorial lord and enjoying his own rights. So it goes without saying that such a lord, by virtue of his natural freedom, is entitled to defend his house and his country, his properties and in general all his natural or acquired rights against unjust attacks, or against foreign and internal dangers, that is to say war, and it is also open to him to make peace and various other treaties with those who were his enemies, to renounce some of his rights or to acquire new ones with the consent of the other party; to finally come to the aid of his friends against a third party whose preponderance could become fatal to him; in a word, to compromise with other sovereigns, either to advance their reciprocal interests, or to prevent or to terminate disputes. For the struggle as well as the treaties concerns only the personal affairs of the prince and these rights belong to him by virtue of the right of every man to see to his own preservation.”

“For the people who are subject to him are nothing but a multitude of men, an aggregate of people naturally dependent or who serve voluntarily as a result of infinitely varied obligations; they have nothing in common with each other except their master; isolated from him, they do not form a whole, no community, and consequently cannot be offended collectively; most of a prince’s subjects even have no relation, no point of contact with foreign powers. Thus the unjust acts that they could afford can only fall on individuals. Also the general experience confirms that almost all wars are undertaken solely for the rights and personal interests of sovereigns; that the peoples are neither the first cause nor the goal, although the consequences of these wars may interest them in several respects. But even assuming that simple individuals or whole classes of subjects, for example travelers, neighboring inhabitants, creditors, etc. were wronged by foreign powers, in commercial relations, or in other private rights, and that the sovereign took up his cause for them, that he gave them his support and that he wanted to obtain justice and satisfaction for them; it will always be his particular business to examine and judge whether he should have recourse to arms in such a case, or whether he should limit himself to other

expedients, if the object in question is worth the perils and sacrifices of war, and if the success of this struggle is probable, or if it will not lead to greater misfortunes, either for the sovereign or for the rest of his subjects.

Now for this very reason that the prince's war is his own war and concerns only his own interests, he is naturally authorized to declare it, to conduct it and to end it as he pleases, and it would be to injure him in his rights that to pretend to interfere in a matter of this nature, to thwart him in his legitimate will and deny him the power to execute it. To wage such a war, therefore, he does not need either to report to anyone, or to have the consent of anyone, as long as he does not ask for help, or that he can obtain the necessary resources, men and material provisions, by his own fortune."

"But here arises another question of very important right: In what way the subjects are obliged to construe relief to their master in such wars? If the prince's war is only his own war, if he only makes it for his own interests and declares it from his private authority, why then are the subjects obliged to assist him in this enterprise, to sacrifice their persons and sometimes their goods for his benefit? Finally, according to these principles, would the sovereign not be reduced to his personal strength? That is the objection that we will not fail to address to us. Our answer will be, that one might as well ask why one helps a prince in other matters which are also his; that military service rests on the same foundation as any other service, and that an opulent and powerful man who can dispose of so many honors and riches, the existence of which is inseparable from the happiness of so many individuals, will always find enough people who will help him in his defense, who will render him services in war as in peace, and who will even prefer them. First, because supposing more courage and exposing them to more dangers, they also procure more glory and distinctions. In truth, the obligation of military service is not absolute, universal and rigorous; generally speaking, it has never been regarded as a duty of strict justice, since it is not purely negative, and positive laws do not need to change its nature, but this obligation rests on a threefold natural foundation, first on moral duty or on manifest equity, then on the particular interest of the subjects themselves, finally on individual commitments. Nothing is fairer than to fight alongside the one with whom one is in a social relation, to serve him not only in good but also in bad luck, to also share the dangers of the bond when one wants to enjoy its advantages and secure them for the future. Who is the denatured child who does not assist his father, the servant who does not defend his master in case of necessity?

Besides, don't the subjects between them also have their differences and their wars, in which the prince comes to their aid, procures them peace and the enjoyment of their rights by his jurisdiction, and sometimes by force of arms? Why then should they not in their turn help him to obtain justice, and to guarantee his person and his property, when he happens to have quarrels and wars with other sovereigns? The fairness of such mutual aid is so obvious that it almost changes the simple duty of humanity into an obligation of strict justice. Thus the peoples have recognized it at all times, and provided that war had only a plausible motive, a sovereign has never lacked numerous and voluntary auxiliaries. There is more, we often see whole nations

running without constraint and fighting for their sovereign with eagerness, an enthusiasm and perseverance which surpassed even that of the prince and his usually less energetic surroundings. However, as the duties of benevolence are obligatory only in proportion to the means that one has to accomplish them (while those of strict justice, purely negative, can always be fulfilled), and that no one has the right to demand others that they sacrifice themselves only for him in an indefinite manner and without any reciprocity: we also see throughout history that the extent and duration of this friendly assistance has often been fixed by equitable agreements between the princes and their subjects.”

Thus, his argument against universal conscription, on the basis of class distinctions, unequal duties and the natural boundaries of sovereign freedom:

“Finally the corps of armed servants or regulated troops were themselves formed as a result of individual pacts, since each soldier received in exchange for military service, food, lodging, clothing and pay. It goes without saying that soldiers thus enlisted are bound, by the nature of their contract, not only to defend the prince and obey his orders, but also to march and fight wherever he deems necessary for the good of his service. No doubt here, as elsewhere, we presuppose lawful actions; for the natural law is always tacitly reserved. That if, therefore, by some possibility (although such a scruple is rarely to be feared) a soldier finds that a war is essentially unjust, or that he is ordered to take actions which are repugnant to his conscience and injure the obligations of a higher order, he will be allowed to ask to leave the service, but he cannot collectively collect the pay and refuse obedience, enjoy the advantage of his position and not fulfill its duties.”

“There is therefore no doubt that voluntary attachment, the feeling of reciprocal equity, personal interest and conventions of various kinds, will always provide a prince with enough auxiliaries for his defense. But can he use violence to compel his subjects to military service, even in permanent corps of troops; forcibly remove conscripts in the modern way and extend this constraint indiscriminately to all classes and conditions of his subjects, thus changing from his private authority more eminent, voluntary and defined services, into inferior, forced and undefined services? This is a question which, according to the nature of sovereign power and true principles of public law, cannot be answered in the affirmative. The greatest monarch himself has only natural or acquired rights. Although his power gives him more means of exercising the former, and the latter can be very extensive, because he has many things: however the body of his subjects is not his property, on the contrary it belongs to each individual as the first gift he received from nature. In addition to general duties, subjects are only bound to their sovereign by their promises or their special conventions, and more cannot be demanded with justice. The employees themselves and the servants, although directly in the wages of the prince, do not owe him all kinds of works or relief, but only specific functions to which they freely engaged; and just as a particular lord does not have the right to force all the men who are in his dependence to the same kind of service; to, for example, a farmer to be a schoolteacher, still less has he the right to dispose of their sons and their families as he pleases; in the same way also a prince or a sovereign lord could not be authorized to such an abuse of power; his independence, his superior fortune do not exempt him from the natural law which orders to leave to others what belongs to them and to respect the conventions. As a rule, military service must therefore be free like civil service; if coercion was allowed for one, why shouldn't it be for the other? **And why could it not be extended even to women and children, since in several respects women can be very useful to the state, and that if need be, there will be no shortage of sentences to represent even the most vulgar domestic duties as public services.**”

“We owe [conscription] only to false political principles, to this philosophical public right which lavishly promised freedom and produced only slavery. It is also a fruit of republican language falsely applied to monarchical relations. In a republic, it is true, the citizens who

together make up the free community are individually bound to military service just like to many other charges, because, taken collectively, they are themselves the sovereign or the belligerent person.”

“By means of our efforts to annihilate revolutionary principles and to found on an unshakeable rock the existence and the rights of sovereigns, we believe that we have rendered them sufficiently great service that we are allowed to say also a word in favor of the private liberty of the subjects. In order to penetrate the whole world with just horror against the principles of the revolution, it is necessary to prove that they are equally fatal to princes and peoples. Enough and too often we have been criticized for defending only the rights of the strong: Ah! Let us also respect the rights of the weak!”

(According to Honore de Bonet’s L’Arbre des Batailles of 1387: “There is another kind of servitude called libertine serfdom, which involves obligations to perform certain tasks in the fields: for instance in the corn fields or vineyards. Such serfs would not be required to take part in war, for, considering the nature of their state, a new servitude cannot be imposed on them.” Legnano also agrees that *ascripticii*, i.e. free men holding servile obligations as a result of land tenure, cannot be conscripted by their lords: “From this it is as clear as day that the right which lords have over ‘ascripticii’ is a right related to the possessions to which they are ‘ascripti.’ And so it appears that, if they are summoned by the lord to extraneous personal services, they are not bound to obey, except by special agreement to that effect.”)

Haller proceeds to describe the dreadful consequences of conscription, debt financing, “people’s wars,” and the obligation that a belligerent party finance his wars off his own income, but with the possibility of obtaining voluntary aid, which most subjects would gladly oblige due to their common destiny with the prince either way:

“Soon the standing armies became so considerable that it was no longer possible to find enough volunteer soldiers, nor to pay the costs of recruiting, and moreover, the so-called national systems, the philosophical or revolutionary principles were going to gain recognition from all sides. It was then that the idea was conceived of removing by force the so-called citizens for military service, and of justifying this measure, hitherto unknown, by these new maxims, that the people are the true sovereign, and the princes only their employees or their representatives; that these for the needs of the State can dispose of the person of the citizens and their property; that all wars are national wars waged in the name of the nation, etc. Frederick William I., King of Prussia, who wanted to elevate his little kingdom to the rank of a great military power, was the first to set the example of this constraint; however, he did so only with great reserve and numerous exemptions. In Austria it was Emperor Joseph II, protector of protector of the modern philosophy, which establishes conscription; but stopped by a general insurrection, he could not extend it either to the Netherlands, or to the Tyrol, or to Hungary, or to the Milanese. In France, it was introduced with the revolution by the decrees of the various national assemblies, at the very moment when, according to an inconsistency quite peculiar to these governments of sophists, they decreed that the guarantee of the rights of man or of the individual liberty was the unique end of the state. In all the other countries conscription did not exist, and the countries which were able to resist the torrent of the century and the foreign force, even nowadays, are freed from it. But although this deplorable invention, which admittedly no longer allows us to declaim against the slavery of other parts of the world, everywhere provokes the most lively repugnance and produces incalculable misfortunes, it is nevertheless to be feared that it becomes day by day and more harsh and more universal, either by necessity or as a result of a voluntary or forced imitation. However, what proves that the princes and their advisers are not here very convinced of the goodness of their cause, and that a secret feeling constantly warns them of the injustice of conscription: it is that this measure can never to be carried out in all its rigor, and that everywhere one is forced to admit some restrictions, some softening; that, for example, in France, where it was first wanted to be applied to all citizens, it was later necessary to allow a redemption or a replacement; that in other countries there are a large number of legal exemptions; that elsewhere again, all kinds of connivance are deliberately tolerated; that everywhere we seek to pour out the odiousness of this means on national authorities, real or apparent, for example on senates, provincial administrations, states, lordships and communities; that, finally, when it comes to conscription, far from speaking in the name of the prince, we use a philosophical or semi-republican language, so many detours and precautions which would be completely unnecessary and even impolitic, if the law accorded with natural justice and equity.”

“However, it should be noted that in the republics also this rule only applies to genuine citizens., and not to the subjects of the sovereign community. Now in monarchies there is no city [cives], consequently no right of the city; but only a natural dependence or a voluntary service. So as long as a man who is neither slave nor serf, and who has not committed a crime, renounces the service and the advantages which result from it, leaves the territory of his prince and leaves his natural relationship with him, he is no longer a subject, and consequently the sovereign can no longer have a special right over him. Changing domicile at will, offering his services and work sometimes to one master, sometimes to another, stipulating the conditions

oneself: this is what distinguishes a free servant from a serf or a slave; but to be able to serve only one, to be forced to serve it and to render him perpetual services without power, to never get away from it, this is what characterizes the servitude, whatever care may be taken to disguise it under the grand words of fatherland, of civic duties, etc. A free man who, with the aim of improving his fortune, leaves his country and surrenders in another to exercise his industry or take up employment there, cannot be considered a deserter. The latter broke a special contract of service and violated a solemn oath; as a rule he still steals the property of his master, he takes the price of his engagement, arms, clothing, etc. ; he has therefore indeed committed a crime. The free man, on the contrary, has not injured any duty, and has not taken the property of anyone; no natural law, no promise forbade him this change of domicile, and consequently nothing authorizes to decide a penalty against an action of this nature.”

“Since the prince’s war is his own war, it follows moreover that in good rule he must wage it at his expense. For he can no more appropriate with his private authority the good of his subjects than their bodies; it would also hurt them in their rights and treat his friends as his enemies. So this principle was formerly religiously observed; and wherever the prince’s fortune suffices, it is still recognized today. The contrary maxims also prevailed only with the revolutionary principles. History proves that in the past even the greatest sovereigns were frequently forced, sometimes to sell or pledge their domains and to cede sovereign rights, sometimes to renounce various rights, to grant franchises and privileges, only to procure the means to wage war, and more than once the lack of resources made it difficult for them to keep or restore peace. **So also these wars were not so disastrous for the people that one would be tempted to believe it; on the contrary, they often facilitated for a large number of seigneuries and communes the means of rising to a higher degree of power and freedom; without any violent commotion, everything compensated for itself; for if some princes lost or ceded their rights, others gained them; the impoverishment of some enriched others.**”

“In the following centuries, in the abundance of cash, a consolidated credit and more extensive commercial relations compelled the sovereigns to meet the expenses of the war by considerable loans opened throughout Europe; and these loans gave rise to most of the royal debts which are now called national debts. Even today, before and during the first years of the French Revolution, the sovereigns of Europe have fought at their own expense without charging their subjects in any way; in the interior and in a friendly country, everything was paid for, and we still remember the fear caused by the first requisitions ordered in France. Only later, when, either as a result of universal impoverishment, either by the loss of credit, voluntary loans no longer offering sufficient resources, and it was nevertheless necessary to continue the wars, we began to make the subjects bear the expenses, to procure supplies and other material objects for the army by requisitions, to consider in a word private property as state property, and for this purpose to assert the new maxims, that all war is a people’s war, that it is done in the name of the people and for the people, so that we owe to revolutionary principles this demand.”

“However, although, on the one hand, it is the rule that the princes wage their wars at their own expense, on the other, it must also be agreed that equity as much as the particular interest of the people command them to come to the aid of their sovereigns in necessities of this kind. For, as the fortunes of the subjects are in a thousand respects closely linked to that of the prince, as the invasion of the country and the ruin of their master would make them suffer great ills, while by strengthening his independence they both save their people and their goods: it is quite natural that they assist their prince in the wars which he is obliged to support, and give him assistance not only in men, but also in food or in money. This moral obligation is even universally recognized, that the subsidies for the war are ordinarily granted without repugnance and paid with a good heart, provided that the war appears however just or honorable, and especially that one can hope for a happy success. It was such and other subsidies which had been granted to pay the principal and the interest of the royal debts, which gave rise to most of the taxes. Here as everywhere natural attachment, self-interest, and voluntary agreements will produce much greater results.”

Against a prince disarming his subjects, and on bodyguards as the nucleus of a private army (the Duke of Atholl in Scotland still maintains a lawful private infantry regiment to this day, the Atholl Highlanders):

Now, don't wealthy individuals or large communes also have armed hunters, forest guards, constabularies, village, town or castle guards, who are sometimes organized in small regular bodies? Since it is permissible to employ animals devoid of reason in the care of one's property, why should it not be permitted to employ men from whom there is less abuse to be feared? Moreover, it is not without example that simple lords maintain larger bodies of troops.

Without speaking of the most vulgar instruments, bows and arrows, swords, sabers and spears; there are, for example, hunting enthusiasts who own a fairly large number of rifles or firearms, and no one finds that they thereby arrogate to themselves a right of sovereignty or that they cannot have them lawfully without special permission from the Head of State. These weapons, with all that is needed for their use, must be kept somewhere, and this place of deposit is called a gunroom, taking the name of 'arsenal' when it is more considerable and forms a particular building. But where is the line between this and that? Why should we still suffer from gunsmiths and gunmakers, if it was forbidden to have them or if individuals could not have a supply of them? In a word, [the sovereign] disarming his subjects presupposes a degree of mistrust on the part of the prince which can only be justified by obviously hostile actions, or else by a formal war, and, in the strict sense of the word, this disarmament is impossible. The victor, even a foreigner, does not always disarm the inhabitants of a conquered country, although he may look at them as enemies, or at least as auxiliaries to his enemies. He does so only in extraordinary circumstances, either by necessity to provide his troops with a greater number of weapons, or as a measure of prudence to prevent new acts of hostility. Thus, a natural prince will allow himself much less to take such proceedings towards his own subjects, he who should have with them only peaceful and in no way hostile relations, who sees in them only friends and partisans, and so to speak see them as his own soldiers, whose forces he does not need to weaken, and to whom he would be more inclined to furnish arms, than to take away those they possess.

Finally, with regard to fortresses and other fortifications, we will first ask if they are anything other than a factual reinforcement, by means of which one opposes to foreign aggression, not only the power of man, but also the forces of nature? Now, is it forbidden for individuals to put locks and bolts on their doors, to reinforce their windows with iron gates, to enclose their fields, their gardens and their vineyards with walls, fences and palisades; to draw small ditches, to raise boulevards and terraces intended for pleasure as well as for defense, to build cellars and vaults which are fireproof and in which we can take refuge in case of need, etc.? We will no doubt face the objection that these are only small means of security against a particular power, and not real fortifications. But this answer is yet another proof that our modern science consists much more in terms than in things, and that we always try to escape the truth by chicanery of words. For where then do the small means of security stop? Where does the fortification start? Have the laws ever determined this difference, and don't we see here, as everywhere, an insensible progression from small to large? Fortifications of a higher order would either be useless to most individuals, or far too expensive, and yet the large number of castles and

provincial towns regularly fortified by walls, ditches and ramparts, obviously prove that even individuals or particular communes can fortify their territory, without claiming sovereignty, or any less faithfully fulfilling their duties towards their natural sovereign...

On the other hand, it is beyond doubt and in no way contradicting these principles, that if, in time of peace and without a legitimate or known cause, a powerful and opulent subject suddenly formed numerous corps of armed servants, made provisions, extraordinary weapons and ammunition, and for which considerable and unusual fortifications were established: the sovereign could, by virtue of the right he has to watch over his own safety, as well as that of his subjects, prohibit these armaments or these preparations after having requested the reasons for them; demand its cessation; and, in case of refusal, to obtain it even by force, not because these means of safety and defense are prohibited by their nature, but because it is presumed that this subject wants to make an illegal use of them. **For such armaments, which go beyond any ordinary measure, are manifest proofs of hostile intentions, either against the rest of the subjects, or against the prince; and since, on such preparations, explanations are often requested, even from foreign sovereigns, whose right is however incontestable, all the more reason can one ask a private individual and a subject for whom they are not at all necessary. That if he refused to give satisfactory explanations; if he confined himself to invoking the rigor of his law, and claiming, for example, that other persons possess such means of defense, that their number and extent are not determined by any law, etc, the sovereign could, as a general thesis, grant him all these arguments, but then oppose him his own law, which authorizes him not only to repel these hostilities, but also to prevent them....** What bears the name of a treaty between equals will be called obedience on the part of a weaker person or of a subject; but in either case, the matter is essentially the same, and it can never be inferred that in general it is forbidden to arm one's servants, to stock up on arms, or to guarantee one's property by the aid of technique, since one forbids, not the use, but the abuse of the right, not the just, but the unjust use of liberty.

The right to procure justice for one's self is so deeply ingrained that Haller cites the example of those Swiss mercenaries who "in the sixteenth century, the Swiss pretenders (Ansprecher), that is to say, a certain number of former dismissed soldiers, formally declare war on Louis XII, King of France, to force him into payment of a balance which he had promised them, a war in which the cities and sovereign communes of Switzerland took no part, which they even saw with concern and condemned loudly, but which they had no power to prevent or even the right, as they believed." More recently, Haller cites an anecdote from 1760 recounted in the Percy Anecdotes about a member of the Roux family, a merchant house from Marseilles, declaring private war on the King of England. Although of course under the international law of the time this action would have no legitimate standing, it illustrates that deeply ingrained sense of wanting satisfaction for wrongs.

XXIX. On peace treaties and diplomacy.

International law, or the law of nations (*ius gentium*) in older terminology, is an extension of natural and private law. The same relationships of exchange, marriage, conveyancing, wills, sales, etc. between relative equals or between superiors and inferiors within a territory apply just as much to relations between free and independent princes. Because of their perfect freedom, enforcement is more difficult and depends on trust and goodwill, but this in no way erases the obligation.

The novelty of permanent embassies and legations: “As regards the power of sending and receiving ambassadors, it is clear that this right derives quite simply from natural freedom and does not belong exclusively to sovereignty. Permanent legations are a fairly modern use, and peculiar to Europe; the small states as well as the majority of the republics even do without them even today, either for reasons of economy or because their relations do not make them necessary. When the princes had to deal with each other on important and complicated points which they could not decide either in person or by correspondence, they had to, like individuals, appoint and send to each other agents who bore titles, first the modest name of deputies or procurators... Although permanent legations owe their origin, either to the curiosity of sovereigns who wanted to be informed of all that was important in a foreign state, or to their self-esteem, because they wanted to be constantly noticed in the circle of free and powerful people; they are nonetheless, by their nature, an excellent use and suitable to maintain and consolidate friendly relations, by presence of pleasant intermediaries; to support orally reciprocal wishes and interests, to resolve the difficulties which arise so easily as a result of written correspondence, to end disputes at last, and sometimes even to prevent the outbreak of war. However, these ambassadors are mainly appointed for the rights and personal interests of the prince who sends them, and this is already proven by the very nature of their functions. **For although these ministers can render many services to those of the subjects of their sovereign who are domiciled in the foreign country, assist them in unforeseen embarrassments, accelerate their affairs, take in hand their particular interests, and thereby become their bosses and their natural protectors; all this, however, is only an act of benevolence, the effect of a friendly bond between compatriots, and not a duty of rigorous justice; it is an ancillary benefit of these missions and not the purpose of their establishment.**”

“Even today, to speak precisely, sovereigns do not cede the rights of individuals; because the impossibility of protecting them in the future cannot be called an assignment. However, it must be admitted that when modern peace treaties are concerned with renouncing provinces, too little attention is paid to the rights of the inhabitants, almost always they are deliberately ignored, or at least the articles which concern them are written in vague terms, with too much lightness and haste, which makes the change of masters much more painful than it would otherwise have been, and should be according to the true principles. Now this new misfortune which weighs on the people, is not only due to the lack of charity and to the egoism which prevails among large and small alike, but especially in false political doctrines, according to which it was claimed that war and peace take place, not between sovereigns, but between nations, and which consequently one is authorized to stipulate also to their detriment. That if a prince is not strong enough to defend himself alone against one of his enemies, or if, either to prevent or to end serious dissensions, his interest demands that he appeal to allies near or far away; sometimes to receive help and sometimes to give it; that he renounces rights which he could have made use of, or assumes obligations that he did not previously have: he can in all these cases make agreements of various kinds, conclude all kinds of temporary or permanent alliances, provided that he confines himself within the limits of his rights, that he does not injure those of others, and that he only binds himself and his property.

We will not speak of the vulgar conventions which take place between the princes, either to end a war, or within the very heart of peace, as are the demarcations of borders, the actions of purchases, sales, exchanges of gifts, the contracting of marriages, wills, pacts of succession, etc.; there is no doubt that sovereigns have, as well as all other individuals, the right to make such treaties *ad infinitum*, and that in their capacity as independent men, provided that natural justice is observed therein, neither the form nor the substance can be prescribed to them.”

“Here at least, it is clear that these pacts only concern the affairs of the sovereign, otherwise it would also be necessary to say that the peoples marry, and that the marriage of a sovereign is a national contract. We even challenge the publicists who would be tempted to distinguish between the particular covenants of the princes and what they call public or national treaties, to show us the limit where the former end and the latter begin. They will always fail in this attempt, and will end by recognizing that this whole distinction is without foundation; that there cannot even be national pacts in a monarchy, because the nation considered as a community, as a collective person, does not exist, and because it is not a united multitude (*multitudo unita*), but a multitude without union (*multitudo soluta*). Even the so-called commercial treaties, which, moreover, are few in number [Ed.’s note: not anymore!], and which, with more friendly arrangements, one could very well do without, cannot be called national pacts; for it never stipulates how and with what commodities the respective subjects must trade; these treaties are, as a rule, only the softening of certain prohibitive measures; the sovereigns alone oblige themselves to do so reciprocally, sometimes to allow entry into their territory for such and such foreign products, sometimes not to forbid the export of a few others, or not to charge them with taxes and exorbitant tolls; or finally to grant the traders certain facilities, certain assistance, etc

.; so many things which depend on the free will of the princes, and which are not indifferent to their revenues and their own interests, although the results may also turn, sometimes to the advantage, sometimes to the detriment of their subjects.”

Defensive alliances, such as those of the Lombard League and the Swabian League in history, are perfectly legitimate even under the tutelage of a sovereign lord, provided they do not infringe his own superiority. Further, the sovereign right to send ambassadors, envoys and legates is a direct parallel to how a private individual can authorize an agent or proxy to act on his behalf:

If the princes could not of themselves make peace, conclude treaties and alliances, send or receive ambassadors, they would be in worse condition than the smallest individuals; for just as these have suffered dissensions and wars with their equals, so also it often happens to them to make peace. Who has ever forbidden men to reconcile enemies, to appease differences, to compromise on their rights or on opposing interests, sometimes in person, sometimes through intermediaries, to whom they give such instructions as they deem appropriate?

“Any town or country community, any trade, any religious or political order, any literary and commercial society; in a word, is not every social pact a kind of alliance to strengthen and support each other? Doesn’t marriage itself bear the name of a covenant? But no one has yet claimed that such meetings, harmless in their nature, are forbidden to subjects. Ah! What would become of men, how could they survive, without this multitude of infinitely diverse associations, which teach them to know the price of mutual love, and which show the weak what strengths they can acquire through mutual benevolence? There is more; even the defensive leagues proper, commonly referred to by the general name of leagues or alliances, were never absolutely prohibited or contested; on the contrary, they have always been regarded as a naturally lawful action, provided that the rights of the sovereign are not compromised, or that they are expressly reserved. Since individuals or subject municipalities could, as we have just said, wage war for the defense of their own rights: why could they not have also promised and lent each other mutual aid? The whole history, and in particular that of Germany, Switzerland and Italy, contains so many examples of such leagues, that it would be tiring and interminable to quote them all. And these alliances were not only formed in times of anarchy and against the will of the princes, but with their assent, by virtue of a generally recognized natural right; and they never harmed the most scrupulous respect for the real rights of sovereigns.”

“Finally, it is not true either, it is even altogether contrary to reason and experience to say that the faculty of sending ambassadors is a privilege of sovereigns; it basically belongs to all men, but it is exercised only by those who have the need and the means. First of all, there is no doubt that individuals frequently address themselves to messengers, envoys or intermediaries when their business or their negotiations so require, and that they observe in miniature the same rules of law, the same forms and uses as the princes between them. But there is more; all of history and everyday experience are teeming with examples which prove that ordinary individuals or particular societies, even to foreign sovereigns, accredit agents, deputies, ministers, and that they provide them with letters of credence, affidavits, full powers and instructions for this purpose; people will doubtlessly object, that they do it only for their own business; but have we not already shown that it is the same for sovereigns?”

“If, therefore, individuals do not ordinarily maintain ministers, or permanent legations near foreign courts, it is only because they do not need them, or they do not have the means to support their costs; for, moreover, there is no other difference between the envoys of princes and the deputies of individuals, except that the latter are less distinguished persons, and that, consequently, the sovereigns do not render them the same honors as those who come from their equals,” concludes Haller.

XXX. On protecting one's subjects abroad, and hospitality toward foreigners.

This chapter is an easy one to misunderstand today. Here, Haller is discussing the old “right of safe conduct,” “right of escort,” or in German *Geleitrecht*, i.e. the obligation to provide for the safety of the persons and possessions of those foreigners (usually merchants) who one has authorized to enter. A good historical example are the royal protections for foreign merchants granted by Edward I of England in 1303. As described by Keechang Kim in *Aliens in Medieval Law*:

Offering a safe passage to an individual or to a group of individuals by providing an armed escort or an official document had a long history dating back from Antiquity. But the growth of commerce in the twelfth century changed the nature of this ancient institution. Merchants became its heaviest users. From then on, the institutional arrangement known as safe-conduct was frequently used to safeguard the movement of merchants and their goods. Henry I, for example, granted the fair of St Ives to the abbot of Ramsey in 1110. The grant was accompanied by a guarantee of safe-conduct that all, while going and remaining there and returning thence, should have the king's firm peace: ‘et volo et praecipio ut omnes ad eam venientes et in ea existentes et inde redeuntes firmam pacem in eam habeant’. The ‘firm peace’ was often manifested in the form of the extremely severe punishment imposed on those who broke the peace of the fair.

For mercantile purposes, safe-conduct did not mean exemption from tolls. Safety of transportation was promised on condition that due customs were paid. In 1224, for example, the family of Petrus de Conti obtained a safe-conduct. We find the following text in the Patent roll: ‘[the recipients] shall have the letters of safe-conduct in coming to England with the goods and merchandise of the said Petrus upon payment of just and due customs’. Much attention has been paid to a text (c. 991-c. 1002) which set forth differential rates of tolls payable by various foreign merchants at Billingsgate, London. Merchants from Rouen, Picardy, Normandy, Huy, Liege, etc. were mentioned in the document. This may be regarded as an example of the tolls which were usually described in contemporary legal documents as ‘recta et debita’ or ‘antiqua et recta’.

The preferred status of the merchants who later became known as Hanse merchants is reflected in the Billingsgate document: they were held worthy of all good laws equally with London merchants. A charter issued by Henry II to the merchants of Cologne in 1157 may be discussed in this connection. It provides that the persons and possessions of the merchants, including their house in London, shall be ‘in my custody and protection (in custodia et protectione mea)’ and that they shall be protected ‘as if they were my men and friends (sicut homines meos et amicos)’. The charter was confirmed repeatedly afterwards. Some of these confirmation charters state that the safe-conduct is granted because the recipients are the king's men: ‘quia homines et fideles mei sunt’.

Ergo, Haller writes with regard first to the obligation to protect one's subjects abroad: "It is argued as a prerogative or a special right of princes that to protect their subjects even in the territory of another sovereign, to grant or refuse hospitality to foreigners in their own country, to prescribe them in this regard. such conditions as they see fit, etc (*jus hospites recipiendi et pellendi*). Now the first of these rights, as long as it is confined within the limits of justice, is not only a natural right, but also a duty, the accomplishment of which turns both to the honor, and to the advantage of the sovereign, because it increases his consideration, that is to say, the reputation of his power, and moreover multiplies the bonds of love between the subjects and their lord. However, this is again one of those duties of charity which cannot be demanded, neither rigorously nor in all circumstances, because the sovereign may lack the opportunity or the means to accomplish it, and no one is held to the impossible. It goes without saying, although it is worth repeating, that the protection accorded to subjects in foreign countries should take place only in just causes, a condition which would no longer be fulfilled, if, for example, they wanted to abuse their influence to remove them from the jurisdiction of the sovereign in their disputes, or from the punishment they would have deserved by their crimes, or finally to grant unfair favors to the detriment of nationals, etc. Support given to injustice is already illicit in one's own country, but abroad it becomes quite unbearable and provokes deep hatred, because it detects the highest degree of pride and ambition. Moreover, protection, even in just cases, must be given rather in the form of verbal or written recommendations than in a compelling manner; because not only is it absurd to order where we have not the strength to be obeyed, but also one succeeds better by gentleness, and it is honorable, even for a stronger sovereign, to spare in such a case the self-esteem of his neighbor, because each one is singularly susceptible at home on the verge of independence, and willingly agrees to dispense justice when necessary, but not at all to be compelled to do so."

With regard to foreigners, "any enjoyment of an object, when it does not harm the owner, for example, the passage on the main roads built for this purpose, the transit of goods, the simple stay, the drawing of water from rivers and fountains, etc., must be granted without difficulty." Haller also explicitly mentions those courts of piepowders that were formed at fairs and markets for the purpose of granting speedy justice. Haller, with his aristocratic sensibility and his life in a more civilized time, bemoans the rise of passport controls, but nonetheless it is obvious that "a sovereign can undoubtedly refuse entry and stay in his country to any foreigner from whom he fears some damage or some danger, and he remains the sole judge of the existence or the likelihood of these inconveniences. Why would this right, which is recognized by every father, every landowner, be forbidden to a powerful and independent lord?"

"Foreigners are not bound to any special service, because they are not in any post which authorizes it to be imposed on them. Therefore they are not obliged to military service; so it is not required of them, even when the natives are required, although in good rule this service should only be voluntary, even on the part of the nationals. According to strict justice, foreigners do not owe direct or personal contributions; for as they do not claim any

permanent advantage of the social bond, they cannot be held to contribute to its existence or to its preservation: and although it may be objected that during their stay they profit from the power of the prince and his various establishments, it would nevertheless be a not very generous and petty thing to impose on them tributes for that, and to charge, so to speak, for the smallest act of convenience. On the other hand, foreigners cannot be freed from indirect taxes, either because they are not real taxes, and that they are paid freely to obtain real value in exchange, or because it would be impossible or impracticable to make such exemptions. If foreigners own land in the country of a sovereign who is not their master, they are naturally bound to pay the taxes or royalties with which property of this nature is encumbered, and this, not only because of the protection they receive, but also because these royalties are a debt, and in this respect the owners can neither be privileged, nor even considered as strangers... Finally, if the foreigner is guilty of misdemeanors or crimes, he will be punished according to the laws and customs of the country in which he lives; not that he is a citizen of the state, but because one has the right to protect oneself against his criminal actions; **not that he himself is subject to these laws, but because they are imposed on judges.** However, it is generally customary to employ, against foreign criminals, according to their condition or according to the nature of the crime, different penalties, sometimes more and sometimes less severe, provided that they achieve their goal.”

Either way, this is fairly academic, and in any modern setting with cheap transportation and a third-world population explosion, a strict closed-borders policy is the most prudent of all, which Haller would not have disagreed, as he does also note in other chapters the disadvantages of princes hiring foreign servants; rather this chapter is a brief sketch on how foreigners would be handled from the perspective of an independent private law householder offering a right to escort in his domains, i.e. without the implication of a ‘civil community.’

XXXI. On placements and the employment, promotion and dismissal of servants.

Crown officers, court officials, clerks, bureaucrats are all species of the genus of domestic servants. This was quite obvious e.g. in the Great Officers of the Crown in the Kingdom of France — constable, chancellor, grand-maitre, marshal, chamberlain, etc. Any distinction between a public and private servant is erroneous in a proper monarchical state.

“If the rulers were only the first officials of nations, drawn up by the latter and only for the latter, it would be impossible to explain how they can have the right to appoint all other officers or employees of the State, to give them instructions to advance them in rank, to dismiss them, to create or abolish places and jobs, etc. Never until now has a republic delegated such power to its head or president; for it would be enough alone to change the employee into master and to annihilate the republic. But this faculty exercised by sovereigns at all times and in all places, without any contradiction, is still explained naturally by their freedom and their property; by this simple fact the pretended public officials or employees of the State are not the servants of the people, but on the contrary the servants of the prince, solely destined to help him in his affairs, in his designs and in his interests. Now, according to this principle, it is clear that the entire economy of his great house, the placement, promotion and dismissal of all servants and employees, the right to determine their functions, to fix the various conditions, the duration of the service, the salaries and other advantages, etc. belong to him as an independent territorial lord, as well as they belong to any other lord; here, as everywhere, it exercises only a right natural to all men. He is the master of increasing or decreasing the number of his employees in proportion to his means or his needs, to create new offices or to remove old ones, to place individuals or rather to receive them at his service, to reward them with advancements, hopes, etc.; to dismiss them even, if circumstances so require, to give them all the instructions in accordance with the nature of their service, etc., as can any other lord rich enough to have numerous employees and of such diverse kinds. Now, that all those who are commonly called public officials, large and small, are in fact only the servants of the prince and solely intended for his business, although their work may be indirectly useful to the people, this is what has been demonstrated by all the circumstances and by the nature of the functions themselves. In the first place, these employees are appointed only by the prince, and after God they are accountable only to him; they take an oath of fidelity to the prince, they are paid by the prince and not by the people.”

“There is therefore no essential difference between the so-called public functionaries and the private servants of the prince; this distinction that some jurisconsults have wanted to establish is purely arbitrary and specious; the dividing line can never be drawn with precision; because the marshal who commands the armies of a sovereign, the keeper of the treasury or the principal minister in charge of his domains, his income and his expenses, the ambassador who supervises his affairs with a foreign power, are just as much the servants or personal auxiliaries of the prince as the lowly clerk or domestic officer; only they serve or help him in different ways, and in different matters. They enjoy a consideration proportionate to the degree of power with which they are vested, as well as to the skills and knowledge required for their duties.”

“Consequently, the natural relations, between a prince and his various employees, can be judged only according to general rules on pacts or contracts of service, that is to say, according to universal justice, and as needed according to the duties of benevolence. So these relations are nothing less than arbitrary or despotic, but free, humane and mutually useful. First, a sovereign appoints only his servants, just as private lords and corporations can only name their own. He is the master of fixing the number according to his income or his needs; this is a matter of simple

prudence; but, by right, a prince may have as many employees or servants as he sees fit or is in a position to pay for them. He is entirely free in the choice of subjects, between those of course who apply for the job or who agree to accept it; compulsion to serve is unjust, and would be harmful rather than useful; for a forced servant would certainly not be a zealous servant. It is also up to the prince to receive foreigners or nationals in his service, unless a formal pact or a contrary promise does not oppose it. Generally speaking, the preference granted to the natives conforms to the rules of equity and wisdom, but it is not a duty of rigorous justice: it therefore admits of exceptions, and it would even be very impolitic to bind one's hands too tightly in this regard. That if a sovereign prescribes for the placement and advancement of his employees certain conditions, for example, the profession of such or such religion, a determined age, preliminary studies or other tests, previous work in the part of which he is applying, the state of marriage or celibacy, etc. , these are only rules that he imposes on himself, maxims of equity or prudence that he adopts to make the choice easier for himself, to escape the inconvenience of tiring and too numerous solicitations, or finally to ensure the fidelity and capacity of his servants; rules, however, to which he is not subject in such a rigorous manner that he can derogate from in extraordinary cases.”

Interestingly, contrary to what one might expect from Haller's private law approach, he is opposed to the sale of venal offices, but in large part because he saw this as financing the growth of a *noblesse le robe*: “The sale of venalities, that is to say, the condition of paying a certain sum of money for the employment which the prince grants, which after all amounts to a diminution, appears to us improper and unworthy of a great lord. One seeks, it is true, to color it by various sophisms, by saying, for example, that it carries to the places only men of a certain ease and consequently better educated; but it rests nonetheless on the great error of appreciating the merit of men solely by wealth, although this advantage, considered in itself, is the least estimable of all, because of the great number of less ignoble or illegal acts that are used to acquire it, and that for this reason it furnishes the most uncertain guarantee of virtue and talents; **besides, it offers too powerful an attraction to return by all kinds of ways the sums which one has spent, to resell what you bought yourself; and finally, the venality of the charges leads to this even more fatal abuse, of creating a host of new and useless places for the sole purpose of selling them and indirectly obtaining considerable sums of money, from the person being supported by them paying high interest..**”

“Places can be given for life, for a fixed time, or for the duration of mutual contentment (*ad bene placitum*), that is to say, as long as the employee suits the service and the service suits him. As to the appointments , the sovereign may, at the outset, fix them according to his good pleasure, and even subsequently increase them; but not reduce them by his sole authority without a just reason, because in this respect the consent of the official is not presumable. If the latter fulfills his engagements, the prince must keep his; all wages are a sacred debt, and unless there is a formal offense, they should not be suspended, reduced, or delayed. Finally, to say a few words about the essential points of the placement, promotion and dismissal of employees, it is first of all a great fault that a prince commits if he does not reserve the

appointment of all his officers and servants; and that, either by indolence, or by false principles, or under any pretext, he abandons the right to confer subordinate places, on his ministers or on immediate superiors, instead of simply having regard to their presentation and their recommendation. **Because by giving up the right to appoint to places, the sovereign increases too much the power of his first servants and on the contrary weakens his own; instead of attaching the natural bond of dependence and affection to his person, he attaches it to that of another, because the inferior employee no longer believes himself bound to recognition except to the one whose he received the office, and not at all towards the prince; moreover the feeling of being the servant of the sovereign, and not the servant of his servants, exerts a great influence on the point of honor of all individuals, and it is necessary, for the religious and voluntary fulfillment of their duties, that this idea be constantly revived in them.**"

"The first servants, not as to the importance of the object, but in the order of time and need, are those destined for the necessary, agreeable and convenient service of the person of the prince and his family, or to the stewardship of the house which it occupies, and which is called, in almost all languages, a court, because this house is, like country houses or country manors, usually surrounded by a court, of an enclosure, of estates; which, by the way, provides further evidence that the first principalities had to cradled in these country mansions."

Eventually, as territorial acquisitions start to grow and with them rights and duties, there start to appear non-domestic secretarial and ministerial officials: "But the existence of a prince is not confined within the confines of his home, nor limited to the idle enjoyment of the pleasures of life. He owns a large number of lands and incomes more or less distant from his usual stay; he has varied and frequent relations with his employees, with his subjects and with his equals, that is to say, with other sovereigns; and these relations give rise to a multitude of business that can not or will not manage itself, and that it would be impossible to complete alone. However, to relieve the administration of these cases, what is now called the government, the secretaries, become indispensable to him, since it is necessary to speak to absentees, and to let them know the will or the decision of the prince. Such is the origin of the functionaries who are called ministers who, at bottom, are nothing other than the first secretaries of the king."

These are writers, clerks, notaries, chancellors, etc. "This chancellor placed all important affairs before the eyes of the king, whether they were requests from individuals, reports or requests for instructions from various officials, letters from foreign sovereigns, or even proposals and notices of the chancellor himself. In this regard, he received the king's decisions, took his orders, looked after their expedition, and kept the seal of the sovereign. For several centuries, the princes had no other ministers than these chancellors."

Eventually, multiple chancelleries start growing into modern ministries: war, commerce, interior, foreign affairs, etc. It is here that sovereign power starts to dilute. Many of these ministries were quite redundant and useless, and the growth of the administrative state a threat to good government, but at the same time there is no such thing as any upper limit on the proper number of royal servants a ruler may have:

Business is far from being as distinct in reality as it appears in theory; and their arbitrary classification usually has no other result than to prevent this general glance which grasps the whole and the connection of them, to force people to consider them only in an imperfect way and under a single point in sight, or to hinder their progress and harm their success, by necessitating numerous conferences, and often even debates and disastrous oppositions between the various chancelleries.

From these new chancellors came the Ministers of War, which were superfluous before there were standing armies; the Ministers of Finance, in place of the older practice which once received the accounts of the various territories, to pool them in a central fund; the treasurer general who rather ought be concerned with reducing expenditure than with increasing revenue. In addition, we created the Ministers of Foreign Affairs which were once few in number, and could easily be completed by the prince and his chancellor; the Ministers of Justice, another useless institution, as justice was once thought to be the end of all sovereign affairs, and that the small number of items concerning civil justice, which are likely to be reported to the sovereign, could without difficulty be dispatched by a higher tribunal or by the ordinary chancellery; of Ministers of the Police that we did not yet know, half a century ago, because this system of universal espionage has no goal in times of calm and mutual trust, and that moreover each minister in his department, each provincial or communal administrator policed his district, maintained good order there, and watched over public safety.

Finally, thanks to the influence of new revolutionary principles, according to which it was no longer believed that the prince governs his affairs, but those of all individuals, we have seen these days ministries of agriculture and trade, of the arts and the sciences, and ministers of worship, etc., although in reality the first of these ministers should be occupied neither with farming nor trade but only roads, bridges, ports, canals, tolls, etc., belonging to the sovereign; and the second, at most with the schools and other educational establishments which the prince had founded. As to the ministers of worship, apart from their institution being based on a great error, that which regards religion and the Church as a political establishment, they are absolutely useless in Catholic countries, and one could do without them, even in Protestant countries, because nothing prevents the small number of ecclesiastical affairs which require the intervention of the sovereign, from being presented to him by a supreme consistory, or by an ecclesiastical council which then receives and transmits its orders on this subject...

Moreover, we have seen men create even today courts of cassation and ministers of the court, the first of which is obviously a product of the revolutionary principles of the separation and independence of powers, under which the king or his first officers were not supposed to judge themselves, nor correct the judgments of the lower courts, but could on the other hand overturn them in the event of a clear contravention of laws or forms, and to refer the case to another court; an operation which does a disservice to the litigants, since it indefinitely postpones the term of their dispute, and because after all there is always at the end a tribunal which decides the case according to the opinion of the court of cassation, so that it is almost as if the latter had judged itself. Thus the cogs of the political machine multiply ad infinitum, without business

going either better or faster; every day we create new places, most of them superfluous, rarely we remove them, or better to say never; and the salaries of this fearful crowd of employees absorb, in almost all the states, the natural revenues of the domains and of the regal rights which, without taxes and without subsidies, formerly sufficed abundantly for all the expenses of the sovereigns.

That if to all this are added taxes and regulated troops, the mind is lost at the sight of the immense number of new functionaries which these establishments require; we no longer understand how it is possible that a single man has such a crowd of servants, and that in great monarchies, not only several hundred thousand, but perhaps several million men are in the wages of an individual, depend on his power and make him, in their turn, powerful by their services. And yet this is easily explained when we consider that the progress from small to large is infinite, and that nature has not set absolute limits to human fortune. It is with social ramifications like those of a large tree; millions of branches, twigs and leaves draw their nourishment from a single trunk. The greater and more varied a man's strengths and abilities, the more he is able to provide for the needs of his fellows. However, as a sovereign is not reduced to income from his land and capital, new resources give rise to new needs and allow him to offer new benefits.

Thus, Haller ends with a call to massively cut the number of "public" servants:

What huge expenses do not this crowd of civil servants demand? And how easy would it be to restore the dilapidated finances of large and small monarchies, if we wanted to limit ourselves to what is necessary, return to the old simplicity, and, like private houses, start saving money by reducing the number of servants?

Could it be that this proposition: so many millions of individuals are only at the service of the sovereign, destined to do his business and not those of the people; seemed strange and shocking to the men of our century? In that case, we would in turn pity their folly and their false science. So don't they see that this very restriction constitutes the strongest guarantee of private liberty? In fact, sovereigns cannot and must not govern everything; there are still things left to the care of the peoples or of the various classes which compose them; nature has not denied them all means of helping themselves, all the glory of contributing to their own happiness and to the prosperity of the social bond. Or would we prefer to see the prince's officers, under the pretext of governing the people, meddle in all the affairs of private individuals, rule subjects as one rules children in infancy, and thus exercise a despotism as petty as it is unbearable?

Enough attempts have been made nowadays to place public employees in countries where they have nothing to do in the service of the prince, or in views alien to his interests. **But what were they used for, if not to oppress and upset the people? What good have they done all these modern regulatory officials, these inspectors and these researchers of all kinds, if not to upset the subject and disturb his domestic tranquility? What advantage has resulted from these directors of commerce who hinder it rather than facilitate it, from these commissioners of public instruction who even get involved in private education and domestic discipline, as if they were the parents? The mania of forcing the officers of the sovereign to attend to the affairs of the people produces this double inconvenience; that the interests of the prince and the interests of the subjects are equally badly administered: the first, because they are neglected; the second, because we obtain nothing and we always infringe the rights of others.** The peoples today suffer from one and the other of these ills, proof evident that the "public law" of the philosophes engenders despotism everywhere, even when it does not intend to oppress; instead of everything going well, as soon as the sovereign is content to govern his own affairs, and leaves his subjects the freedom to govern theirs; that moreover a mutual affection unites the chief and the members, and that if necessary they help each other to guarantee the enjoyment of their rights.

XXXII. On supreme lawmaking power and the right of observing laws.

Laws are only the manifestation of a binding will, an imperative rule of conduct. All men make laws according to the extent of their right and their power. The laws of sovereigns are distinguished from the particular laws, not by their nature, but only by a higher degree of importance and by the extent of objects they embrace. The right to make laws, is, like all power and all freedom in general, limited by natural law and the rights of others. The division of sovereign laws according to persons that they oblige are: a) laws that a prince imposes on himself and in part on his successors; b) laws that are given to employees and

servants (service instructions); c) laws that concern subjects. They are the fewest and the least necessary. Criminal or penal laws do not belong to this class; they are only instructions for judges. Human laws are not universal, nor equal for all, nor necessary in the sense that they admit no dispensation. These characters are exclusively specific to natural or divine laws.

“Consequently, it is clear and demonstrated, that within certain limits all men can manifest an obligatory will, that is to say, make laws; and although it is said in all our books of public law that the right of legislation is an exclusive and characteristic mark of the power of sovereignty, nature and experience give a formal denial to this doctrine. Individuals or corporations incessantly carry a multitude of laws which concern and often bind a very large number of persons. First of all, they impose themselves on each other by their conventions, and this is what gives birth to civil laws properly so called, which, as we will demonstrate later, do not consist in any way in sovereign ordinances, but in pacts and practices of individuals between themselves, and that we call civil laws, not only because they concern the citizens, but because they are made by them. In addition, a large number of private laws derive from a single will, and in this sense any superior gives laws to its inferiors, although they do not always bear the name, but they are quite commonly designated by the words of decrees of decrees, orders, regulations, instructions, by-laws, etc. Does not every man say: I have imposed on myself such and such a law; I gave my people such and such orders? Does not each have their legislative authority within the circle of their law and their power? Are not wills, for example, laws of succession, binding rules for heirs, and sometimes for a long succession of descendants? Do we not see all the fathers, all the heads of families, all the entrepreneurs or owners of large establishments, giving to their children, to their servants, to their employees, and to many other men still, precepts, instructions, regulations, which sometimes are even printed and addressed to the whole public? Do not we read in all the newspapers of the statutes, the ordinances, the laws and rules of any kind, by which corporations, universities, schools, cities, municipalities and other private companies regulate their internal organization, their finances, their policy, etc., and for which, unless they affect the rights of others, the consent of the prince is no more requested than for any other particular action or will?

In a vain attempt we try to escape these objections by word games, distinguishing, for example, between paternal precepts, advice/counsel, pacts, corporate statutes, and laws themselves. This distinction is a vain subtlety which is not any more instructive than solid. All these various manifestations of an obligatory will are at bottom only laws of various kinds, all included in a single general notion; they are just other words for the same thing. The precepts of a father or a head of a family are paternal and domestic laws; the statutes of the communes and of the particular companies are laws for the members of this corporation or for those which depend on it; pacts are laws that are imposed by agreement of a mutual will, although in certain circumstances the agreements of the weak with the stronger do not differ greatly from a law imposed by the latter. Advice, it is true, is not a law; for the obligation to submit to it does not result from the will of the one who gives it, but from the nature of things; acceptance of advice is not a rigorous duty, it depends on free will; however advice which one cannot refuse to follow without exposing oneself to major inconvenience, is almost equivalent to a law, and often a compelling precept is disguised in the form or the milder denomination of advice or counsel. Finally, as regards to orders, it is not true to say that they relate only to a single individual; because we give orders even to entire armies, and in many cases the decrees or laws of rulers, especially in military empires, have no other name. An order is undoubtedly also a law for the one who receives it; only this word carries the accessory idea of a firmer will in the

superior, of a more prompt execution on the part of the inferior, and is usually applied only to isolated actions. In truth, all the injunctions of superiors, all statutes of municipalities, etc. do not extend beyond their own affairs and the limits of their small territory; but the same thing takes place for the sovereigns; they too only make laws in their domains; they only impose them on those who depend on their power and not on outsiders. Undoubtedly again all the laws of individuals are subordinate to so-called public laws, that is to say, to those of the sovereign; the latter can suppress them, not arbitrarily, it is true, but for just causes... to say that all the covenants and all the commands of particular superiors or private companies are given only in the name of the prince, of his consent, or even under a sort of delegation received from him is an absolutely false proposition. The power to make these kinds of laws is on the contrary, in these individuals or in these corporations, a result of their freedom, of their right to property, and it would be a tyranny as ridiculous as it is impracticable, to want to prohibit their members any demonstration of an obligatory will, any right to order what concerns them.”

Separation of powers is rightfully dismissed: “For if the prince had only the executive power, he would necessarily receive the law from another, and in this case he would no longer be independent, but a servant, while his servants would become his masters; which is in contradiction with the nature of the relationship which subsists between them, and consequently absurd. To say that a prince cannot make laws is, in a word, as if one maintained that he cannot have any will, and that he has fewer rights than the smallest individual in his country. On the contrary, he is the master, the sovereign, the legislator; and the real executive power lies partly in the employees and officials, partly in the subjects themselves; for everywhere and always, laws are executed by those on whom they are imposed.”

Firstly, the laws that the sovereign makes regarding his own domains, successors, various privileges and franchises to corporations and social estates:

“Now, one hardly suspects how numerous are the laws which sovereigns impose upon themselves; and it is certainly a right that cannot be disputed with them. That if, for example, a prince fixes the number of his soldiers or other functionaries of all kinds; if he prescribes certain conditions of admission or advancement; if he grants his tribunals, his civil and military administrators some powers, some competence; if he pays the amount of his expenses, if he allocates to special needs, as for the army, for buildings, for pensions, for the maintenance of his own yard, etc., these are as many laws that he gives to himself, maxims that he declares to have adopted, which he alone is obliged to follow, and which in no way concern the subjects. We must put in the same class the laws of succession established in the ruling houses and the statutes of families who provide for the protection of heirs, at the time of their majority, to the prerogative of the younger children, etc.

Finally, we must still put on the same line the promises or the solemn concessions that kings are accustomed to making, either at the time of their coronation, or after internal wars or in other extraordinary circumstances, by charters or letters patent; promises which oblige them towards their subjects to duties which, without them, they would not be kept, and which our revolutionary century calls constitutional or fundamental laws, although however they do not found and do not constitute the state, and that they are even less necessary and less useful than one thinks. Now, it goes without saying that any sovereign is authorized to establish laws of this kind, since by this he only disposes of what belongs to him; he restricts his own freedom, he attaches his benefits to certain conditions, he finally yields of his own right, and does not injure that of anyone. However, it is sometimes necessary for the sovereign to declare his will on objects of which he is also the master, either to reduce the number of cases, and not to be tired of all trifles, or to prevent abuses, which otherwise would be almost inevitable, or finally because of the connection of these objects with others, which could not be resolved if the will of the prince was not known in advance.

However, it is certain that in several kingdoms, and especially nowadays, these kinds of laws are much too numerous, and that, without preventing evil, they often put obstacles in the way of doing good. They always have this double disadvantage, that the sovereign then believes himself bound in a number of cases where an exception would be necessary and useful, and that if despite this he derogates from such laws, if he grants, for example, an increase in salary to some employee of merit, if he advances another outside his rank, if he exempts someone from certain legal conditions, if he brings up, in serious circumstances, such or such cases to his tribunal: all these exceptions, although fair and lawful in their nature, appear to be opposed to the general law, consequently arbitrary and odious; while, on the other hand, all the favors which the sovereign spreads, by virtue of a published law, are received with less gratitude, and are no longer regarded as anything but the duties of strict justice. As to those laws which a sovereign imposes, not only on himself, but also on his heirs, as the testaments, the laws of succession and the promises made to the various classes of the people, they take for these successors the nature of a contract; for, from the moment they wish to inherit, they must accept the conditions under which this inheritance is offered to them; and the testator could not transmit to them more rights than he himself had.”

Against the mania for civil codes, legal rationalization, excessive legislation, and in favor of the primacy of customary law:

“Wherever there are few positive laws, the natural law is all the more sacred; the conventions are more religiously observed, wise customs are in force, and it is better to have some particular abuses to punish, than to want, according to the madness of our century, to bring against each incipient abuse new laws which end up preventing even good to be done, and produce inconveniences often more fatal than those which one wanted to avoid.”

“This multitude of laws is the natural effect, either of pride, which makes each man believe himself to be the only public-spirited one, who claims to know more than all the others; or of that secret ambition which seeks to make its own will prevail everywhere, and to make it obligatory, not only for the present generation, but also for those to come.”

“Also most of the codes called civil are not sovereign ordinances, but only collections of ancient customs (*coutumières*, *customals*) methodically drafted by learned and industrious men and published by means of printing, or else foreign laws, especially Roman laws, as adopted and thus reduced to custom, or even to serve as a subsidiary rule. That if such collections are afterwards submitted to the prince’s examination and sanction, it is not in order to make them binding on the parties; since they would be independent of this formality; but in order to raise their authority, to compel the judges and above all to prevent the slipping of provisions which could compromise the rights of the sovereign himself. In addition to these customary laws, civil laws may even make up a few orders of the prince on those cases which were presented the most frequently before the courts, as, for example, inheritance *ab intestate*, on guardianships, profits, inventories or other legal settlements; on debt suits, etc., etc. But looking at them closely, these ordinances are only instructions for judges; they do not prescribe anything to the parties, and are purely subsidiary, in the event that individuals were unable or unwilling to dispose of them themselves.

Hence also the old rule that in civil matters pacts prevail over laws; for the laws of hereditary succession, which themselves have been made only according to older customs, come into force only in the absence of wills, in which it was formerly permitted to each to dispose in the most unlimited manner. Testators and widows may themselves establish or require guardians, and if, for the latter to take office, the authorization of the judge is necessary, it is only to have them recognized by the public, and in the interest of their own safety. It is not forbidden for anyone to liquidate their fortune themselves, to deal with their creditors, to get paid from his debtors, other than according to the forms of legal proceedings. Here, as everywhere, personal assistance, within the limits of rights and means, precedes public assistance for everyone.”

“The greatest possible freedom in what concerns the substance or the matter of the covenants and provisions; an exact observation of the general custom and of the ancient custom of the country in what concerns the forms, and in all that the parties have not determined: this is what will always constitute the best civil legislation. We do not need to give laws with regard to natural law; these laws have existed from all eternity; they are universally known and engraved in the hearts of all men. As for the positive forms or additions which are, so to speak, the bark of natural law and the visible sign of its observance, they arise quite naturally by uses, by customs and by the will of one who exercises some lawful action. The diversity of these forms,

an object of derision for our century which claims to be enlightened, although it knows nothing but how to forge chains, is precisely the most beautiful proof of civil liberty and the reign of justice.”

“Will we no longer be able to contract a debt except in front of a notary? Will it be forbidden for us to write ourselves, although we are all taught it, to promise verbally, to take goods on credit from a merchant, to order dinner from a restaurant owner, etc.? For these are so many commitments by which one contracts a debt.”

“Moreover, these written laws are never so well suited to the needs and means of each locality; far from being universally known, they do not take long to become an object of monopoly for a small number of jurisconsults or lawyers, as if they alone knew what is just or unjust, lawful or unlawful; a state of affairs of which the most revolting arbitrariness, servile superstition of the laws of man, and unbelief in the law of God are the necessary results. Finally, these positive laws give rise to the greatest part of difficulties and trials; because always these eternal formalities are the fuel of the quarrel, the pretext for injustice and the trap in which simplicity and good faith are so easily taken. It is especially of these positive civil laws that it is true to say with Plato: ‘Ubi plurimæ leges, ibi et lites et mores improbi.’ A lot of laws, a lot of quarrels.”

“As for criminal or penal laws, they are only instructions to make known to the subordinate judges the will of the prince on the manner of proceeding in the investigation and the punishment of the crimes; also they are not carried out by the subjects, but only by the judges or by their auxiliaries. The crimes are defined in advance by the natural law which is known to all. We do not make a law to prohibit the robber from stealing (as if the theft could otherwise be permitted), still less so that, if he steals, he has to submit freely to such and such a penalty; but one imposes on the judges the obligation to hang or punish the thief in spite of his repugnance and in spite of his will.”

“But who will be able to foresee and determine in advance, on the one hand, all crimes, all offenses with their genera and their species, their causes and their effects, their degrees and their infinite modifications; and on the other hand, all the imaginable penalties, all the measures of safety, correction or repression, and throwing them down one by the other?... **It is not necessary that the malefactor know in advance the kind of punishment which awaits him, because it would perhaps be indifferent to him, or he could prepare the means of evading it. In the first place, one is not obliged to warn him of it, for the very reason that the form and the degree of the penalty depend on the will of the punisher; and then, it is good that he who would have conceived the thought of the crime, is worked with a vague anxiety and fears more evils still than will perhaps be done to him subsequently.**”

Finally, on “Polizeiordnung,” or “police statutes,” which in the original meaning of that term refers to regulations for the public welfare: “Now, any father of a family, any private lord, as well as any administration of a town or commune, makes similar regulations within the extent of their domains and according to the measure of their power or their foresight... Basically, they are rather benefits, precautions and assistance than duties of rigorous justice.

It does not enter into our plan, it would even be also superfluous and impossible to enumerate all the objects that the police can deal with. Do we not know that, according to our modern writers, it must extend not only to public and particular safety, as well as to general sanitation, but also to the propagation of mankind, to pregnant women and women in childbirth, to the education of children, and even to food, to the habitation and clothing of men? Our century, so proud of its policy regulations, without making it any more free, nor happier, nor more charitable than the preceding centuries, tires us in this respect with voluminous works and collections of ordinances whose weight could moan the earth. In general, as there are different evils which threaten men, so many different policy measures can be conceived. However, although, on the one hand, these social precautions are beautiful and useful when they are confined within their true limits, when they are above all subordinate to justice, and when, limiting themselves to advising rather than coercing, they do not do real harm in order to produce an imaginary or uncertain good: on the other hand, there is no doubt that they lend themselves to serious and numerous inconveniences, and which in our days especially they have been singularly abused. Too often they degenerate into unnecessary annoyances which hamper personal freedom and the legitimate use of property; whether by prohibiting lawful actions, or by imposing heavy burdens, under the pretext of avoiding a possible abuse.”

XXXIII. On immunity from laws, or: privileges and graces.

Here by “privilege” Haller is referring to any kind of legal dispensation, and not just the obvious case of a titled nobility, which for him belongs more to the military state (vol. IV below) than the pure patrimonial state.

“Whereas the positive law of a sovereign is nothing other than the manifestation of an obligatory will, that this will emanates from the personal right of this sovereign and also finds its limits there; it follows that the prince can not only change these same laws, but also make exceptions to them while they remain; and these kinds of dispensations are for those who receive them a privilege or a favor; because we generally call grace any benefit to which the one who grants it is not strictly bound. A prince, as well as any other, can renounce part of his rights and favor some of his subjects in things which depend on his free will; in a word, he can change his will, provided that it does hurt not the rights of others; and this freedom, which serves as the basis for the right to grant privileges, also fixes its limits. The same principle is still used to judge the question so often agitated, whether a sovereign is above the laws or not: a poorly determined question and it is impossible to decide, either affirmatively or negatively in an absolute manner, because in posing this vague generality, one confuses divine laws with human laws, and one does not even distinguish sufficiently between the latter. **First, there is no doubt that a prince is not above natural laws, either physical or moral, because they do not emanate from him, but from a superior power and superior wisdom. He is not above the freedoms, covenants, statutes and customs of other men which often bear the name of laws; for, as he is not the author of them, they are not subject to his will; he is not bound, to tell the truth, to execute them in person, but he must protect and favor the observation of them on the part of those whom they oblige, and above all take them as the rule of his judgments in cases which arise, not whether these laws concern him or are imposed on him, but because they serve individuals as titles or as a basis for acquired rights, the injury of which is prohibited by natural law. On the other hand, a prince is unquestionably above the laws which he himself made; and it is in this sense that it is true to say with the old rule: “Princeps legibus solutus est.”**

First, for the laws that a sovereign imposes on himself, there is no doubt that the exceptions depend on his free will, since in this he does no harm to anyone. If, therefore, in extraordinary cases where the good of his service, the encouragement of virtue, and some motive of humanity so require, it behooves him, in spite of subsisting ordinances, to create a new office, to place a foreigner, to grant to an employee of merit a rapid promotion, an increase in salary or a pension which exceeded the established measure, etc., no one would have to complain about it, because these ordinances only bind the prince alone, and do not give any rights to anyone.

Likewise, the sovereign may dispense his officers or servants from some of the duties which have been imposed on them, whenever this dispensation is required by the public utility or by prudence and charity. These kinds of instructions or regulations often order things so minute and so indifferent in forms that rigorous observation becomes impossible or even injurious to the purpose for which they were made. But in all such cases a dispensation is necessary; otherwise it would be necessary to ban rigorous observation when it becomes impossible or even detrimental to the purpose for which they were made.”

“And as we have, with good reason, included even the penal laws among the [malleable] instructions given to the judges, it is here the case to point out that the exceptions to these kinds of laws, that is to say, the remission, the softening or commutation of legal penalties are acts not only lawful, but also ordered by equity in certain circumstances. Any man can forgive a debt, forgive an insult, renounce a satisfaction or demand only a slight one: why should the same right be refused to a sovereign? The culprit, it is true, has deserved the penalty, but the offended is not bound to demand it; we have the right to punish the criminal, but we are not strictly obliged to use this right, much less to use it in one way and not in another.”

“And why, in extraordinary cases, would it not be permissible to declare valid a will, a promise, a marriage, etc., when the fulfillment of the legal formality was impossible, and that moreover the free will and the mutual consent of the parties are sufficiently established? Suppose that the law generally requires that the descent or the age of a man will be proved by an extract from the baptismal registers; could we not derogate from a small law, when the individual who should provide this proof is born in a country where such registers have been distracted, burned or even never existed, but in which moreover the fact is established by other evidence, such as by eyewitnesses, by the registration in family books, by certificates previously provided, etc.? What is the emancipation of a minor, if not an exception to civil laws? What is the inconvenience of granting a dispensation, when the spouses are well known and the speedy completion of their marriage is of the highest interest to them? And why could emancipation not take place, when it is evident that the minor has reached the age of reason, and that all his well-being depends on his civil liberty, if not as an exception to civil laws?”

XXXIV. On the natural origin of highest jurisdiction.

As Haller correctly notes, the origin of jurisdiction is as a “cry for help” from a wronged inferior to a master with power and competence to exact restitution for the wronged party’s right. In older law, there is the expression “hue and cry” which reflects this, and in Jersey there used to be the so-called *clameur de haro*, where to invoke protection, the aggrieved party would literally yell out “Haro! Haro! Haro! À l’aide, mon Prince, on me fait tort” on his knees before two witnesses.

“All these natural relationships between a prince and his judicial officers result from this simple principle: Jurisdiction arises from a cry for help, and is nothing more than impartial assistance from a superior. But we can deduce still many other interesting consequences which clarify a host of difficult questions, and explain uses that otherwise would be impossible to justify. So first, it is clear and it is important to note that this jurisdiction, or even judicial counsel, is a blessing and not a duty of rigorous justice ; which is already proven by this alone that it does not command a simple omission, but positive action, a sacrifice of labor. All assistance, unless one has agreed to do so by convention, is a favor and not a duty of strict justice, since it could be refused if necessary without harming the rights of others. From there first comes the old rule, that in absence of a complaint there is no trial. No one is forced to receive a benefit; help is only given to those who ask for it. In criminal cases, it is true, this rule suffers from an apparent exception; for crimes are punished, not only because the offended complains of them, but because they are crimes, and the safety of all requires that the wrongdoers are put out of harm’s way. In such a case, the evidence of the fact cries out for vengeance, and the complaint is naturally presupposed on the part of all those who might be harmed by the criminal. But it is also within the prince’s power to deny his subjects the help of his authority, for cases that are too trivial, because it would be indiscreet to annoy the sovereign or his officers for trifles which do not require their intervention (*de minimis non curat prætor*); a quarrelsome mood should not be encouraged; and we blame, even among children, those who come to complain constantly and about everything.

It follows from this principle that legal aid may be suspended or prohibited, even for more important grievances, at certain times, in certain circumstances and for certain purposes. No doubt justice itself must never be refused, it obliges everywhere and always; but it is not the same with help to obtain justice; the sovereign may prohibit or suspend it when moral considerations of the first order necessitate this measure, and when public tranquility or other great interests so require. Thus, we see that in all countries there are judicial holidays or court vacations, either in favor of the accused, or even in favor of the judges; for one cannot reasonably claim that these are occupied day and night with quarrels between individuals.”

“Since the court is a blessing, and consists in a friendly aid, it follows that is not always free; but litigants do not buy justice, as our sophists claim; they only compensate their judges, or protectors, for their penalties, their work and their expenses. By the same principle, sovereigns were formerly thanked for having rendered good justice , and this custom was still practiced in the old criminal courts, although no gratitude is owed for the accomplishment of all that is rigorous duty. Now we also understand why the court was usually attached to other functions; why each, more or less, exercised it in its part, and why, at least in the past, it was everywhere entrusted to the officers who today are called administrative. For the very reason that it is only a help from authority, no one can better procure it than someone who is already invested with the power and authority of the prince for other purposes; and if it is true that it is desirable and by no means impossible to diminish the number of disputes and crimes in a country, it would be absurd and ridiculous to establish officials for their repression who often have no real work to

do, and the maintenance of which would nevertheless cost considerable sums. The distinction between justice and what today is called administration gives rise to a host of inconveniences and conflicts, and is hardly practicable.

Finally, these principles further explain to us what non-contentious jurisdiction is... Men often need it, and it is the peculiarity of the weak and the small to seek permission or prior approval from the strong, even for actions that are lawful in their nature. This behavior is inspired by reasons of prudence, in order to avoid the difficulties and the oppositions which could arise. To this voluntary or non-contentious jurisdiction belong, for example, the use or the right to give all kinds of permissions, to issue passports and certificates, to put the last seal on acts of purchase and sale, to ratify wills or other contracts; to establish and confirm guardians, to receive or approve their accounts, etc.: so many benevolent customs, protections or friendly assistance which the stronger gives to the weaker.”

A defense of manorial courts and patrimonial jurisdiction by lords of the manor:

“Far from being an usurped power, this [patrimonial] jurisdiction is on the contrary a boon that the territorial lord grants to his subjects at their own request, and modern declamations against such a simple and natural order of things are a new proof of the ignorance and depravity of our century. Among the German authors, one maintains that the patrimonial jurisdiction is reprehensible, another that it is harmful to the impartial administration of justice and even dangerous for public safety, this one calls it a detestable abuse, that one calls it a real scourge, a prodigious evil; but all dispense with giving the slightest proof of their assertions. And why would it be a detestable abuse, a real scourge, a prodigious evil, for a territorial lord to render justice to his nationals, that is to say, that he could show them the truth and the natural law? To judge their differences, to punish crimes, and to help the weak oppressed in his rights with his power? Not only is he authorized to do so by nature, but it is a moral obligation for him and moreover, in each particular case, is not the right to judge conferred on him by the parties themselves, as long as they recognize him as judge? What help is more accessible, more prompt and less expensive than this? Where can we suppose more knowledge of the facts, more impartiality and even more benevolence and conciliatory authority than in the immediate and natural lord, who remains in the midst of his nationals as in the bosom of a large family in friendly relations, and who cannot be indifferent to their esteem and their confidence, as would be a temporary employee, arrived from afar or domiciled at a great distance? That if errors and abuses are possible with the patrimonial justice, we ask in our turn are they not so also with tribunals instituted by princes, and if this is not the greatest of all abuses, as owing to the immense number of cases, the multiplicity of writings, and the indefinite prolongation of terms, such a trial which, in principle and on the spot, could have been easily and promptly ended, instead is carried with enormous expense, for ten or twenty years; that bulky pieces of documentation rot, piled up in boxes, and that in the end one so rarely achieves the enjoyment of one’s true right.”

“It has often been said nowadays that by suppressing patrimonial justice, a right was taken away from the lords: and this is true in this sense, that they have been stripped of a certain degree of consideration and freedom, by reducing them to the level of their subjects, or making them subjects themselves. However, it is much more true to say that, by doing so, we have deprived the people of a right, the right which nature gave them to find help within their reach, promptly and at little cost. Is it therefore useful to litigants, that for every trifle, for the slightest offense, or for the smallest assistance which they once found so easily in their master, for example, for the appointment of a guardian, the approval of an account, the dispatch or ratification of a contract, the pursuit of a debt, the issuance of a certificate, etc., they are forced to waste whole days, and to make expensive trips, at the risk of being finally received with harshness and dismissed without consolation? Let the country folk themselves be questioned; ask them if they have gained anything from the abolition of patrimonial justice; their answer, much more eloquent than our arguments, will condemn the sophists.”

That the highest tribunal of the sovereign should concern only the highest affairs, i.e. those of his immediate tenants, vassals and dependents, also on the right to punish in general:

“That if you now assume a territorial lord of a higher rank, a lord so achieving independence, in other words, a true sovereign: his judicial authority, like that of all other men, will be based on natural law; and his jurisdiction will also be the supreme or sovereign jurisdiction in his country, for the very simple reason that the prince being there the strongest of all, he can lend aid and protection to all his subjects, and that he himself does not have any superior. In relation to his immediate subjects, he is altogether the first and the last judge; compared to those who report to him only indirectly, he is often only the supreme judge. **His jurisdiction, like his legislation, is distinguished from that of other men only by a greater extent and by more power. It is exercised more frequently, it is more eminent, more famous, subject to more regular forms; it extends to all objects, to all persons and to all parts of its territory; finally, it eclipses the other particular jurisdictions, and that is why in the eyes of the common people it appears to be the only one. However the sovereign uses it only in important and major cases, and one can call major all cases where his help is essential. Experience proves that, as a rule, no other disputes are submitted to the prince’s tribunal, than those which the immediate superiors have not had the means to settle; and certainly the sovereigns, or their officers, would be the first to complain, and in fact they would be the most unhappy of men, if it was necessary to annoy them with every trifle and every domestic dispute.**”

“It is the force of things and not a human law which puts limits on the right that each one has to punish. For the first and most frequent case is that the offended is too weak to punish the guilty, and that he does not have it in his power; and even if he could seize it, an individual seldom has the resources to impose a sentence which gives him complete security. **At the most, he can forbid entry into his own house or his estates in terms analogous to criminal law, since he has no authority over the possessions of others; he is not strong enough to compel restitution, fines or forced labor; he cannot imprison, because he has neither prisons nor enough to feed the prisoner; and even though he could sometimes take his life, as a simple private individual he does not however dare to come to this end, because he must naturally be afraid of exposing himself to a responsibility, to a kind of expiation, or at least to a penance which is always very painful; and this is why the right to life and death, or as one should rather express it, the right to punish until death, can be exercised freely and without danger only by men who are not under the control of anyone, or by those to whom the sovereigns have conferred it.** In all other cases, the offended therefore claims the assistance of the strongest, so that he who has more means, and who has nothing to fear from anyone, arrest and punish the culprit. – Secondly, it happens just as frequently that injured individuals or even their natural superiors do not want to punish, either out of timidity and weakness, or to avoid greater evils, which is to say that they cannot punish with safety.”

Conclusion:

“In concluding this chapter, therefore, we reduce all its substance to the following six propositions: 1. Jurisdiction derives from a call for help, and is nothing other than impartial assistance from a stronger, which can compel the execution of its judgment. 2. It is not a distinctive right of sovereignty, but every man exercises it in small proportion to its means. Only a prince has, by the nature of things, a more extensive jurisdiction, and the supreme jurisdiction. 3. He only uses it in major causes for which his help is needed, and he can administer it, either in person or by officers of his choice, 4. These officers being the agents of the prince are not independent of him, still less are they instituted to judge him himself. 5. Jurisdiction, considered as assistance, is a duty of humanity on the part of the one who grants it, and a benefit for the one who receives it; which explains the need to invoke it, the right to refuse it in certain cases and for good reasons, the compensation granted to judges for their sentences, finally, the nature of the non-contentious jurisdiction. 6. In the exercise of this right, it is a duty of rigorous justice to conform to natural or positive law. All these truths now appear indisputable to us, and we hasten to pass to the real or acquired rights of sovereigns.”

XXXV. On real rights of the prince deriving from his domains and regalia.

Much of this chapter is expanded from his 1807 lecture on the same subject, covered in the biographical essay.

So far Haller has been discussing those liberties of the prince that derive from his personal independence or natural right, now he gets to those that derive from his property or acquired right, since “a sovereign also has acquired rights, he possesses lands, revenues, goods of all kinds, and even in greater number than any of his subjects; now, from all these properties and the pacts which follow on from them, new rights and new powers are born... Unless the family statutes or the wills of his predecessors oppose it, he can increase or decrease his movable or immovable fortune, regardless of whether it consists of territorial properties, buildings, cash, invested capital, perpetual annuities, etc”

“The distinction between the tax authorities and the public treasury (fiscus and ærarium) is borrowed from the Roman emperors, and has no basis in real principalities.”

“It is not because a man is prince or king that he possesses independent domains; but it is on the contrary because he has independent domains and properties that he is prince or king. **The history of all the sovereign houses obviously proves that they acquired these domains as individuals do, through purchases, marriages, inheritances, or other agreements with the former owners. One cannot even oppose to this the subtle distinction established today in some monarchies, between private domains of princely families and the alleged domains of the state; this distinction is not based on anything real, and relates only to the use which the prince makes of the income which he derives from it.** Both are his private property or that of his family, and there is only one difference between them, which is that the products of the former are allocated by the sovereign to such and such a kind of expenditure, and that from the second to another, something dependent on his free will, and can change according to the circumstance.”

On the origins of the inalienability of the crown, and rents on sovereign domains:

“By virtue of this right of ownership, the sovereign can enjoy his domains as he pleases; he can embellish and improve them, have them administered as he sees fit, lease them out, give them as a fief, cede them as a form of supplement, and withdraw them again, either at the termination of the pact, or in the case in which the other party does not fulfill its commitments. The question of which of these forms of administration or enjoyment is preferable depends solely on the circumstances and the rules of prudence. A prince can even alienate his domains, unless covenants or wills of his predecessors do not oppose it, that is to say, unless he has acquired them under other conditions. Now this right of alienation, which is certainly the strongest proof of a full and entire (allodial) property, originally existed in all states; and even nowadays, it is in force for all areas of recent acquisition, and which have not yet been brought together in the trust of the sovereign house. No doubt it is today recognized in most kingdoms that the domains of the crown are inalienable; but this law was not made by the people, as our publicists claim; it comes according to the will of a former owner, or agreements made between family members – even so as to prevent a single spendthrift from depriving the estate of his parents or his descendants, and so depriving the whole house of its luster and its independence.”

“If one supposes a purely patrimonial prince, who did not extend his authority and his power by various voluntary pacts with other territorial lords, the totality of the lands, of which the whole forms his territory, is or was in principle his property; it does not matter whether it is currently managed or farmed for its own account, or whether he has abandoned the use of it to others for benefits in kind, for labor services, etc., or finally that he ceded them under various conditions, by way of sale, hereditary fief, etc. Such changes undoubtedly subsequently give another appearance to the matter, and in the long run those who are only usufructuaries are taken in different titles for the true owners. The houses that the subjects build on these lands, and that, for this reason, they cannot build without the approval of the lord, do not become, it is true, his property; but the need to obtain his acquiescence for this construction, or for the division of goods, as well as the royalties generally in use which one pays him in such a case, by way of annual compensation, for the reduction of his enjoyments and his income, further prove that he is the legitimate owner of the land on which these houses are raised. Thus it is often said, when speaking of private individuals, that they own entire towns, not that the houses or the furniture, and even less that the inhabitants belong to them, but because the land on which these towns are built is theirs, and that after initial agreements, they draw certain revenues from it each year.”

“When therefore the subjects of a prince or any other territorial lord claim the ownership or enjoyment of certain considerable waters, marshes, moors, forests, etc., they must prove their right by formal titles as are donations, grants, purchases, feudal pacts, or by what is called prescription, that is, by presumed consent. Now, as such titles are not uncommon, we also see a great number of forests, marshes, rivers and lakes which have become the property of individuals and particular communities. Where the princes are not at the same time landlords, but have only certain powers acquired by various treaties, there also they do not have any domains, because these domains remain with the old masters; finally, either because of the distance or the inaccessible position, or because of the nullity of the product, there are in all

countries waters, marshes, even forests and moors which are occupied by no one, and over which neither the sovereign nor the individuals make any claim; in short, things without a master offered for the use or occupation of each.”

Haller explicitly defends royal monopolies, particularly the traditional *iura regalia* that derived from exploiting the natural resources of the land: “In addition to the exclusive possession and enjoyment of his domains, the independent landlord can naturally, and with better rights than all his subjects, form on his territory, by himself or by others, all kinds of lucrative businesses and works, in order to increase his income. **It is here only a use of capital, a kind of industry which one can no more refuse to the prince than to any other. If he finds advantage in it, and provided that he does not deprive anyone of actual possession or lawful property, he may even reserve exclusively such companies; for he is the master in his country, and has the right to prescribe the conditions of admission to each newly arrived subject.** It is from there that the rights called *regalia* are born, although, according to its etymology, this word means nothing other than a royal or seigneurial right, and consequently presents a much more extended meaning than this particular meaning. It follows first of all from this definition, that no company, no manufacture, no trade is a sovereign right by itself or by its nature; they only become so when an ordinance of the prince declares them as such and reserves them exclusively to him. So we see that what is sovereign right in one country is not always so in another. There are several states where the same posts do not belong to the sovereign. Formerly bishops, abbots, towns, etc. often had the right to coin money. In all countries private individuals own tolls and mines. The salt and tobacco trade was still free in several states, and nowhere did the princes exclusively hunt and fish. Undoubtedly it is not allowed to strip the subjects of property, and if we want to change into sovereign right any industry that has already been legitimately exercised through one or more of them, the sovereign must compromise to obtain the voluntary cession of their establishments; and this principle of justice was still practiced everywhere before the philosophical publicists had advanced their arbitrary systems which trample on all acquired rights, and no longer recognize any natural equity.”

“The *iura regalia*, properly so called, are either works and lucrative establishments, or objects of commerce which the sovereign has reserved for himself in his territory.” Haller advises that tolls be set according to “quantity than according to the quality of the goods, because this last mode is quite arbitrary, because it does not rest on any natural basis, and because moreover it causes delays and all kinds of annoyance.” For postal services, “if they are administered by the sovereign or in his name, he may, by virtue of the exclusive right which he has reserved for himself, prohibit in his territory the private messengers, the bearers of letters and the post office contractors who would make it a branch of industry,” but not to prohibit carrying letters between individual persons on a small scale.

Minting coins is a natural sovereign monopoly, since “the attraction of fraud and falsification would be too powerful for [private mints], control would be difficult, impossible even for the greatest number of subjects, and one could not justly impose on the prince or his officers charge of checking the title and weight of each coin produced by private individuals free of charge.”

Mining rights are an extension of those rights of hunting and fishing, enjoying the usufruct of the land, and as a *lucrum cessans* to prevent depreciation of his land, or “[to] speak exactly, all this belongs rather to the domains, or is, like hunting and fishing, only the exclusive enjoyment for the prince of a part of his domains, **because one can reasonably suppose that the original owner, in ceding by form of agreement or by giving as a fief, wanted to give up to the purchasers or to the donees only the cultivatable surface, and not all the treasures which they could discover thereafter in the bosom of the earth. Even if these treasures were not explicitly reserved, the result would be an enormous injury for the prince which could not have entered into his intention. Also it is by an effect of this original concession, that the sovereigns usually receive the tithe or other fixed income, even on mines discovered and exploited in particular properties.** In addition, we do not even need to adopt this principle in all its rigor to justify the sovereign right on mines. It is conceivable, I admit, that the owner of a land freed from all royalties, can in his capacity as inventor and first occupant, operate a mine and consider the ores, precious stones and other materials that he has extracted from it, as the legitimate fruit of his labor. This is why in all countries there are individuals who have sizable mines, both metallic and non-metallic; and as to common mines, such as quarries, marble, slate or inflammable substances, such as bitumen, vitriolic earths, peat, earth coals; most often they remain with the owners of the land, without the sovereigns making the slightest claim. Thus in Sweden the exploitation of the mines was declared sovereign right in 1480, and allowed again to everyone in 1623. In Denmark the counts also enjoy the mines discovered in their counties. In Siberia twenty-seven iron mines belong to the Crown, and a hundred and forty-seven to private individuals. When an individual discovers metals in his fields, he remains the owner, at the expense of paying the tithe and a certain amount of copper that the crown buys. In England the lords of the manor have the property of all the mines which they can discover in their lands, without excepting those found in a land held by copyhold tenure. It is with this sovereign right like all the others; mines do not belong by their nature to sovereigns or kings, but only when they have become their property in a legitimate manner.”

Moreover, such large capital and labor-intensive enterprises were often only practicable by the large wealth of the princely treasuries, and remained as their enterprises since.

Haller ends by listing the various lucrative works and enterprises that a sovereign could start instead of relying on taxing and borrowing from his subjects, and moreover argues that a regalian right is not an indirect tax but a non-rivalrous service fee:

“However, and without doing the least harm to the subject industry or their means of existence, these great establishments could still be greatly increased, and they would undoubtedly serve more to enrich the sovereigns than this multitude of taxes, or those sumptuous financial operations which are only disguised loans and the forerunners to utter ruin. Not to mention the clearing or better administration of the great forests, as well as the desiccation of marshy lands, etc., of which new and vast estates would soon be formed; how many roads to be established, canals to be dug, bridges to be constructed, for the use of which the peoples would easily grant the prince a very productive toll! How many subterranean riches are still unknown or despised, the search for and exploitation of which would give it a considerable benefit and add to his independence! Moreover, one can conceive of still other sovereign rights which would present a character of public utility. Of this number are lending and discount banks, by means of which the cash that is not employed in the public coffers could be privately lent. It is true that these kinds of enterprises rarely succeed in monarchies, because the safety of so great a quantity of capital there depends on the will of one man; and that in case of extraordinary needs, it is too easily tempted to abuse unlimited trust of which he is in possession, to multiply the banknotes in circulation beyond all measure; to the point that soon we can no longer pay them, and that they are reduced to simple paper money. But under a conscientious prince, and who, moreover, would not be hampered by pressing needs, these banks would offer a very great advantage.

The manufacture of weights and measures, which has a great deal of analogy with that of coins; the cases of maritime insurance, those against fires, hail, etc. could also be formed by sovereigns. Under a good administration they would give a considerable benefit, and would also have the moral utility of strengthening the links between the prince and his people. But the success of these great operations requires good order in finances, a great deal of capital, and a credit which has never been shaken.”

“Finally we still have important note here that the regalia cannot be accounted for as indirect taxes, rather their product is instead a personal and legitimate income of the prince. **For whenever the subject receives in exchange for what he pays his sovereign an effective value or a service that he has requested, and that otherwise he would be obliged to pay just as dearly, or perhaps more dearly to individuals; as in the enjoyment of a road or a bridge, postal delivery, salt, gunpowder, etc. it is no longer a tax or a subsidy; it is a purchase like any other.** That if one claimed that the regalia are indirect taxes, since they prevent the subjects from exercising any industry; one could retort the fallacy and say with as much and even more reason that any branch of industry, which the independent territorial lord allows his subjects in his domains, is an indirect donation on his part, since if he had reserved this industry for himself, his income would also be more considerable.”

XXXVI. On taxes and emoluments.

By “tax” Haller is here referring to what we would now call a bounty or a fee. For a “tax” in the modern sense of that term, direct requisition of wealth, he uses the older term “subsidy” or “contribution,” a usage from the old days when these were voluntarily requested from the

estates of the realm, or at the least in formality. Even in late imperial Rome, the *munera patrimonialia* were compulsory services of property, from *munus* (root of English “munificence”), a gift given either freely or out of a sense of duty, but implying an aid done out of one’s own will; ergo it would mean “gift from one’s own inheritance.”

Haller strongly prefers that servants of the prince be renumeralated from bounties and service fees (i.e. on a per-use basis) instead of living off a permanent salaried income from the proceeds of direct taxation. In fact, this is how most American officials were paid prior to civil service reform, as documented by Nicholas R. Parrillo in his book *Against the Profit Motive: The Salary Revolution in American Government, 1780-1940*.

“Why would we not be entitled to ask for light taxes (fees) and emoluments of office for this large number of acts of voluntary jurisdiction, which turn only for the benefit of those who claim them, such as permissions, mandates, registrations or ratifications of all kinds of contracts, concessions, privileges, the licenses and other particular affairs which are transacted in the ordinary chancelleries, and which cost those who work there so much trouble, fatigue and expense? What could be fairer than to charge for all this care to the one who caused it or who benefits from it? Why should the prince’s servants be forced to deal with things foreign to his service, sacrifice their time, neglect other business, or even incur expense? By what right does the sovereign who, by granting these assistance and these favors, already fulfilling a duty of humanity, would he still be required to take charge of all the expenses, which are very considerable as a whole, but not so much for each individual applicant? And wouldn’t it be unjust to levy taxes for this purpose on other subjects who did not participate in these advantages? Besides, we see similar taxes and fees in all relations between individuals; these fees are based only on this ancient and universal custom, of returning by gifts or small tokens of gratitude for any benefit received.”

Consequently, and although under the pretext that the state must do everything for free, in our days so much has been said against the old emoluments of justice and chancellery, only to establish burdensome taxes soon after; it is nonetheless true that these emoluments are just in their nature; and moreover, it is impossible to ignore their numerous advantages, provided that they do not exceed a reasonable rate, and that they are not demanded either of the poor, or even of the less well-off, with inexorable rigor. First, far from being forced, they are voluntary compensation for a service rendered or to be rendered, and anyone who does not claim this service, or who can do without it, does not pay the tax either. They are righteous, because they impose a burden only on those who have obtained what they solicited; each pays them voluntarily, at the very moment when he withdraws a debt from them, and it has not been heard that the peoples have ever complained about them, provided their affairs were promptly dispatched.

Moreover, these emoluments stimulate the application of employees who, as a rule, are obliged only to look after the affairs of the prince; they compensate them for a considerable increase in painful occupations, which in the long run would become unbearable with the simple enjoyment of a fixed salary; they compensate in a way as simple as it is natural the inequality of their work by the inequality of the earnings, and thus make them fulfill with joy their functions, which turns out much more to the profit of the public than of the civil servants themselves. Finally, fees and bounties prevent, if not entirely, at least in large part, shameful corruption, offers or demands for presents, and all other means of seduction; for as soon as a man perceives a benefit which he can enjoy in good conscience, he is already much less tempted to demand one which would be illicit, as we are less tempted to offer it to him... The idea of duty alone is not strong enough to engage everyone in fulfilling it; generally speaking, zeal needs to be animated, supported, rewarded with an incidental benefit.

The arithmetical equality of salaried servants and officials is decried: “This arithmetical equality, in unequal situations, is not only unjust and useless, but it has produced everywhere, and must necessarily have produced a certain repugnance against any extraordinary work, a disposition to spare oneself the slightest trouble, and to reject any request from the subjects as a tiring importunity. In addition, it is not appropriate for the dignity of a prince, to consider these kinds of benefits as a source of income, nor to have them collected for his own account, even under the pretext of forming a salary or pension fund; this would be offering oneself to the eyes of the people in an unfavorable light: for as soon as the emoluments enter the sovereign’s coffers (which, as elsewhere require large, expensive and painful accounts), all their advantages vanish. To prevent by their means all kinds of abuse, to encourage work, and to assure individuals of friendlier audiences and more prompt assistance; these taxes (emoluments), in accordance with their origin and nature, must be left to the employees as incidental income and as a reward for their application.”

XXXVII. On subsidies and imposts.

“For what constitutes servitude is not to give subsidies, but to be forced to give them; whereas voluntary aid or which appears to be such has something noble about it, and even flatter the self-esteem of those who grant it, since it gives them the appearance of taking a keen interest in the prince’s cause and of the state, or even to have a stake in the government as in the republics.”

Here we deal with what we would understand by “taxation” today. Since the 12th century, the Romano-canonical legal principle of *quod omnes tangit ab omnibus tractari et approbari debet* (what touches all must be approved by all) had been routine maxim for raising money from subjects. A very prominent historical example is in the Cortes of Castile and Leon (*The Cortes of Castile-León, 1188-1350*, Joseph F. O’Callaghan).

No taxation without representation. pic.twitter.com/jRoC0CwiFF

— Nigel Carlsbad (@pompilivs) [March 21, 2021](#)

“Going back to the principles of natural justice, a prince, considered as a territorial lord and sovereign, can doubtless not arbitrarily charge his subjects with direct taxes, nor thereby dispose of their property. **Because despite his personal independence, or his perfect freedom, he has no more the right to seize the property of others, than a private lord to take anything from what belongs to the people in his service or of his guardianship. A conqueror who, in a just war, imposes temporary or annual contributions on the vanquished, finds himself, it is true, in a completely different position. If he demands these tributes, it is either as a penalty to guarantee his own safety, or as a condition of peace and a redemption of greater evils that he could do them, since after the rigorous right of conquest, of which we will explain elsewhere the basis, the extent and the just limits, everything belongs so much to the conqueror, that what he leaves to his enemies must be considered as a benefit, and that basically he always asks for less than he would be entitled to demand. Often even this obligation to pay tribute results from a formal agreement, which makes it even more legitimate. One can conceive of another similar right to levy indefinite contributions on complete serfs, that is to say, on men who, by the events of war, for whatever crime they have committed, for debts that they have not been able to pay, or as a result of extreme poverty, have fallen into the power of a master who assigns them land for their subsistence, builds them houses, gives them cattle, furniture, agricultural instruments, and in exchange reserves their share of indefinite works or services (operas indefinitas): but this right again, which moreover is never exercised in all its rigor, confirms rather than contradicts the real rule. For in a relationship of this nature everything belongs by right to the master; the complete serf has nothing of his own; all that he can save, all that the landlord abandons to him beyond his maintenance and that of his family, is a boon. If, therefore, the master imposes, in case of necessity, new charges or royalties on his serfs, either in money or in kind, one cannot say, to speak exactly, that he impinges on their property, but only that he takes back part of his own; he raises the rent of the land on which he has granted them the enjoyment: and according to strict law he could demand much more.** Also, is it on this basis that rested the indefinite right of taxes or exactions that the princes formerly exercised with regard to the serfs in their domains, and which, for the same reason, still belongs to the particular lords of various countries, without arousing the slightest complaint. However, although the power over the vanquished and the serfs is unjust neither in its origin nor in its essence, it nevertheless has something hard in its rigorous use, and especially in its perpetuity. As soon as the vanquished must remain the subjects of the victor, they must also be treated little by little as friends, and consequently not to increase the contributions originally imposed or freely promised; and although servitude in itself is not established for the interest of the master alone, but the slave also finds his own, yet the indefinite services, whether personal or real, give rise to so much abuse, so discourage any application, any love of work and the economy, that the Christian religion has endeavored everywhere to suppress or mitigate this relationship.”

“But the patrimonial prince, such as he generally exists and such as we suppose him here, can neither treat as vanquished, nor as serfs the subjects who entered voluntarily into his service, or who are naturally dependent on his service, no more than a general can treat

his own troops and the soldiers who freely enlist under his flags as enemies. The prince is the absolute master of his own affairs, he can order all the services, all the acts that are owed to him naturally or that have been promised to him by special engagement. But where would it come to him the unlimited right to dispose of the fortune of his subjects, since the universal law to leave to each what belongs to him, obliges him as well as all other men? One cannot conceive of any pact by which a free man would have given to his fellow man the permanent power to impose on him indefinite burdens and contributions, For such an absolute sacrifice would be absolutely free and without any compensation; the weak would no longer find any advantage in their relationship with the strong; and, in any case, such a pact would bind only him and not his descendants, at least for what they would have acquired.”

“The natural order of things is that the master feeds and pays his servants and not that the servants pay and feed the master, although in extraordinary cases they can help him with their subsidies. So, therefore, for the very reason that a prince is an independent lord and not the official of his subjects; that they are at his service and not he at theirs; it follows that, as a rule, he must live on his own income.”

“Which, to mention it in passing, is indirect and striking proof against the so-called philosophical system on the origin of states. For if the power had emanated from the people, and the princes had only been its employees, there would certainly have been taxes from the start, and the people, in their capacity as sovereign, would undoubtedly have had to pay all the taxes and costs of public administration.”

“Because, as the existence of the sovereign house is, under a variety of relationships, useful and even essential to the majority of the subjects, and that often it is exposed to dangers which require efforts and extraordinary sacrifices; as, moreover, the long duration of an empire, and the ever increasing progress of social needs incessantly necessitate a host of precautions and new institutions; that, for the preservation of the prince and his people, it is necessary from time to time to endure expensive wars, to endure invasions and contributions from the enemies, to contract debts and to pay the interest on them, to maintain permanent armies, to build fortresses, to found together all kinds of establishments, and that in general, in modern kingdoms, a large part of the sovereign’s income is used only for the interest of the subjects, or at least for their sole benefit; it follows that it is for them a duty of equity to assist their prince in needs which they share with him. So people cannot be accused of having disregarded this moral obligation; on the contrary, their goodwill in this regard is often such that they go beyond what is desired, and that in the very cases where they could successfully oppose, they suffer without a murmur of the taxes established by the sole authority of the prince, it is for them a duty of equity to assist their prince in needs that they share with him.”

“We respond with nature and experience, that he must ask them of his own, of those he can call in the strict sense of the word his people, that is to say, to the most powerful and freest men who report to him immediately [the tenants-in-chief], and not at all to those who depend on them, and with whom the prince has no direct relation. Suppose a particular lord with ten, twelve, or even a greater number of estates, administered by as many farmers and stewards, fell into embarrassment and want, and wanted to obtain advice or help from his people, to whom will he make this proposal? It will obviously only be these same farmers, managers or heads of families who have contracted directly with him, and who find in this engagement a reciprocal advantage; but certainly he will not do it to their children, their servants, their workers or simple domiciles, etc. It would be absurd and ridiculous, and would overturn the natural order of things.

Likewise, if the owner of a house who rents a large number of apartments considers himself entitled to ask for a subsidy or a contribution for some need common to all the inhabitants of the house; e.g. for lighting, for the salary of a porter, for fire insurance, etc., he will also only address his tenants, that is to say to his Domestic Estates, with whom only he has direct relations, and not at all to their wives, their children, their servants, their sub-tenants, etc., who have nothing to do immediately with him; still less will he have the thought of bringing together all these people, the masters and the valets without distinction, in a single assembly, or of making them appoint a certain number of representatives charged with decreeing or refusing the subsidy by the plurality of votes.”

“Moreover, these Estates do not represent the people as is commonly believed; they represent at bottom only themselves, although one can rightly consider them as the patrons, the advocates and the natural protectors of their subjects and of the various inhabitants of their domains. **For if they were the representatives of the whole people, they would have to be composed differently, and moreover, appointed by the people themselves: so we see that all those who, according to revolutionary principles, and in spite of all the history, regard the present estates as a representation of the people, exclaim at the moment that this system of**

representation rests on false bases, and that it must be drawn from all the classes of the people in proportion to the population. But in reality the true estates of a kingdom represent no one; they exist by themselves, and sit in assemblies in their own and private name. As a result, they used to have to pay the subsidies they had granted from their purses. For if the sovereign himself does not have the right to impose arbitrary charges on his subjects, the great vassals or owners do not have it either, since no one can dispose of the property of others. If, however, these subsidies are too onerous or come back too often, it is permissible for the members of the estates to ask in turn for voluntary assistance from their nationals, in order to alleviate their own burden. This second rule, as well as the first, is not only a speculative truth, but it is once observed in practice; and the contrary uses which have prevailed in modern times are only abuses successively introduced by necessity, or tolerated by weakness.”

“Do the estates of a kingdom have the right to have the product of the subsidies administered themselves, or at least to determine the object for which they are to be used? In general, they do not have it; because these taxes are subsidies properly so called, which the nation wants to help its king: and all that has been once given and accepted no longer belongs to the donor, but becomes the property of the donee. Unless, therefore, by granting such taxes the estates of the kingdom have reserved some right to themselves, and the use of the funds which come from them has been specially determined and consented to by the sovereign, he can dispose of them as he pleases, like other income, without being accountable to anyone. This principle is still generally recognized today; everywhere the use of subsidies depends on sovereigns and princes, whenever the contrary has not been formally stipulated.”

“That individuals who arrive later in the country are subject by right to the taxes which they find established there, that is not under question. They knew in advance the conditions under which they entered into this social bond. Besides, these kinds of taxes are usually of such an indirect nature that it would be impossible to except anybody, even foreigners. **As for the children and descendants of the former subjects, they are strictly bound to pay the subsidies granted by their fathers, since the latter, by granting them, had already ceded part of their property, and had imposed a debt on themselves, the succession remains otherwise unencumbered, and which is transmitted to their heirs. But the same cannot be said of provinces or communities that a sovereign acquires by treaties, or which are passed to him by their former masters under certain conditions. In such a case, the subsidies introduced for the old provinces cannot be obligatory for the new ones, since the latter did not consent to them, and their sovereign was unable to transfer rights other than those he had himself. Similarly also the taxes existing in the newly acquired countries, do not bind the old domains, and this principle, in accordance with natural justice, explains to us why, in the greatest number of states and especially in the great monarchies, all the provinces are not subject to the same charges.**”

“As for capitations and direct taxes, either on fortune or on income, they appear to us to be absolutely in opposition to the spirit of a monarchy and rather in conformity with republican relations; for in a republic, as in any other private association, each citizen, each member of the corporation pays by right as much as the other, by the sole fact that he is a citizen; he participates in the same advantages, therefore he must bear the same charges. This equality of contributions, far from hurting or humiliating the poor, raises him, on the contrary, in his own eyes; it is clear proof that, as a member of the city, the poor have as many rights as the rich, and the rich have no more than the poor. Direct tribute is a sign visible from his right as a citizen or associate, and therefore more honorable than humiliating. But among the various classes of men who depend, either naturally or voluntarily on a prince or a republic, no one participates in sovereignty, and all are not equally mediated in their relations with the sovereign. Those, for example, who do not live by employment or other favors of the prince, but from their own fortune or from their particular industry, do not find there any other advantage than a protection which they could equally well find elsewhere, an advantage that our philosophical systems make much too much of; and which can all the less serve as a title for personal or progressive contributions, as states or social bonds were not specifically founded for the purpose of guaranteeing the safety of individuals; but that the sovereign grants the help of his authority, by virtue of divine law and for the general interest, that moreover, this protection is by its nature uncertain, often incomplete; and that, in the cases where it becomes necessary to have recourse to it, it must still be purchased, in a way, by taxes or judicial emoluments.”

“Strictly speaking, the prince has the right not to allow the exportation of products from his country, or the importation of those from abroad, except at the expense of certain royalties, although nowadays this recourse has been much abused, and prohibitive measures given an extension contrary to the nature of things, to reciprocal interest, and to the mutual affection which must reign between peoples.”

XXXVIII. On the moral duties of princes in public services and charitable establishments.

“The sovereign Master imposed on princes as well as on all men, not only the law of justice, but also that of charity and active benevolence; it is not enough that their power is harmless, it must also be useful; and as they can do more good than other men, they are also more bound to do it. It is therefore to these moral duties or to these benefits of princes, that we are going to devote this chapter, if only to fill an otherwise inevitable gap in this science, and to decline the reproach of imperfection which has already been addressed to us.”

These includes measures to “facilitate trade by good roads and sound currency, the construction of bridges, of dykes, of channels, through stations, docks and other means of transport; to provide the people with work and resources through large enterprises; to exploit and put into circulation subterranean riches which one might perhaps have disdained; to encourage and assist industry by bounties, advances and other lawful favors; create and maintain, either for the sciences in general, or for its particular service, academies and

schools of various kinds, provide them with subsidiary resources, call and appoint teachers and professors for this purpose, give them regular treatments or honorary rewards; to found houses of work and correction, as well as help and refuge for the poor, the sick and the old; spreading special alms, granting pensions and gifts; finally charter foundations or other institutions proper to the general sanitation or even to the relaxation of the people.”

“But all these great foundations, either for suffering humanity or for other objects of public utility, which, far from being purely negative acts, require generous sacrifices, are benefits and not debts, and consequently sovereigns are only obliged to do so in proportion to their means, and as opportunities present themselves.”

Thus, in many cases they are best left to the Church and to wealthy patrons.

“Nothing is more absurd than to say with our modern sophists, that by virtue of an alleged end of political society, or of I do not know what mandate given by the people, sovereigns are strictly bound to found such charitable establishments, that they are even exclusively responsible for them, and that other men have neither the right nor the duty to create similar ones in proportion to their strength. **Nothing is more ridiculous than to maintain, as has been done in our day, that the state, or, to put it better, the sovereign, must be the doctor and the universal benefactor of his subjects; that it is his duty to educate all their children; to feed all the poor, as well as the old and the infirm; to save them from the evils they have attracted to themselves, even the most corrupt and lazy men; to house and maintain, throughout their life, all criminals, as if to reward them for their crimes;** to care for all the sick, and to establish everywhere at its expense midwives, physicians, surgeons and apothecaries; to procure for his people all kinds of entertainment and recreation; to guarantee it, so to speak, against all accidents of nature; finally to compensate completely, not out of pity or charity, but as a result of a real obligation, whoever has suffered, even through his fault, some damage.

These are so many insane doctrines which would destroy all freedom, all true beneficence and which only derive from this hypothesis of an imaginary state, which does not exist, has never existed and will never exist, because it is impossible. But that is not all: these systems are not only absurd, they are also perfidious and fatal, since they provoke perpetual discontent, impose on governments burdens which surpass all human strength, give to the princes that we have brought up on such principles, cruel anxieties of conscience; and as, after all, each one feels that he cannot be held to the impossible, they end by believing themselves exempted, even from what they could do; so that these systems only harden the heart, far from disposing him to more generous sentiments and true charity...

A prince, in general, and the patrimonial prince in particular, is nothing else than a man who by fortunate destiny has become opulent, powerful, and therefore independent; or, as the people are accustomed to expressing themselves, a great lord, whose power should not be harmful, but useful. As for those who are in his service or in his dependence, each one must in good rule take care of himself and of those who are entrusted to his authority; each one must bring up his children and instruct them, or have them educated in what is necessary for them; each must provide for his own existence and to push in the world by his work and his industry; to do good to others when he can; lastly, to endure the unfortunate accidents which befall him, and to suffer the natural pains of his faults. This is what justice and the order of nature want, from which men have never gone out and must not go out. Everything that is done beyond to help individuals to fulfill these various designs, to provide them with some facilities, and to ward off the evils from which they cannot get rid of themselves, is a natural benefit of social life, the result of all kinds of conventions, that is to say, of the exchange of services, of friendly associations, or else of a purely gratuitous charity, the law of which is neither more nor less rigorously imposed on the princes than to private individuals.

It is thus that we are indebted to the best establishments of public utility, either for religion and the sciences, or for the education of the youth, the care of the sick and the relief of the poor, to the universal Christian church, in this great and sublime religious society which itself out of immense love, has, by its disciples and his followers, raised in Europe and even in other parts of the globe, several million temples, to glorify the author, legislator and curator of the world; which founded so many educational houses of all kinds, of primary or Christian schools for the children of the people, of monasteries, colleges, seminaries, academies and universities; which built so many magnificent hospitals, so many other asylums for suffering humanity; which, moreover, has all richly endowed them with buildings, land, income and ancillary resources, and provided with the most ingenious laws and the most suitable to achieve its; which, even on mountains covered with snow and ice, offers the lost or destitute traveler a hospitable roof and all kinds of help, to relieve him in his distress; which, finally, has opened up to true scholars, to those who teach men virtue and science, a career which offers them the advantage of living free from the care of their own existence.

In addition, we see in all countries simple meetings of fathers of families, cities, corporations of all kinds, establishing for their common utility, endowing and administering schools, orphanages, shelters for the sick and the poor, and sometimes establishments intended solely for public recreation. Are there not also a host of private individuals who, by means of private education in the sciences or the arts, or of various enterprises, procure, by their knowledge and their superior talents, advantages and amenities for their fellow citizens, so that their very existence is already an establishment of public utility?"

"All charity withdraws in the face of constraint; the most beneficent and the most generous man closes his heart, and even refuses alms when one wants to force it on him, instead of distributing his gifts abundantly when relying on his generosity, and that he can hope for recognition. In large as in small social relations, it is therefore always better not to await the foundation of charitable establishments than of a spontaneous movement of the heart of man; the souls of sovereigns especially are naturally inclined to acts of munificence."

XXXIX. On the boundaries and limitations of princely power [landesherrlichen Gewalt].

They include capitulations, pacta conventa, letters patent, royal charters, etc. but without a religious devotion to right and duty, they may as well be dead letters. The oaths of coronation also serve as solemn binding acts to fulfill the duties of the divine law.

Moreover, per Haller, most charters of rights and liberties "are seldom necessary, always useless as soon as one does not respect the natural obligation to keep the treaties and the promises; often, finally, disastrous and likely to promote injustice and far from preventing it. Indeed, if we examine the most famous transactions and capitulations, charters and royal concessions, letters patent, coronation sermons, recesses of empire [hauptschluss], official reports of estates-general or provincial, etc, we will see that what they contain is basically

reduced to very little. **Usually they speak only of the rectification of some abuses which had crept into the preceding administration, or of some special commitment to actions to which one was already bound by natural law; but very rarely a real restriction of the rights of sovereignty.**”

In such pacts, very often either “sovereigns only give trifles and obtain immense things, and peoples grant permanent taxes, maintain regular corps of troops, assume enormous debts, and often renounce very important private rights,” or on the other hand if “the legitimate power of the princes is too restricted, or at least bound in its exercise by embarrassing forms, it will always seek to free itself from its shackles, or will compensate for it in another way by acts which the charter neither envisaged nor prohibited, which makes for a bitter spirit.”

This is a consequence of Haller’s general statement that all positive laws and ordinances are subsidiary to and disambiguations of particular covenants and pacts, which in turn are practical manifestations of the natural law.

“Who, if not these same doctrinaires, should we attribute to have heard these days of large and small rulers proclaiming this principle subversive of all justice, that the advantage of the greatest number is the only true good, and therefore now permitting under one pretext and sometimes under another, to destroy communities, entire classes of citizens, corporations, monasteries, hospitals and other religious foundations; to seize their property and their income, as if they had belonged to the prince?,” Haller asks rhetorically.

It would be as ridiculous as if “the sovereign wanted to arrogate to himself an authority over the internal affairs of families, to interfere without any preliminary complaint in the particular economy of individuals, to prescribe the kind and the mode of agriculture according to such or such accredited system, to place almost all grown men under a sort of tutelage like infants; annoy all paternal authority, regulate education and domestic instruction to his fancy, and to withdraw it from the will of parents or from the influence of the Church, of forcing people to attend unnecessary or bad schools,” which, what a shock, we have all of it today.

“We have already proved that, strictly speaking, a king or a prince is the master only of his own affairs, and that at bottom he does not govern others. Although his powers are very extensive or appear to be so, because he has more means to use a legitimate freedom, and because his great properties place him in vaster and more varied relations, although in a word his power embraces more numerous and more considerable objects, however he is not the owner of the body and the goods of his subjects; no one has yet maintained that he can dispose of it according to his fancy, that he be allowed to play with life, the freedom and the honor of the people who are in his service or in his dependence, to strip them of their fortune or to consider it his own, to arrogate to themselves a right over their wives and children, etc. Independently of the relation which binds a servant or a subject to his sovereign, a relation which, in addition to the natural duties of man, still imposes on him others by virtue of his commitments, and finally advises him certain rules of prudence or decorum : nevertheless, every man has a circle of freedom, domain in which he is his own master, where no one should disturb him, and in which an immense number of legitimate actions are entirely left at his disposal. Everyone has something of their own; his life, honor, time, and strength (provided that he has not dedicated them to another by form of agreement), belong to him just as well by the grace of God, than to the king his power, his fortune and his crown. The divine laws, that is to say, the laws of necessity and the moral laws, are therefore the limits of sovereign power, the former cannot, the latter must never be broken by a prince.”

“Previously, when kings still recognized God and God alone as their lord and master, it was not uncommon to see religiously observant princes, just and charitable, who took to heart their sermons and performed their duties with scrupulous fidelity, who respected and protected the rights of each and still generously gave out benefits with both hands. The subjects were free in their own affairs, united among themselves and content with their fate. Today, on the contrary, the people are regarded at least in principle as the sovereign (a singular sovereign, it is true, who does not manifest his will, who cannot manifest it, who constantly contradicts himself, and to whom each lends his particular will), there is no longer any rule, no longer any recognized truth; such a system is contrary to that true natural right which always more or less limits their sovereignty, that is to say, their perfect freedom. One can count among these legitimate and natural restrictions those of starting a war only with the advice and the assent of those whose help is requested; not to give away certain posts, and to reduce neither the rights nor income of said posts; to choose functionaries among those faithful to the state religion, or among the nationals only, or finally among a few privileged classes; not to take foreign troops into its service; to declare the charges irremovable, except in the case of forfeiture and complete incapacity; not to seek and not to punish anyone for previous events and crimes; to protect exclusively one or more religions; to renounce the recovery of certain royalties, not to alienate the domains, not to revoke privileges, donations, fiefs and profits; to allocate subsidies to such and such determined objects, or even to leave their administration to national and provincial authorities; not to increase judicial taxes, tolls, customs tariffs, etc.

On the other hand, if more favorable circumstances present themselves, the kings and the princes can in their turn, and by virtue of such conventions, add to their rights and to their old powers new powers and rights; for example, that of being delivered from some odious obstacles and in no way prescribed by natural justice, of requiring the military assistance of their peoples, to suppress privileges which have become harmful, to extend their jurisdiction over districts and over objects which until then were not subject to them, to revive abandoned or remitted royalties, to establish sovereign rights previously unknown, to obtain subsidies, the product of which becomes their full property, to have their debts guaranteed and paid by the nation, etc. All these stipulations are correct, as soon as they take place by voluntary agreement; history offers many examples of both, and depending on the circumstances they can turn sometimes to the advantage and sometimes to the detriment of the peoples.”

“Consequently, it is always extraordinary and unhappy events, great injustices, internal wars, violent revolutions, usurped sovereignties, or at least irregular adventures to the throne, which give rise to these charters, capitulations or other positive concessions. It is only then that, to prevent the return of the same evils, to calm the spirits and restore peace, we feel the need to make these kinds of promises, that is to say, to solemnly proclaim the original rule that had been violated, to state it in a formal way, to perpetuate its memory through public acts; or else reciprocally abandon certain powers to end dissensions and better strengthen public tranquility. Most of these promises do not add, in substance, anything to the natural obligation, but they nevertheless prove that it is recognized, that previous acts are considered not as the rule, but as a violation of the rule, and that consequently we do not want to renew them. In the relation of subjects to princes, as well as in that of individuals between them, in public law, as well as in private law, positive laws always follow abuses [of the natural law.]”

XL. On the rights and duties of subjects.

As to their source and nature, these rights are the same as those of sovereigns. The difference is not in the diversity of rights, but only in the diversity of means to use the same rights, that is to say in the inequality of fortune. The duties of the subjects are also the same as those of princes, and in no way different from the obligations they owe to all other men. These duties are divided into duties of justice, duties of charity, and rules of prudence, of course the latter must always be subordinate to the former.

“Natural rights, that is to say the possessions or the goods given by the author of nature, are equal for all men, except the various degrees of perfection; whereas the acquired rights, founded on particular acts, and of which it is necessary to produce the titles and the testimonies, vary for each man, because one has a talent, and the other a different one, one uses his freedom in one way, and the other in a different way.”

“Now, it is precisely so that men may live together and help each other reciprocally, that divine wisdom and providence introduced this diversity in innate or acquired strengths; diversity of means and of needs which is the parent of any mutual affection, the generative

principle of all social relationships: it is with it and through it only that all men can enjoy roughly the same amount of happiness. Because nature compensates for all; great power is not necessary to be happy and content; sorrows and pains reach all men, the king like the hireling, the rich like the poor. Servitude has its advantages, and freedom its inconveniences; the happiness of the young ones is more stable; that of adults, more exposed to vicissitudes.”

See also: Naboth’s vineyard (1 Kings 21).

“Thus, first of all we regard to princes an extraordinary and very particular prerogative, to be subject only to God, and not to human and arbitrary ordinances; but basically, and despite appearances to the contrary, other men can boast of the same advantage. For, as all their obligations ultimately boil down to natural duties towards God, so the last of the servants is only bound to his lord and master for two kinds of acts, those he owes him in his capacity as a man, regardless of any convention, and those to which he has voluntarily engaged, under a special pact; and indeed the obligation to keep his engagements and his promises of not thwarting the legitimate desire of others, is already included in the natural law which forbids one to injure the rights of others: it follows that in one and the other case the servant actually obeys the will of God, and not to that of men; that it therefore falls only under the first, and not at all under the second. God is, properly speaking, the only master, and men are only linked to each other by the diversity of means and needs; they depend on each other only by virtue of natural law and an infinite number of special agreements. And although the considerations of prudence come to join the moral law, to engage the subjects, in a way by force, to fulfill their duties more scrupulously, and even sometimes bend them in cases of conflict: the obligation, however, does not derive from this necessity, and moreover the same considerations still influence the sovereigns.”

“Moreover, we have already proved that there is not a single right of sovereignty which is not exercised in a narrower circle by the lowest private individual. **Don’t we see all men defending themselves to the extent of their means, pushing back by their strength, sometimes alone, sometimes with the help of their friends; in short, wage war and negotiate peace; to enter into treaties and alliances; address each other to deputies and intermediary agents, and in this respect follow almost all the rules, all the customs of the law of nations? Are they forbidden to receive guests in their homes, to exercise hospitality in their homes and estates, to recommend their friends, even in foreign countries, to persons of the same rank or of a lower rank, with whom they have friendly relations? Do they not have the power to regulate their house according to their good pleasure; to create or to remove the charges for the good of their own service; to place, to advance and to dismiss the employees themselves, to give them suitable orders and instructions, and finally demand any lawful or specially promised assistance? Do we not find even in the titles and functions of private servants a striking resemblance with the titles and functions of officers of a king? Can anyone deny that all men make laws, that is to say they will show a compulsory (binding) will, sometimes for themselves, sometimes for their subordinates, according to the scope of their rights and of their power; that likewise also they repeal these same laws, change them, interpret them, derogate from them, etc; finally, that in things which depend on their free will, they grant privileges and graces, when the motive of the ordinary rule comes to cease or it must bend under the natural and supreme law? Haven’t we demonstrated that each man exercises some sort of judicial authority; ready, according to the measure of his sources, to give assistance to justice in case of disputes; end disputes which arise between his subordinates and punish transgressions and negligence, either by himself or by officers or agents, with varying degrees of formalities, and often as a last resort? Here again, no superior is judged by his inferiors. In addition, don’t individuals**

own land and income, personal property and real estate; in a word, finances of all kinds, the administration of which they regulate to their liking? Do they not have domains with their various servitudes and dependencies, rights to hunt, to forests, to fishing, etc., that they can grant, lease or regulate as they see fit? Do they not add to these domains certain rights that one might call regal, that is to say seigneurial and lucrative enterprises, absolutely similar to those of the princes, and sometimes even exclusive in their favor?”

“For the faults and injustices of princes, like those of private individuals, are not always produced by the desire to harm. If they sometimes ask for lawful actions and services of their nature, but that are strictly not compulsory; if they prohibit or hinder the exercise of this or that legitimate freedom, it is not always with the intention of oppressing; it is sometimes by mistake, sometimes by surprise, sometimes by necessity, in the case of a conflict where their right is momentarily incompatible with that of others, and where, consequently, they do not want maintain the first, and not hurt the second. So we cannot reasonably assume that they will always fall back into the same fault, much less that it will serve as a rule for the future. Now, in all such cases, a weak person, a subordinate, even a child can forgive in his heart and out of a spirit of charity a stronger, a superior, a father, and thereby console himself for the wrong he has received.”

XLI. On the means subject have of guaranteeing their rights.

These are: religiosity, passive resistance (remonstrance, refusing to aid iniquity, moderating the execution of unjust measures), fleeing/emigrating, active resistance and formation of defensive leagues, but the latter is typically hampered with logistical and prudential difficulties and may exacerbate evils. It is not strictly prohibited in all cases, however.

The absolute prohibition of all resistance in all cases creates absurd implications, and is hardly defensible if one accepts prerogative of private war in an uninterrupted state of nature, however rarely exercised it may be:

“Indeed, to protect oneself in one way or another from the inconveniences of tyranny, we would end up resorting to even more disastrous maxims; we would teach for example that kings are the source of all justice, the organs of the general will, and which consequently they can never err; or they are merely agents of the people, must defer to their will, and they are required to obey the will of those who call themselves the nation, without the right to defend themselves by the force of arms; or that, in order to deprive them of the power to do evil, they must be reduced to a state of complete nullity, restrict their rights, inhibiting the exercise, impose all kinds of barriers and constitutions, supposedly to prevent evil, but simply transfer to another the ability to commit it; or finally, one would go so far as to proclaim that kings and princes are quite useless, even dangerous, and that they must be removed from the earth as soon as possible. All these statements necessarily follow from the false principle of the delegation of power, and from that which proscribes any resistance to the most obvious abuses of sovereign power; and that’s why we’ve heard all of this arrogant rooftop preaching in our day.”

Leagues and the wars of the weak against a stronger one, as we will show later, are of themselves so rare, so difficult, and almost always so perilous for their authors, that princes assuredly do not have much to fear from the hand of their peoples; but, generally speaking, there is neither in the natural law nor the rules of prudence, any reason to justify the doctrine of those who teach in an absolute manner that resistance to tyranny is strictly illegal.

The konfederacja in Poland-Lithuania is cited as an example, as is Alfonso III of Aragon’s Privilegio de la Union of 1287. But nonetheless they are fraught with difficulty, as “if a large number of subjects want to go to war against the sovereign and his supporters, they must, above all conspire together; because conspiracies are nothing more than the league or the coalitions of subjects against their prince. However, these kinds of leagues are infinitely difficult to form, because they require a coincidence of circumstances which is seldom encountered; first, a common need, and a considerable number of allies, second, all kinds of resources and material forces, finally, mutual trust, known and respected leaders. This implies a new spirit of harmony and obedience. With so little skill and vigilance, there is nothing easier than to prevent these kinds of leagues; a thousand obstacles that arise from force of circumstances make their success more than problematic.”

“Knowing how to refuse obedience, one can soften, temper, postpone the execution of unjust or harmful orders, often even completely paralyze them. For first it is impossible, even for princes, to be consistent in evil; one meets everywhere unforeseen difficulties; the execution of a single injustice that we want requires a host of others that we do not want and which have not been ordered; usually, it is not the evil in itself that we are proposing, but it is only an end that it must serve to achieve. However, in all such cases, subordinate employees have the right and duty to seek further instructions, to represent the obstacles, finally to indicate other expeditions which will perhaps be more pleasant. From this it still leaves some time for reflection, and so the execution of evil is at least delayed, and often comes at a time when the unjust measures are revoked by the person who prescribed the same, or they become useless by the simple change in circumstances.”

“The subjects have not established the prince who reigns over them, and therefore cannot dismiss or change him by their arbitrary will: but nothing prevents them from renouncing his service, from leaving his territory, and in this sense, each individual can choose another master; a faculty, to say in passing, that is at once more useful and more in keeping with the freedom, than the obligation to receive oneself to a master who one would name the collective majority of an entire people. Besides this extreme resource of flight or separation is not always as sad as you think; a great number of persons have found there a means of fortune and elevation, the more so as a sojourn in a foreign country ordinarily obliges them to adopt a wiser and more peaceful conduct, and to make a greater effort of their talents. After all, since a man often separates from his friends and from his country, for a wedding, or any advantage, why would we not also leave enemies and objects for which one feels an invincible aversion?”

XLII. On the alienability and heredity of princely power.

A highly important chapter, covering: a) the right of alienation in general. The princes do not transmit more than their own power or their own rights, and not those of their subjects; b) of heredity in particular. It is based solely on the heredity of personal property and rights; c) natural order of successions among independent persons, which is undone by the will of a testator; d) natural origin and legitimacy of wills; e) different princely house laws and inheritance customs; f) partible inheritance and primogeniture; g) natural origin and immemorial antiquity of primogeniture; h) defects barring succession; i) secondogenitures and appanages.

Haller starts off this with this brilliant passage on how the alienation and conveyance of territories from one sovereign ruler to another in principle does not injure the subjects in the least:

If a kingdom was actually an association of citizens, only chaired and administered by the prince, as of the first official, certainly, it would be difficult, say even impossible to conceive that this official could alienate his power or pass it on to his heirs, without the prior consent of the community from which he received it; and in this respect the arguments of revolutionary writers would be irrefutable. We have not yet heard of a consul of Rome or a doge who has alienated the republic of which he was the leader, or disposing its land and its areas as if his own. A delegated power is, by its nature, neither hereditary nor alienable; no employee, no representative, can transfer to anyone his place or his full power, without the authorization of his superior. This principle is universally recognized and respected even in practice. Now, if, despite this, the power of the princes has been alienable and hereditary in all times and in all countries, without any contradiction; if the principalities, as well as lordships and areas of individuals have changed under all kinds of conventions, and to this day it came to mind in people to find in these transmissions something unjust or shocking: the philosophers and the jurisconsults, if they had sought the truth in good faith, would have had a clear proof that it is impossible that the sovereign power can rest on a delegated power, and that it must necessarily emanate from personal power. If, then, instead of fearing the development of this principle, they had elaborated all the consequences: the truth is presented to them in all its majestic whole, they would have seen with delight that private freedom, which they claim is the sole end of civil society, is found in this natural society under very different guarantees than in the philosophical system.

Indeed, everything becomes clear, all difficulties vanish, as soon as we conceive of the true nature of a prince, of a power of his own, and of his personal rights. **Then one easily understands that such an independent territorial lord, whose power and freedom is based on domains, property and income freed from any dependence, is also the master [holding dominium directum] of this property, and consequently the power and independence derived therefrom, either in whole or in part, can be alienated by means of sales, exchanges, waivers, donations, marriages, inheritances, etc. as well as it was practiced in previous times without any opposition. For, by means of such acts, the princes do not alienate, transmit or exchange the rights of others, but only their personal rights; they do not sell peoples, much less simple individuals (who are undoubtedly not a commodity); but they only transmit their own domains, their houses, their goods, their incomes and their enjoyments of all kinds, with the authority which is inseparable from it; in short, with the rights and charges inherent in this possession. The inhabitants of these domains lose nothing by these kinds of conveyances; nothing is taken from them, their condition is not deteriorated; therefore they have no right to complain. The new owner of a sovereign lordship, like that of a lordship particular, succeeds just to the property, rights and rapports of the former master; he cannot acquire more than this one possessed; the sovereigns in their turn can transmit only what is theirs, and, in fact, they never transmitted anything else. Also, let us observe that in the older peace treaties that stipulated the transfer of certain provinces, that in the same acts of sale and exchange of a sovereign principality, the natural and acquired rights of the subjects were expressly reserved; that often continuation of certain acts of benevolence was recommended, of**

certain favorable customs; and that, in addition, the new prince gave all kinds of assurances, to have regard not only to their strict rights, but also to their personal attachment to this or that prince. The subjects, the inhabitants of the ceded country, remain free as before, they are not sold like slaves, as our philosophers claim. And since when would we be slaves just because the soil we live on changes its possession, so that we now owe for the future of John, what we previously owed to James? On the contrary, all the remaining pacts between the two parties are renewed in such a case in an express or tacit manner, and ordinarily without additional constraints. Employees and subjects continue to serve or obey, for the same reason they were in the service or in the dependence of the former master, as the nature of forces there, or the service pact obliges them to do so. It is also a great advantage that the new owner wants to renew old conventions and fulfill the same engagements as his predecessor, since it means those social relations are not dissolved.

Also, the old German phrase to sell a seignury with the land and the people [Land und Leute] did not mean anything else; and whatever sounds untoward or shocking, only comes from its excessive brevity. For soil, that is to say, for that which actually belongs to the prince, there is no difficulty; as for what concerns people (leute), this term designates in the German language all those who live with another in a relationship of habitual dependence, who are bound to him for certain services, and that is why we speak of gens domestiques, gens censitaires, gens feudataires, gens de guerre, gens domaniaux; etc. Thus, to alienate a seignury with the land and people, was nothing other than transmitting a free domain, with all the benefits both real and personal, which by virtue of various covenants attached to them, as in private relationships the house can be sold with all the contracts of lease, a landed property with all existing farm leases, or with other stipulated income; in short, with rights and charges. Now, since it is open to a dependent individual, to a censitaire, a cultivator, a mortgage debtor, to alienate his property liable to certain royalties, provided that he cedes only what is his and reserves the rights of his master or those of others, why would the independent man, the owner, the creditor, etc., not enjoy the same faculty as well? Does it follow that therefore one is no longer allowed to sell land, a house of trade, a factory or other industrial facility, by arguing that debtors would be sold like slaves, or that servants, clerks, and other workers would be passed down like cattle? However, this is what these principles would result in if the rulers could not transmit what is theirs.

“In general, the ancient treaties of peace, of which M. de Martens has made such a complete collection, are in this respect infinitely remarkable. If such stipulations no longer take place today, if the change of master has become much more expensive than it was in the past, the peoples owe this new misfortune only to the philosophical principles, to the system so much advocated by the revolutionary uniformity.”

Still, such territorial exchanges are not without drawbacks. “The long experience and the memory of mutual benefits form between the subjects and the prince an affection and bond of trust that is dissolved by the transmission to a new owner abroad; and any such separation

that breaks the relationship old and usual, causes a feeling of sadness in the soul of man, and often draws involuntary tears from him. In addition, these mutations are almost always followed by real drawbacks. The number of bonds and servitudes, however legitimate they may be, become painful and expensive, since they are not fulfilled, as before, voluntarily, but only by duty and coercion. Besides, the dispositions of the new master always remain uncertain... The new owner will probably make changes or reductions in the personnel of his servants; he will bring his old friends and favorites whom no memory attaches to the country, and who, consequently, will not be able to take its interests to heart. He exercises at least more strictly his rights; he will seek to withdraw of his newly acquired land greater profits; at the expiration of the various pacts, he will stipulate more favorable conditions for him, etc .; whereas the former possessor, content with his ordinary income, might sacrifice more than one legitimate advantage, solely so as not to afflict his former subjects, nor to disturb them in a pleasure consecrated by use. That if, finally, the new master possesses more beautiful and more extensive lands elsewhere, where he continues to reside, the subjects lose a host of resources there, either for maintenance, or for the amenities and conveniences of the family life; the income of the country is spent in other countries; the domain is, so to speak, orphan of its father, and, as the eye of the master does not prevent or supervise any more the abuses there, the inhabitants are the plaything of the arbitrator and of the particular interest of junior officers, which favors the prince less, because we look at them as liabilities, and whose sins are much more sensitive because they come only from the servant, and assuming always that the master himself would not have carried them out.”

But these disadvantages are simply of the nature of things, and to prohibit conveyances and alienation of territory on this basis would be as if “to maintain that it is not permissible to sell a house, because the sale nullifies pacts and contracts, and may make their conditions more onerous for tenants.”

Similarly, the heredity of sovereign power cannot be justified on any principle about it leading to more convenient, advantageous or otherwise superior governance, but “it exists in natural right, because this power rests, not on a delegated function, but on goods and properties which necessarily pass from the last possessor to his heir.”

The legitimacy of wills proven to be part of natural law:

Now, wills are nothing more than a gift in which should only receive its effect after the death of the donor, and remains revocable until then, because being unknown to the donee, it was not accepted by him, and so any man can change his will, provided he does not injure the rights of others.

It is objected against this faculty of testing, or at least against the current form of testimonies: 1. that it is absurd for a man to dispose of his property for the time when it will no longer exist, when, consequently, it does not exist, and he himself will no longer have any rights or possibility of having his will carried out; 2. that wills are only a unilateral arrangement, and the declaration of a personal desire, but not a formal pact of inheritance or of transmission accepted by the other party, and only that can give it a real right.

Vain sophisms! No one has done a will after his death; each does so during his lifetime, at a time when he can still dispose of his property; however, from the moment that the testator has manifested this will, and that he has not revoked it, it results for the instituted heir, as well as for the legatees, a title, or at least a legitimate expectation which, upon the death of the testator, is transformed into a real right, and which no one can take from him without injustice, especially since one can also have rights without knowing it, and since every man is presumed to accept an advantage as long as he has not stated otherwise.

And why would it be prohibited for the testator to manifest a will that takes effect after his passing? Did he not occupy the same place in almost all agreements, in all acts and all the provisions of men? The sales and purchases, exchanges, securities of debts and contracts of marriage, they do not remain as valid after the death of one of the parties? Are they not obligatory for them and their heirs, that is to say for all those who come under their inheritance and in the responsibilities which depend on them? With whom could we now contract, if all obligation ceased after the death of the contracting party? **Will it no longer be allowed to plant a tree, because it continues to grow even after the death of the one who planted it? Finally, are not the laws of sovereigns and individuals also binding beyond the life of their authors, particularly when they have conferred on others certain rights that can no longer be taken away from them? Or will it be an insoluble reason against the faculty of testing, that the deceased is unable to carry out his will in person? Strange doctrine! Especially coming from those who go on unceasingly declaiming that rights and duties do not depend on force!**

But fundamentally, each will is a bilateral contract, since it becomes void without the acceptance of the heirs or established legatees, and that no one can impose an advantage, much less burdens, in spite of himself. However, whether the consent of the other party is given at the same time or at a different time, during the life of the testator or only after his death, it is this which, in itself, is quite indifferent and does not change the essence, but only the form of the pact of succession. Do not we see daily donations and inheritance ab intestate brought to absentees; even jobs, titles and honors, granted to absent and distant people, who do not accept them until a long time afterwards, a few months even after the death of those who confer them, and whose acts nonetheless remain valid and mandatory?...

It is in the natural order of things that children depend on their parents, and not that parents depend on their children; and since men can not totally prevent abuse of their own property, it is certainly better that this abuse is done by the one who is the master only by the one who is not. After all, what harm then is it that a child receives a smaller portion from his father than his brother? Where by imposing on him conditions of simple usufruct, he is forced into thrift and economy, and we put a brake on his imprudence and his extravagance? For me, I can see neither injustice nor inconvenience. Or will we say that the children and parents have a right of ownership over what is not theirs, over what they have neither received at birth, nor acquired by their own industry, and which has not yet been transmitted to them? This would be absurd, and the only right they can hope for depends on the express will, or, failing that, on the presumed will of the father. If this were not so, the fathers would be placed under the tutelage of their children; they would have lost the ability to dispose of any part of their property or their income, not even just during their lifetime, in fact they would no longer own it at all.

Indivisibility is the norm, though many historical counterexamples exist: “But however numerous such examples, which could still add many others, the indivisibility of empires has been everywhere and always the rule generally; not because the people wanted it so, as Boehmer, Pufendorf, Sidney, Montesquieu and other publicists claim, in spite of all the history, nor because it always turns to the advantage of the people, but because sovereign houses themselves have established it for their own interest, to not break up their possessions, but to keep them in their integrity, and to perpetuate succession of their power and independence, at least in one branch of the family. The divisible shares have not been an exception to the universal custom, and even where they were received, they dragged on as inconveniences, produced both of war and of strife between families; kingdoms and countries were so weakened, ravaged inside, and delivered to the mercy of the first ambitious neighbor, that, to prevent these disastrous consequences, kings and princes everywhere saw themselves forced to successively introduce indivisibility, consequently, of to transmit their possessions only to a single heir, and to impose on him the obligation to act in the same way towards his successors. This is why almost all the principalities existing today have become *fideicommiss*, that is to say that they are no longer, as in the beginning, the full and entire property of their possessors, but a deposit which is entrusted to them by their predecessors, on condition that they will enjoy it throughout their life, but that, without being able to alienate or share them, they will also transmit them to a single heir, according to the order of succession established by the testament, as in what is often convenient for their particular fortune by substitutions, entailed estates and trusts.”

Why agnatic primogeniture is natural: “First, nature has carved into the heart of humanity an invincible penchant for stability, a provision to which he rose to conserve as much as possible his fortune gained, and perpetuate, at least in part of his race, the inherent consideration of his territorial wealth. However, to achieve this goal, there is only one way, and that is to obviate the partitions, to pass on his succession only to one of his sons, and, in this case, according to natural equity. rather to the elder than any other, or at least to give him the greater share of power... The next reason is the difficulty, often even the physical

impossibility of sharing buildings; for lands and large industrial establishments cannot be fragmented ad infinitum. It is therefore necessary or keep them undivided, or leave them to one of the heirs and dependents, and indemnifying the other in capital or rent. The community of these kinds of goods is a source of discord, and incompatible with good administration; their alienation saddens the heart, because it erases all memories of family, breaks all ties and turns the closest relatives into strangers.”

The introduction of equal inheritance as a legal principle is attributed by Haller to the Romans: “It was only the Roman laws, born within the walls of a city, in a large movable property, appropriate for a corporation of citizens, and made with the intention to maintain republican equality, which carried the first breach the ancient birthright. First spread by the force of arms, and then voluntarily adopted with a kind of superstitious awe, these laws abrogated the rule of primogeniture, especially in Germany and France, and gave rise to the succession law based on legitimacy of the Romans, or even of equal divisions, at least between the sons. But the nature of things was not long in proving that the same laws do not suit all peoples; the effects of this innovation, introduced in countries that were hardly inhabited except by landowners and bonded cultivators [coloni], were so disastrous, that the difficulties and the physical impossibility of perpetual shares gave rise both of war and of strife, the weight of the resulting legitimate debts to pay to the brothers and sisters impoverished or ruined the heads of prominent families, and they were soon forced to protect themselves by all sorts of roundabout ways, against the irruption of these foreign laws, and to return indirectly to the old birthright. We therefore had recourse, as M. Moser makes the judicious remark, to various expedients; sometimes to privileges obtained from kings and emperors, sometimes to personal laws, that is to say to familial statutes and the confederations and brotherhoods between various wealthy houses, who had the same interest in opposing equal shares; or girls were required at the time of their marriage, to renounce their paternal inheritance; or finally it was established for some large land that it be held in permanent substitution as a fideicommissum; a use that first prevailed among the princes and counts, but for the same reasons, was soon followed by other noble families, and even of simple peasants.”

The history of the adoption of primogeniture by royal and princely houses:

The feudal system also favored the birthright, because the fiefs being liable for military service, the investiture could only be given to a single individual. But the many advantages of this mode of succession made itself so well felt that it was not long in establishing it, even for free or allodial property. Indivisibility or the right of primogeniture, which is a consequence of it, were introduced for the royal house of Portugal, from the year 1181; in Spain, for Castile in 1232 by Ferdinand III; and for Aragon, in 1275, by James I. In France, where it had not been in use under the Merovingians, it gradually became the rule under the Capetian dynasty, either because of its analogy with the old Salic law, which was only a law of succession. between individuals, stating that the land should remain with the males, either because the first kings of this race had for custom to take during their lifetime the oath of fidelity to their eldest son, and to designate it thus for their successor. As for England, there is no example that this kingdom was shared. In Denmark, the right of primogeniture was confirmed by the royal law of 1665; in Sweden, it was not established in law until 1720, although in fact it had been in force before that time. The House of Savoy introduced the indivisibility in 1450. However, even in our days, it was not universally known in Germany. The Golden Bull, emanated from Emperor Charles IV in 1356, first bestowed this privilege to the four secular electorates, such that only the electorate itself, i.e. the special fee on which rested the electoral dignity, should belong exclusively to the elder but that the other properties of the family could still be shared. The house of Brandenburg was one of the first which understood the advantages of absolute indivisibility, and which, for this reason, extended it, in 1473, to all its present and future domains, except what belonged to the lines of Ansbach and Bayreuth. The law establishing the birthright in the house of Württemberg dates from about the same period; but it was not until 1664 that Duke Eberhard ordered, by his will, that the younger princes would no longer be appanaged in lands or lordships, but that they would only be given annual pensions. In Austria, indivisibility and the right of primogeniture were introduced in 1576 by Maximilian II; but a long time before that the elder always enjoyed great prerogatives, in order to better support the imperial dignity; and by virtue of a privilege granted by Emperor Frederick I, in 1156, the Archduchy of Austria had never been shared. With effect from that time, many of the princes of Germany followed the example, though many of their ancestors, by a false interpretation of certain passages of the Bible, had yet, in the sixteenth century cursed any of their descendants, would dare introduce the birthright to his family. The ducal houses of Saxony were the last to comply, and they were compelled to it by the need to prevent their inevitable total ruin; also it is by a series of old partitions that they are still today divided into so many different lines. In Saxe-Eisenach and Gotha, the birthright has only existed since 1685; in Saxe-Weimar, since 1724, and in Saalfeld, only since 1736. In the Duchy of Saxe-Coburg, it was not introduced until 1742, and in that of Saxe-Meiningen, only in 1801; still it was necessary that, for greater security, these testamentary dispositions, forming an exception of Roman law, should be confirmed by the head of the empire.

Nonetheless, cadet branches and secondogenitures are also created for the sustenance of younger heirs, often if possessions of a house are non-contiguous: “However, to get at one hand the advantages of primogeniture, and obviate of the other to its possible inconveniences, or rather a remnant of the old habit of sharing, several powerful rulers have introduced in their homes what are called secondogenitures, which is to say that, by laws of

succession, they prescribed to give also to the younger son an independent country although less extensive, where he could hold the state of prince and contract a marriage matched to his rank, so that the spread of a reigning family did not depend on a single branch. In this second branch of the family, the inheritance goes to back to the eldest son; if he leaves no issue, the series returns to the older line, which usually sets again a secondogeniture in favor of a younger son. If instead there is just the elder branch comes to an end, the youngest cadet line takes its place, and possesses the two countries at the same time. This is what exists, for example, in Austria for its Tuscan branch, in Spain for its Neapolitan branch; and once again the branches of Ansbach and of Bayreuth formed a secondogeniture for the house of Brandenburg. However these examples are rare, and almost all the sovereign houses, especially those which do not have possessions so vast or separated from each other by such a great distance, stick to the rigorous indivisibility, joined to the rights of primogeniture.”

The preference of lineal agnatic male-order primogeniture to the exclusion of female succession has the practical effect of preventing territorial dispersion by distant magnates claiming *jure uxoris* succession rights from their wives.

XLIII. On the growth of princely territorial power [landesherrlichen Macht].

All states were originally of little extent. They can, however, be increased by various legitimate means. These means are: 1. The introduction of indivisibility and the right of primogeniture; 2. All kinds of acquisition certificates: purchases, exchanges, donations, marriages, inheritances, etc. ; 3. Conquests and ensuing renunciations. Their legitimacy in certain circumstances; 4. Various advantageous agreements, without acquisition of territorial properties. a . Equal and unequal alliances. b. Absolute or conditional submissions. Personal unions, infeudations, advocacies, protectorates, capitulations, etc. That these conventions are not always unfair or onerous. Easements on particular possessions of other sovereigns.

The increase of sovereign power can be done also through the abuse the strength, or theft: invasions, plundering, confiscation, secularization, arbitrary mediations, etc. In this regard, it should be noted: 1. That though they are as unjust between princes as they would be between individuals, we can not always prevent them; 2. That some particular abuses do not make all other possessions illegitimate; 3. That the usurpation relates directly only to the previous possessor, and not to his subjects. The latter have, it is true, the right to resist the usurper; but they are not strictly obliged to do so; 4. That a long and undisputed possession eventually legitimizes it, and especially if the prior sovereign renounces his right.

“Now, the right of primogeniture, of which we have already proved the antiquity, the origin and the almost universal existence, is not only favorable to the increase of principalities, in that it obviates partitions, but also in that, as a rule, each possessor adds something to what he had received. For, generally speaking, every man is thrifty with what is his, and lavishness is only an exception to the rule. The disposition to preserve one’s property, to increase it and to enhance the splendor of one’s family by considerable and permanent wealth, is much more common and more deeply engraved in the heart of man, than the opposite passion to dissipate his fortune by disorderly enjoyments, and of rushing himself in misery and humiliation. Such a destructive inclination is rare, because it presents the future in a sinister aspect, and presupposes an unusual levity.

Moreover, local properties are imperishable, susceptible of indefinite improvement, and their value as well as their product is constantly increasing with the population and the public prosperity. There is more: a patrimonial sovereign is not enriched only by his own economy, but also by industry and the well-being of his subjects, either because he has granted them, under certain conditions, part of his domains, or whether they simply inhabit his territory; since, by means of the progress of culture, the activity of commerce and the large number of well-off consumers, the product of state royalties, indirect taxes and sovereign rights, must necessarily rise without ceasing. Thus, as long as faults and extraordinary disasters, such as excessive lavishness, unfortunate wars, foreign invasions, exorbitant contributions, forced renunciations, etc., do not come to disturb this natural course of things, the fortunes of the independent owners who succeed each other in order of primogeniture, increase in such a way that often, after a few generations, the annual income of the estates exceeds their original value; and that same opulence in turn provides the princes many ways to make new acquisitions, and thus raise their power to an indefinite height. Patrimonial princes can therefore, secondly, expand their territory and authority, acquiring in various ways, including through purchases, exchanges, donations, marriages, wills and testaments, etc. of new goods, to new areas, by virtue of which he succeeds the rights and relationships of their former masters. **A number of sovereign houses, both ancient and modern, have and still owe their greatness only to similar successive acquisitions; and several examples prove that, without wars or unjust conquests, kingdoms that had for their cradle only one noble manor, become considerable in degree. As of simple purchases, exchanges and other securities, in truth they rarely succeed in vast possessions; because for this it would be necessary not only an immense and constantly available wealth, but also fortunate opportunities which do not often present themselves.**

For princes as for individuals, the fastest way to get to a great fortune is through unexpected inheritances, or weddings with of heiresses; only thus can we acquire one stroke, by a promise or a simple word, what others have laboriously amassed in the course of several generations. The legitimacy of these kinds of acquisitions have already been proved in the chapter on the alienation of sovereign power; it rests on this principle, that one does not inherit and does not buy neither the men nor the people, but only the power, the goods, the rights of property of the old master; and whatever one is authorized to transmit, the other is entitled to receive it.

Undoubtedly, in these kinds of cases, one cannot acquire more than the transferor himself

possessed; and it explains to us the variety of the legal relations in which the sovereigns find themselves towards the various parts of their territory; a variety that is a result and proof of respect for the law, a source of joy and of contentment, which our modern sophists would like to replace with a sad and tyrannical uniformity. That if, therefore, the possessions purchased or newly acquired were previously independent and did not belong to anyone; or, in other words, if they were the full and entire property of the old master, and formed a whole existing by himself, the new purchaser will enjoy them in the same way; he will possess several principalities, will reign over both with the same freedom; and from there comes the great monarchs who have to talk of their states in the plural... If, on the contrary, the former owner was in a relationship of more or less limited dependence, as once again the princes of Germany by virtue of fiefs they held of the Empire; even if these lands were only bound by certain dues and benefits, or if finally they formed simple dependent lordships, the new master, although sovereign in his own domains, becomes, in this respect, the liege of another; and since he cannot injure the rights of a third party, he will be bound to fulfill the duties which result from this relationship, unless he is released from it by a new pact. This is how the kings of Spain, at the height of their power, possessed, from 1544 until 1707, the Duchy of Milan, as a stronghold of the Germanic Empire, and that the kings of Sweden, by virtue of the peace of Munster, acquired in the same way the duchy of Pomerania; so that both, for this reason, figured among the Imperial Estates of Germany. Often princes and sovereigns have fiefs and simple rural property in a foreign country; formerly, for example, the emperor of Austria was still lord of the land of Rhäzüns in the country of Graubünden; and even simple vassals or private owners become sovereign when, by inheritance or otherwise, they acquire independent lands; in the same way also the greatest monarchs can, in relation to certain possessions, be obliged to servitudes and benefits towards their own subjects...”

Haller's position on the right of conquest and territories acquired by war:

“A third mode of acquisition, which is the subject of great controversy and so merits special mention, is the right of conquest, that is to say the occupation and taking possession of foreign land by the force of arms to the result of serious dissensions, of war and of treaties or of waivers that follow. These conquests will lose their odious appearance since if are considered from the point of view of genuine public interest, what is the precise nature of the war, what is the purpose of the conquest and with whom the treaty is concluded. One can conceive, it is true, that in a legitimate war, where each belligerent party is entitled to weaken its enemy, even to annihilate it, or, at least, to deprive him of the means of harming, it may keep the conquered lands as soon as this enemy no longer exists or has given up the fight. However, as the law is not always clear enough to the world, to distinguish the legitimate conquest of an invasion or an unjust spoliation, and in the ordinary case, every quarrel, every war ends with a treaty of peace, it is not either the occupation by force, **but it is only the subsequent treaty, the renunciation on the part of the old master, which gives a right to the new possessor; and this is why it is customary to ask for it of all vanquished enemies, even the weakest. Now, such a waiver, however painful and damaging it can be, and even when it would be more or less extorted by fear, must always be regarded as voluntary, and therefore also, for valid and binding; either because it is compensated by other advantages, in particular by the peace and the preservation of the rest of its existence, because no one can be forced to a formal agreement as soon as he prefers to endure greater evils; or finally, because the opposite doctrine would destroy good faith and would make for endless wars, and any treaty of peace impossible. These treaties are not, moreover, in themselves unjust, since the cession of the territory can be made as compensation for the expenses of the war; and that moreover it is often useful to both parties, suitable for consolidating the peace, and that after all it is necessary that disputes between independent persons end in some arrangement. Finally, such a waiver is not unlawful in relation to its object, and the inhabitants of the country are not given a greater right to complain than to any other disposition; for here, as in wills and deeds of sale or exchange, the sovereign who, after an unsuccessful struggle, finds himself forced into it, either by weariness or by lack of resistance, does not give up peoples, but only his personal rights, property and possessions.** As for what does not belong to him, like the private rights of its subjects, whether individuals or corporations, their personal liberty, their acquired properties, the relations which subsist between them, civil laws properly so called, pacts and customs, etc. the sovereign cannot alienate; and in fact he does not alienate them, not in a treaty of peace, nor in any other transaction, in which he can offer only his own rights, and not those of others, unless it be to their advantage.

On the other hand, it would be just as unfair to require a prince to guarantee these same private rights against an obviously superior force, for no one is bound by the impossible. As soon as the unfortunate sovereign has not even been able to save what is his, all the more reason that he cannot guarantee what is for others; and since, even in times of peace and in the ordinary state of affairs, the rendering of relief against acts of violence is only an office of humanity, to which the prince is bound only according to the measure of his forces, it goes without saying that the obligation ceases as soon as it can no longer be fulfilled. No doubt a sovereign, giving up part

of his domains and of his possessions, must also consider the interests of their inhabitants. His intercession for them and for their maintenance of their rights, as the princes used to express themselves, by ceding certain countries or entire provinces, is the last proof of affection which he can give to subjects who are temporarily scattered or deprived of all protection; and this sacred duty should all the more be overlooked, as a word of recommendation costs nothing, is sometimes well received, and rarely remains without effect, even in the treaties of the most expensive peace. That if, however, the vanquished sovereign performed all that depended on him; if he fought loyally; if he only gave up what belonged to him; if even his intercession has remained ineffective, and if after all this the subjects of the conquered and abandoned country are less happy than before, if the new master hurts them and disturbs them in their rights: this conduct on his part is doubtless unjust, harsh and inhuman, but it cannot in any way be imputed to the former prince, as it is not one of his acts, and there is nothing left for the oppressed to do but to help themselves, according to the measure of their means, or to come to terms with the new master, or finally to endure the temporary misfortune of an unfair force, as they would bear a physical storm, and make use in general of these natural and legitimate resources against abuse of power.”

A conquering sovereign may legitimately acquire more rights than those of the conquered: “We believe this may occur without injustice, but must here, as in personal defense and the ability to punish, distinguish between the law itself and the precepts of humanity or the rules of prudence which moderate their exercise. The rigorous right that cannot be completely refused to the winner, rests on this natural foundation, that the winner is entitled to consider the subjects of his adversary as his enemies, or at least as the auxiliaries and allies of his real enemy; all the more so as usually they are in fact, since they assist him in all ways, very often without constraint and voluntarily, out of particular interest, according to formal pacts, and sometimes even fiercely. As a result, the winner will also be entitled to dictate the peace of such enemies defeated, and to impose conditions for this purpose he deems appropriate; either as compensation for himself or as a ransom they pay to redeem themselves from greater evils, or finally as punishment to maintain his own conservation and for his future safety. His right in this regard, and the right of the injured party in general, is of unlimited nature, that is to say it extends to the complete satisfaction, according to his own judgement. It is in this sense that it is customary to say that, strictly speaking, everything belongs to the winner and all that he leaves the vanquished should be seen as a blessing; and from there it comes that in all ages one has heard of clemency and generous victors. All ancient philosophies and jurists have recognized this principle, although the majority of them have presented that as a law generally in force or as a universal custom, without explaining the basis and limits.”

We then get to various advantageous conventions, treaties, leagues, confederations, and easements. Their submission may be absolute or conditional. “In modern times, an unlimited submission, quite similar, was agreed to by the Duke and the States of Courland, when, by a formal act, dated March 17, 1795, they renounced all connection with the ancient kingdom of Poland, submitted directly and unreservedly to the scepter of Russia, and abandoned their

future fate to the good pleasure of the Empress Catherine. Besides, all these unlimited submissions have nothing too frightening as soon as one recognizes a divine law and its binding character. However rigorous such a treaty may be, it does not strip the subjects of their personal property, and cannot exempt the new master from his natural duties of justice and humanity; on the contrary, the appeal to his generosity or to his moderation obliges him, by a sort of point of honor, to use of his power with most of that reserve that he could have gone without. The submission to a force majeure obviously is not anything but formal recognition of its superiority, and a declaration that we will abstain from any resistance. Also, the fate of peoples who submit in this way without restriction is often less harsh than if, by a formal capitulation, they had obtained such or such a particular guarantee. Such acts of surrender do not require anything, it is true, but they do not exclude anything either. However they are extremely rare; either because even the strongest wants to give himself the appearances of justice, and because, for this reason, he hardly refuses some special concessions, which, useful to the vanquished, are indifferent to the conqueror and nevertheless assure him the peaceful enjoyment of everything else, and some sort of legitimate title.”

Limited/conditional treaties are more common and mutually beneficial, so “It is thus that Cicero said, speaking of the beautiful days of Rome; that the ascendancy which it exercised over the rest of the world was more a patronage than a domination. Similarly also the old vassalages and voluntary infeudations (*feuda ablata*), formed a gentle and peaceful relationship, in virtue of which the weak, by a promise of fidelity and of aid, was saved the rest of its existence, was a friend of his enemy, and made sure to further his rest and his security so it would not be disturbed by anyone. It was an ingenious fiction, full of humanity, not merely to give his country to a nearby major who he could not resist, but to make do at the same time as a hereditary fief.” Patron-client relations and electoral capitulations (“either as a result of long internal dissensions, an entire nation, or, to put it better, the great and principal of a nation, call to the throne of their country a foreign sovereign already powerful and linked to them by various relations, under the condition that, by an act called capitulation, it guarantees them certain items or fundamentals; a sort of treaty which historians and vulgar publicists call an election of a king, although, to speak exactly, it is not an election, but only a conditional submission to an already existing king”) are also included. Rights of way, safe conduct, stationing of troops, exemptions from tolls, etc. are counted as easements from one sovereign territory into another. What in Roman law are called “*servitudes*.”

Moreover, for conditional treaties there can be no appeal to a supreme power outside what is stipulated, since “in relation to the territory thus submitted, the sovereign is not a landowner, and has neither domains nor sovereign rights; so does not enjoy the powers derived from the property, but only of those conferred by the text of the treaty... as we have already remarked elsewhere that most sovereigns do not have the same authority in all parts of their territory, but they are limited, sometimes by privileges that they themselves have consented to, sometimes by other agreements; and **that it is always an act of despotism when**

princes or republican governments, regardless of acquired title under which they rule in a province, want under the pretext of reason of state, to introduce a uniform organization, and exercise everywhere the same fullness of power [plenitudo potestatis]; a leveling which is no less absurd than unjust, since it is repugnant to the nature of things, provokes general discontent, and always ends up being fatal both to the peoples and to the sovereigns themselves.”

As to usurpations and invasions, though unjust in origin, and for which the best remedy is religious devotion and beneficial alliances, the abuse of power does not invalidate prior legitimate possessions, usurpation of a state is an usurpation of its property and independence, not necessarily of its persons; extended usucaption and good rule can rectify abuses with time, and if the despoiled sovereign renounces or voids his claim, from that point on it is held with fullness of right. “Indeed, during such a long space of time and so many ensuing changes and mutations, it becomes impossible to restore everything to the original state; a multitude of new bonds have formed; new pacts lawful by their nature were concluded without complaint, and can not be canceled without a new injustice, without hurting the rights of many of the innocent. However, as soon as there is a need to choose between two inevitable evils, it is certainly better that an old injustice, already forgotten and long since healed, continues to exist with its consequences, as to commit to new ones which would lead to still greater misfortune... There is therefore no doubt that a sort of prescription was established with its effects between sovereign princes as well as between individuals, and that, by means of long and peaceful use, a portion of the territory, originally usurped, can become legitimate property.”

XLIV. On the causes of states losing their independence.

Haller enumerates eight of them below.

“It is the necessary consequence of the weakening of power; therefore, independence is lost: 1. By the too frequent sharing of domains or territorial properties; 2. By their voluntary alienation; 3. By the total extinction of the sovereign family, without natural or testamentary heir; 4. By quarrels with neighbors, unhappy wars and overly costly peace treaties; 5. By absolute or conditional surrenders; 6. By too many concessions, or what are called political servitudes; 7. By an unjust force, either foreign or internal. 8. By the loss of relative power.”

“As to sales, exchanges, engagements, donations, etc., the history of the Middle Ages offers a multitude of examples; they erased a great number of independent seigneuries, the existence of which is still attested by ruins, but of which we hardly know the names today, because for a long time they have been merged with other states. Have we not seen even to this day the last Margrave of Ansbach and of Bayreuth assign these two beautiful principalities, that is to say the rights and territories, as a dependency of the King of Prussia, for a life annuity? However these kinds of sales are now very rare, because the availability of cash and the development of more extensive relationships now offer the sovereigns opportunities for borrowing resources to meet extraordinary needs; and this expedient is indeed much preferable to the alienation of lands, because, with a good economy, one can easily manage to pay his debts, whereas a sovereignty once lost is hardly ever recovered. The abandonment or voluntary cessation of a principality, by which it would enter, so to speak, in the class of things without a master and would become the property of the first occupant, is hardly presumable today, although we may have seen examples of this from the time of the Crusades and the great national migrations, when one left a country to go and settle in larger and more fertile lands; but still frequently whole countries are erased from the number of states, when by the marriage of a rich heiress they pass into another family which unites them to its own domains; and it is thus, for example, that by the alliance of the only daughter of Charles the Bold with Archduke Maximilian, the vast possessions of the Dukes of Burgundy became, in 1478, provinces of the Austrian monarchy, and ceased to exist as an independent state.”

“For if, by any event whatsoever, a sovereign died without leaving issue, all bonds of human society are not dissolved for this, so that each individual becomes free and independent, or be forced to find a new master. Only the supreme link, the first link in the chain is missing. Power does not return to the people, as those who make it emanate from a social contract claim: it cannot return from where it has not come; but the sovereign power or the complete freedom naturally falls to those who subject directly and immediately to the prince, and were committed to him alone. Consequently, the first officials and vassals, as well as the chartered communities, have at the moment no master that becomes independent or sovereign, and it is only a question of whether or not they can maintain themselves in that position. All the other inhabitants remain in their former relationship to the king, their immediate lords; they continue to serve or depend on them as before, in this respect nothing has changed either in their rights or in their obligations. As for the goods and personal income of the extinct dynasty, they come under the category of things without an owner [res nullius], and become the property of the first who

seizes them. No doubt there sometimes arise quarrels and fleeting wars, even claims to the authority of the old master; but everything ends with treaties and amicable arrangements, with acts of recognition, conditional submission and bids, engagements in certain services, etc.”

“Because as independence rests on the possession of a free territory, it must necessarily cease with the loss of this same territory.”

On feudal pacts, suzerainty, and treaties of conditional surrender: “The Teutonic Order in Livonia and the Duke of Courland have ceased to be sovereign since the former has submitted to the Poland and the latter to Russia, although they had reserved their property, income and number of manorial rights. The cities of Mulhouse, of Venice, of Genoa, of Lucca, etc., are no longer counted among the republics, although they partly preserved their internal constitution, their goods and their income, or that they can at least keep them; but they now recognize a master, and are subjugated by the fact of their voluntary or forced submission. The former acts of infeudation, although they often turn to the benefit of both parties, however, also nullified the legal existence of a sovereign state; for although a prince who makes himself the vassal of another retains the full and entire enjoyment of his domains and of the seignorial rights which depend on them [dominium utile], nevertheless, by this pact, he essentially transmits the property [dominium directum] to another; he therefore renounces all right of alienation, and recognizes the overlord’s power to appoint a new usufructuary in the event that the vassal fails to fulfill the feudal oath, or that his male descendants come to be extinct.”

Haller’s most provocative statement, however, is that the state would still remain intact, just greatly weakened, if all of its subjects were to be exterminated, as long as the head still survives (but not for republics, of course):

Finally, we may be tempted to believe that a state can also cease to exist by the annihilation of the people, that is to say by the emigration, the extermination or the dispersion of all the subjects, because in this case there would be, it is claimed, nothing left to govern. But this singular opinion, expressed by some publicists, is nonetheless contradicted by reason and experience, and only comes from the radical error of the revolutionary system, which makes the state a product of its subjects. But if on the contrary, as we have sufficiently proved, the state is formed by the possessions and the independence of the reigning person, its existence and its duration cannot depend on the accidental and variable number of servants and subjects. That all the branches, the leaves and the fruits of a tree perish by the cold, or be scattered by a storm: the trunk, rooted in the ground, will always reproduce others; but instead extirpate the root or the trunk, and the whole tree will fall with its branches and twigs and leaves.

Likewise, suppose, if you will, that by an extraordinary event, unheard of in the annals of the world and hardly conceivable, all the subjects of a prince emigrate, perish by the plague or are exterminated and dispersed by the sword of an enemy, and that the territorial sovereign alone with his country survives this disaster: he will soon find other men who for their own interest will seek his service and depend on his power by relations entirely similar to those of his former subjects. The state will have been momentarily weakened, but it will no less continue to exist under the same shape and will have the same name... In short, the decadence and the fall of states do not take place any more than their formation, by the arbitrary will of the subjects, who, as it is claimed, would have the faculty to make or to undo a civil society: but it is on the contrary a constant and immutable truth, that the state, or the social bond accomplished, is born and dies with the independence of its leader; it appears on the horizon as soon as an individual or collective person amounted to a complete freedom, and eclipses when this sovereign is himself destroyed or subjugated.

XLV. On the macrobiotics of patrimonial states.

The macrobiotics of states, also translated in French as the “high politics” [haute politique] of states, consists in the art of prolonging their life and particularly their independence. Mirror-wise, it is the art of delaying the causes that lead to the fall of states. Haller criticizes his predecessors, the cameralists, for their primary focus on the incidental aspect of economic development:

Their policy [the cameralists], which they boast with such a proud emphasis, is reduced only to these hackneyed commonplaces of agriculture, industry, trade, education, etc.; or else to this fatal and vulgar art of multiplying needs and increasing financial profligacy; but as it regards to the preservation of the social bond, which alone guarantees the possession of all other happiness, there is no question of it; because these writers consider only the fruits and not the root, they see only the people, and never the founder and the father of the people. Agriculture, industry, commerce, the arts and sciences, the true religion excepted, are specific companies that don't blossom any worse when left to the free activity of the subjects. What sovereigns can do to encourage and to promote these various sources of well-being, is neither a rigorous duty on their part, nor an indispensable necessity; they are pure benefits and acts of generosity. Moreover, all this material prosperity does not prevent the decadence of a state, and history proves us enough examples which the most flourishing empires, where the culture of the spirit, the letters, and the arts shone with the most vivid brilliance, but which nevertheless fell more quickly than others, either by external aggressions or by interior catastrophes and mere political errors.

Haller is ambivalent about Machiavelli. He recognizes some good principles, but of limited use due to his scattered and unsystematic character. "The model that he traces is not drawn from a healthy and true notion, from a first idea and its just consequences, but it is brought together by chance from various examples drawn from experience, consisting of the often incompatible qualities of several princes of his time who seemed to him the most skilful. This is why the most essential maxims are lacking, and the means proposed by the author are, for the most part, only petty and secondary resources which do not relate to the substance of things," says Haller.

Upon listing the lifespans of various states, Haller goes on to state that the cardinal plank of every state's life is the "the preservation intact of the territorial power, that is to say, domains and possessions that form the basis of the principality, the conditions of its existence and of its stability. However, for this purpose, it is essential to introduce indivisibility, the right of primogeniture and a well-defined order of succession." This was covered satisfactorily in Chapter XLII, and so Haller spends the rest of the volume to analyzing the remainder of the macrobiotics.

XLVI. On good economy and financial independence.

Good economy or "financial power" [Finanz-Macht] consists negatively in avoiding the disastrous consequences of the alienation of the domains, an excessive mass of debts, excessively levying taxes, and positively in the conservation and the proper administration of capital, increasing income, reducing expenses, and doing accurate cost accounting.

"The superiority of wealth is the kind of power by which one reigns most naturally and most firmly over others; because it makes it possible to satisfy the most universal need of men, that is to say, to procure for them not only what is necessary, but the amenities and conveniences

of life; to offer them all kinds of honorable and useful advantages, and to procure friends and devoted servants. It is therefore a necessary to endeavor not to spare this power, in order that the sovereign is always the most preponderant man in his country, and surpasses all others, even in wealth and in territorial property. Now, this will not be difficult for him, and with any reasonable economy, he will never have to fear that of private individuals becoming their superior in wealth and therefore harmful to his throne. That if we have seen in history some examples of great vassals who, by the increase of their personal fortune, prevailed over their masters, and thus rose to independence: the cause in was in the dissipation of kings and in other political faults, or in extraordinary accidents.”

“Moreover, a good economy is the indispensable condition for the success of all large and useful enterprises; it alone offers the means not only of preserving local properties, but to take advantage of every opportunity to learn of new and well located ones; to multiply the sovereign rights, and perhaps even to exercise them in neighboring countries; to found all kinds of useful and productive establishments; to attract distinguished talents to its service; to appropriate, so to speak, treasures of intelligence that are better, than all the gold of the earth; to contract advantageous marriages that increase wealth and especially alliances, to wage a necessary war in opportune time, and what is more difficult still, to profit from the fruits of the victory; to establish favorable relations everywhere by alliances and treaties; in short, to increase its power and influence by a thousand different ways, and thereby to secure its own sovereignty.”

On the consequences of profligacy in alienating the sovereign domains, for both subjects and sovereigns:

This alienation is all the more odious to them, as it forces them henceforth to serve two masters at the same time; in addition, their self-love is wounded by no longer belonging to the prince, the country's sovereign; they regard themselves as abandoned, and indulge in complete indifference, or else their affection and obedience turn to the new owner who alone nourishes them, and with whom alone they henceforth have natural and direct relations. However, for the sale of domains, the sovereign waives own solid fortune, at his independent income, one that nobody can challenge him with justice, to which nature has given him and that he should be its sole author. On the other hand, he is reduced to the need of asking his subjects for subsidies and taxes; to depend solely on their good will to him for the grant, or to extort them of strength, and to behave as though he were an enemy of his people.

Let us imagine a prince without domains, without properties, and who nevertheless claims to retain the supreme authority in all his fullness in his former territory. What a weak, inconsistent, and necessarily odious master! The first breath will knock him down, he will only be a foreigner in his own country, and will no longer have any real right to govern it. He surpasses no one in natural and individual power; no one will need to him, and he will need everything from everyone, even his basic sustenance. So one could say with reason that the subjects are forced to feed the sovereign, rather than originally the sovereign who feeds them rallied around his power; that it is only an unnecessary burden for the people, which one could indeed do without. In truth, he will still have for him a certain habit of obedience on the part of his subjects and the need for public tranquility; he will dispose of the taxes previously established, and will consequently be able to pay the troops and employees who will render their services to him. But there will still be a bond of love and of voluntary compliance? Whether there is a crisis, or just two or three setbacks, and you will see how weak and faltering his authority is. How easy will it not be for an external or internal enemy and, moreover, a large landowner, to seize sovereign power, if he only promises the reduction of taxes, and ensures the great landowners an honorable existence. Everyone would go along with such a usurper, because in him each one finds his interest. The change of master will eventually be indifferent even to employees and troops, provided that they obtain equally advantageous places and ranks, and that moreover, they are relieved in their capacity as taxpayers.

This is also why all of history proves to us that a great number of monarchies have fallen solely through the alienation and commitment of their domains. Among the small principalities, one could cite many examples; and among the big ones, who does not know what happened to the Merovingians and the Carolingians in France, of which the last especially had been so weakened by the dissipation of their domains, that in 943 the king Louis IV no longer possessed in all his kingdom anything but the city of Laon? Then the vassals surrendered one after the other independently of the crown, without resulting in the least commotion. The high clergy chooses kings, that is to say special guardians; and Hugh Capet, Duke of Neustria and of Burgundy, who surpassed the kings in land properties and personal consideration, had no trouble in the struggle to take his place. Similarly as the kings or emperors of Germany who fall to the donation or the sale of sovereign rights and the many domains of the crown; the elevation of the great vassals, who, having no need of their leader, are still more detached; the alienation

of the courtiers, who had more of a direct relationship with the emperor; unhappy wars, and disastrous treaties of peace which consummated the ruin, were only the consequences of this first and capital fault. Thus authority, devoid of its roots and of its points of support, collapsed of itself, and, by an unheard-of event, we saw in 1806 the last king of Germany abdicate the crown as an unbearable burden, and renounce an empire which formerly was worth his owner the first rank among the powers of Europe, including the dominion extended from the Livonia to Marseilles, and from Amsterdam and Hamburg to Naples. In vain would one try today to re-establish it, even within narrower limits, since such an empire is not formed by paper constitutions and by simple alliances, but can only come through personal power and a large number of covenants with subordinates. Far from alienating his domains, a wise prince who wishes to maintain his authority and independence for a long time, must on the contrary keep them intact, free and clear of all charges, and never neglect any opportunity to increase their number and independence. The purchase of new land and of sovereign rights is the best job he can do to increase his savings; and the power of a sovereign, supreme territorial lord of his country, would be the strongest guarantee of all, at least against the danger of the interior; since stripping the prince of all his properties would require an excess of violence and injustice to which we seldom indulge, and which never lasts, because the great number are in no way interested in it, and an usurper from within would have neither pretext nor means to accomplish it.”

Moreover, far from wanting to break up royal enterprises and monopolies, he favors their conservation and strengthening, since the king ought to live off his domains:

The modern sophists also took the mask of financial order to better strip the sovereigns of any natural or personal power, and to belittle them in the eyes of the people. They piled up a host of pretexts to represent the domains of the sovereigns as harmful, although in theory, they qualified them as national goods. The administration, they said, is difficult and prone to numerous abuses; their product is always very modest; it would be better to sell them to pay off debts that cost a lot of interest. Moreover, in all cases, these goods would be more productive in the hands of private individuals, therefore agriculture would gain, the population would increase, and, in addition, the domains themselves would enter the category of taxpayer funds. But already in this first report, purely financial, the assertion is false and contradicted by experience: the royal estates and enterprises are so well maintained that often they could serve as models. For this, it takes nothing more than knowing how to choose a small number of loyal and capable employees, and interest them in such a way as to find their own advantage in the improvement of one's goods. Far from it being that the product of these estates is always modest, that it is on the contrary susceptible of an indefinite increase, and that one could prove, pieces in hand, that after four or five generations, their annual income often equals, and even exceeds the sum of the original purchase. In all the ancient monarchies, the product of the domains and the sovereign rights formed, if not the totality, at least the greater part of the income of the prince; and even if the debts cost more annual interest than the estates of equivalent value earn, it would still not follow that it was advantageous for the prince to sell these estates for extinguish debts.

“We will even agree that debts which are modest and in no way onerous, those which can be repaid at any time, or whose capital is employed in useful and productive establishments, such as in banks, credit unions, insurance, pensions and savings, do not impair the account or the power of a prince, and may even form a new link between him and his subjects. But the weight of too great a debt reduces the most absolute sovereign to a painful dependence and makes him enemies rather than friends. For first of all, all his subjects are not his creditors, and even the interests of those who are, far from always being identical with his, are very often opposed to him. The nation is, so to speak, divided into two parties, the creditors and debtors. However, the latter only support with reluctance so many new charges which are imposed on them only so that the former receive their pensions exactly, and without resulting in any visible advantage for the country. We must even admit that their complaints in this regard are not entirely unfair. Thus, when things have come to a certain point where the honor of the prince, which rests on the religious fulfillment of his promises, perhaps even the change of the master, will become indifferent to the taxpayers, provided they can hope for relief in taxes. Any war will be hateful to them, because they will only see an opportunity to overwhelm them with new taxes; they timidly offer support or none at all, and prefer even the most shameful peace with the sole hope of being freed from some extraordinary expenses.”

And here is the closest that Haller gets to addressing modern political economy:

It is the basis and the support of independence, the first condition to enjoy it peacefully, to ensure it and to give it even more extension. But what now is this **economy of princes, which is wrongly called political economy**? To resolve the issue, we can go to the policies of those many modern cameralists, whose sumptuous operations are reduced to pile up, either openly or under the disguised forms, payable debts, to load to posterity the care of paying, or rather to support bankruptcy; to extort new taxes from the subjects; to dissipate capital and income in advance; to refuse compulsory payments, to postpone or reduce them by their private authority; illusory resources which, far from attacking the evil at its root, further increase it and end up making it irremediable. The economy of kings, like that of individuals, consists in the sobriety of needs and in the use of means; it consists of untouched conservation and of the advantageous use of capital of all kinds, of the increase in annual revenue, the spending cuts, and finally of proper accounting, with which the prince always remains informed of the state of his affairs, and which still suggests views for improvement. Here is all the financial science, the only true one, the only one which aligns the goal which one proposes and which, in the administration of a royal fortune, can produce incalculable results, without harming in any way the dignity of the sovereign. First, capital funds, under which we understand all domains and other landed properties, buildings, land royalties, lucrative settlements, titles of debts, provisions in kind, household services, cash, etc., not only must not be used up, but it must be carefully administered and increased as much as possible. In addition, it should be maintained in all respects, not to distort these various sources of capital but to still possess of all kinds both movable and immovable; for, as injustice and misfortune are never universal, a fortune thus shared is the most solid of all and can neither be dissipated, nor ravished or lost altogether. Finally, it is also necessary to have a part of it constantly available, either in cash or in services easy to perform, so to carve out a fund of reserves for cases of necessity, to be able to support and be careful in some delay in the return of income, and to be able to make significant advances for useful business. The increase of income requires above all interest-bearing capital. However, there is certainly neither kingdom nor principality where, without in any way charging the subjects, one cannot, with a little care and understanding, make ordinary income sources much more abundant. What prevents the princes from increasing the product of their domains by a government more responsive and more economical? To gradually increase farm leases or other fees at the time of contract renewal? To sell the natural products at a better price? To reap greater profit from hunting, fishing, forestry, etc, all lawful and easy means, which, taken together, already produce considerable resources? Another large field of noble endeavor is opened up by improvements in the operation of regalian rights, because, as a just and wise administration, these large settlements of industry or of commerce are equally useful both to the prince and his subjects. Nothing prevents him from extending existing regalia, and even creating new ones, without disturbing anyone in his property or in his industry.

XLVII. On the judicious selection of employees and servants.

“Domains and riches alone are not enough to maintain power and independence, although they form its basis; it is still necessary to have friends, assistants and auxiliaries to administer these various goods with intelligence, to not be overwhelmed by business, and finally to be

supported entirely both in counsel and in execution.”

Under no circumstances should you hire liberals: “As a result, it is a cardinal rule to exclude and to return the upper seats, and if possible even menial seats, of all who profess unholy and revolutionary principles, or, as they are called today, liberal principles; an exclusion which, moreover, would contribute much more than we think to shake the prestige of these false doctrines, and to re-establish the reign of old and true principles.” Anyone who “would regard, either openly or secretly, the people as the sovereign, and the prince as the official; or who in general would share revolutionary opinions against all spiritual and temporal authority, and who after God would still believe himself especially obliged to other men than to his master” would work for a state’s downfall rather than its preservation, even if out of ignorance than intentionality.

On the imprudence of hiring foreigners:

“The too frequent preference given to foreigners, unless it is justified by an obvious utility, is a disfavour, a kind of disaffection shown to the natives, to whom we owe more, however, since they are the first and oldest friends of the prince; it even hurts their point of honor, because it supposes that we disregard or disdain their virtues and talents; and therefore it is the seed of discord in every country of the world. In general, known natives and enjoying a certain fortune will always be more suitable, particularly for high places. First of all, they are usually better informed of the state of things, of people and of localities; and, in order to give advice in the administration of a State, it is necessary, above all, to know it. As a result of the personal consideration which they enjoy, they find a more voluntary submission; one obeys them without repugnance, because one is already accustomed to regard them as one’s superiors, and that is why they do not need to resort to the coercion or violent means; whereas strangers and other upstarts excite envy everywhere, become an object of hatred, not only for those whom they have supplanted, but also for the mass of the people, and that the resistance which they meet in the bad will of men, almost always draws them and forces them, in a way, to harsh and despotic measures. Moreover, eminent nationals by their social position and independent for their means of existence, also have more noble sentiments; they already have what others aspire to, and are much less tempted to sacrifice their duties for their interests. Rooted with their families in the soil of the homeland, exposed to all eyes, they are obliged to respect each other more and to spare their reputation, because the memory of their crimes and of their sins would eternally blacken their name while that of a stranger can, at the first setback of fortune, retire to his place of origin, or escape the consequences of his shame or punishment, and go elsewhere to enjoy the fruits of his misdeeds. Finally, the existence of the former is more intimately linked to that of the sovereign, and this connection, as much as their personal fortune, makes them cleaner and more disposed to disinterested efforts and feelings; in case of distress and of misfortune, we can expect more of fidelity and of perseverance; instead of the foreigner who seeks only his personal interest in the service of the prince, easily abandons it as soon as he no longer hopes for the same advantages, and usually wants to share with him only the good and not the bad fortune.”

Another rule is to limit the number of officials and to have as few as possible; for in the first place one is much better served by it, since none of them can rely on the others, nor impute to them the faults of his own negligence; in addition, less servants are more interested in the affairs of their master, and much more fond of his person, because they are in more frequent relation with him. Sufficiently occupied with their duties, and fulfilling them with joy, they do not think of anything else and do not attach their hearts to foreign interests; the service of the master becomes their personal affair, and forms, so to speak, their whole existence.”

The overproliferation of bureaucracy is due to “the extravagant idea which wanted to make every rule a sovereign duty, of meddling in everything, to watch or to dominate agriculture, commerce, the arts, public and private education; to care for the sick, the poor and even the interests of every city and of every village; which, added to the standing armies and the levying of new taxes requires a huge crowd of officials and of clerks, which we did not need before. **To this was added the false doctrine of the division of powers; a system of fragmentation borrowed from the workshops of a factory, and which has been pushed, even in the smallest affairs, to the point of absurdity and ridicule; to ensure that no man could any longer take care of two things, neither at the same time nor successively, but we imagined, on the contrary, that, since the parts of a whole, or the various functions indispensable to complete one and the same task, can be analyzed and dissected endlessly, it was necessary to establish also for each of these functions as many relevant people or authorities.**”

(The prohibition against an individual holding several offices at once was known in Poland-Lithuania as *incompatibilitas*. Haller would have rejected any such limitation.)

An equitable system of seniority, promotions and rewards is also beneficial; to have a *cursus honorum* that officials can strive to climb.

XLVIII. On maintaining personal consideration, respect and moral authority in the land.

This consideration is nothing more than a recognition of superiority; it necessarily derives from the real possession and the outward manifestation of all kinds of preponderance.

Symbols such as the regalia and the crown ornaments: “In this respect, the various emblems of royalty, the origin of which goes back to the most remote antiquity and which are still used today, at least on certain solemn occasions, had been very well imagined. The crown, the scepter, the orb, and the *main de justice*, symbols of the glory of the sovereign dignity and supreme power; the throne, as the natural image of superiority or elevation; the sword, as a sign of the obligation to protect and to defend religion and the law...”

“Vast, beautiful, richly decorated and furnished dwellings; delicate and splendidly served tables, a numerous domestic staff, brilliant and distinguished by the fortunes of those who maintain its upkeep; sometimes even feasts and solemn ceremonies, none of this is

indifferent from a political point of view; and princes who, by convenience, or by excessive saving, or even a mistaken popularity, restrict too much the brilliance of their home, and want to, so to speak, live as frugal private individuals not only fail their goal, but they will still lose much of their consideration. Far from a suitable splendor hurting their subjects, it flatters their self-esteem; because any man is happier to serve one mightier than himself, as he wants that balance to be outwardly manifested, and obeys with repugnance a master who demeans his arrangements at the level of his subjects, and does not stand out from the rest of the men by anything that catches the eye.”

The most important thing, above all, is to avoid the use of revolutionary and philosophically liberal expressions in all official written correspondence and orders, and to stress one’s personal power and acquired rights:

“A sovereign must give his laws and orders in his own name, which, in the form of an address and with a suitable salutation, must be placed at the head of each ordinance, in order to announce where it comes from and why it is obligatory. In the same way also it is necessary that in all his acts, letters or messages, he speaks of his person, of his house, of his family, of his rights, of his domains, of his subjects, and not of his employment, or of his power delegated to him. For the dignity of a sovereign is not an employment, except in relation to God; on the contrary, it is an eminent fortune, a seignury founded on personal rights; the sovereign creates and confers jobs, but himself has none. However, if despite this the kings only address their people in the name of the law, which they nevertheless make themselves; in the name of the state, of the administration of the state, of the public oversight of the government entrusted to them, or, as we have seen in Russian ukases, in the name of the grateful homeland, then it is clear that these expressions borrowed from revolutionary schools, or at least republican ones, accredit the perverse idea that the law, the state, the administration, the country, etc., are anything but the prince, or an addition to him, which portray his person as indifferent, and destroy all respect of his subjects for him.

Similarly it is dangerous to appoint the officers of the sovereign as “servants of the state” and “public officials” ; but we must, on the contrary, call them officers, servants or royal employees, as they indeed are. Their titles must indicate the nature of their functions and the relationship to the master who appoints and pays them, whose affairs they manage, and to whom alone they are bound by the fidelity of an oath. Also this important character, which constantly renews the idea of true relations, was formerly specific to all the names of these officials, and it was very wrong to change them, to replace them by a bland and philosophical language, a fault which is more serious still when it comes to high places, for example, to those of ministers and provincial governments, where the retention of older titles would have been needed elsewhere. Calling the capital and income of the prince “state finances,” “public finances,” or even the contributions of citizens; describing his properties as state territories or national property, of princely expenses as needs and expenses of the state or public goods and services, this is all a very vicious language, and also fatal to princes and peoples; to the former, because it tends to strip them of their properties, and ends up making them believe that they have nothing to their account and only live on the property of others; the latter, because, under the pretext of the needs of the state, they can be forced to pay for everything up to the table of their sovereign, to ensure that arbitrary and forced taxes will no longer have any limit.

At least it will result from these false locutions that, on the one hand, the sovereign will be contradicted and criticized in any use of his income, on the pretext that he is disposing of the people’s money; and that on the other, we will no longer believe that we owe him any attachment, any feeling of gratitude, not even for special favors and graces, because one no longer considers them as benefits coming from his own person, but as debts of the state. Finally, do not address the servants and subjects of a prince as citizens , much less, as was done in France during the revolution, and since then in Russia, the call of children of the homeland, etc .; but on the contrary one must use the term specific to their social position, or rather, as was done in the past, enumerate in the preamble of each edict the various classes of subjects, so that

each recognizes the relationship in which he finds himself with the prince, and knows why and to what extent he is bound to obey his orders. The word for citizen is applicable only in republics, and even then it is only appropriate those who are members of the sovereign city, not to residents or simple inhabitants. In a principality, on the contrary, this term is quite inappropriate, because it supposes that the subjects form among themselves a sovereign community, and are the fellow citizens or the associates of the prince, having equal rights to his existence, to his possessions and to all that derives from it. That if therefore the sovereigns tolerate that in edicts and ordinances which bear their name, their subjects are called citizens, and the king only a public official, or at most the head of state, much like the mayor a city is the head of this community: it is obvious that thereby they accredit themselves the misconception that the subjects are above the prince, which completely destroys the respect that was shown to him, by making the servants the masters, and the master the servant. We have thought it necessary to enter into some details on the danger of this false language, either because this observation is very important in our day, or because it proves the incredible influence which revolutionary principles have usurped in our modern states. Even in countries where the system of revolution has not been put into practice, we have at least managed to introduce this language to pervert all principles, distort the most fundamental notions, and subversively undermine the foundations of the sovereign princes' existence.”

XLIX. On the martial spirit and military virtues.

Haller is not a pacifist by any stretch. The preparation for war is not regarded as a disposition for belligerency and aggression, but as an extension of personal self-mastery.

“Besides the intact preservation of territorial possessions, the wise proportion between revenues and expenditures, the judicious choice of its employees and the scrupulous attention in maintaining, by personal superiority, the inestimable treasure of respect for people and the highest consideration: the warrior spirit or the military virtues are still necessary to any prince who wants to ensure his throne and his independence. For by virtue of their sovereignty, kings and princes do not have a superior who can protect them against insults and acts of violence, but which, left to themselves, they find support only in their own power: it is clear that they will inevitably perish if they do not know how to use these means to oppose the force to the strength and repel aggression. In vain can we count on a perpetual peace, despite the most just and the most fair conduct, as it is not the master of taming the passions of others, and cannot always prevent error and injustice. Disputes and conflicts are sometimes inevitable, and then friendly performances are ineffective, they can not, between independent persons, be ended except by force or by treaties; because, basically, all wars are nothing other than a compulsion of justice or fight for a fairer and more advantageous treaty. That is why wars are as old as the world, and they will be around for as long as men will exist side by side. They are the last resort to enforce the natural law. By wanting to ban war, we would be doing nothing other than promoting all crimes and all acts of violence, while ensuring them impunity; although we can declaim it with pompous sentences.”

“The private individual himself loses his honor, his reputation, his fortune and his personal freedom, if, in cases of necessity, or in the absence of a judicial authority, he is not ready to defend himself, that is to say go to war; instead of thinking about it twice before attacking someone whom we know in advance that he will not allow himself to be insulted or offended with impunity. However, the warrior spirit should not be confused with the love of war, and in fact they are not always united. Often it is impossible for lack of means; often also imprudent, because it offers no chance of success, and in its very use one must observe the precepts of humanity. We must not use the force of arms without good reason or without necessity, and caution must be exercised in pushing the right of defense beyond its just limit, to stop as soon as the goal is achieved. Loving the war only for its own sake, seeking disputes and quarrels, it would be, in a king, a conduct not only unjust and barbarous because of the calamities without number that war brings, but still very risky, because the fate of the fighting is still uncertain, and often the strongest finally meets his match. If the result of the struggle is unhappy, it can cost the sovereign the loss of his country and of its independence, and that would be a foolhardy to expose himself to such peril without cause or need; in short, all the same we would not be defeated, but that success and setbacks would be balanced in such a way that in the end we would not have gained anything by fighting and that we would not obtain greater security.”

“But how do you acquire this military talent? No doubt it is largely a gift of nature as well as the energy of nature, the extent and the liveliness of mind, a force of constant resolution; qualities that education and practice does not create, but they can, however, develop and strengthen the germ. **Thus, for example, a particular solicitude to preserve the purity of blood**, especially by the choice of good wives; later weddings as among the ancient Germans;

temperance, which learns to endure privations, which strengthens the soul and is very well reconciled with the kind of life of a prince; of frequent bodily exercises, gymnastics, horse-riding, shooting, hunting, which is like a picture of war...”

“Instead of training them to be sovereign, that is to say superior, energetic and generous patrons, it applies rather to make them effeminate dolls, men of letters, sophists; in short, precisely what they should not be. All war is represented by the philosophers as a horrible scourge, whereas it is, on the contrary, the indispensable means and often the only means to preserve peace and independence. For this assertion, repeated so many times by our modern philosophers, who claim that war ruins states, is, in large part, false, or at least subject to many restrictions. First, its absurdity is obvious in relation to wars with favorable outcomes, since these kinds of wars create and strengthen states, and it is by victories, above all, when independence is acquired and preserved. So there is no kingdom or republic in the world that has arisen or maintained itself in the long run without military efforts and success. As for unhappy wars, they do not ruin states either directly and by their very nature; if they can become fatal to the existence of empires, it is by other accidents which sometimes follow in their wake: by the discouragement and the despondency which they produce, by the attack which they produce, bring them to the consideration by the weakening of the resources and the weight of overwhelming debts; and above all, by the onerous conditions of peace, prepares their fall in the future, that fall, however we would not have avoided had we not given any resistance but, on the contrary, would have arrived more promptly and more dishonorably.”

L. On avoiding dissensions and internal conflicts; maintaining dedicated and loyal subjects.

Civil wars are the most dangerous of all. One must a) wage open war against the insurgents and gain victories; b) not treat the insurgents as common criminals, but as enemies; c) dissolve their alliance and conclude particular peace treaties with some of the leaders of the rebellious parties.

First, to ensure goodwill from subjects and to minimize risk of rebellion, one must “generally avoid premeditated acts of violence; to abstain from the insane fury of innovations and uniform laws, which, far from being useful to princes, is rather fatal to them; not to interfere unnecessarily in the subjects’ way of life; leave them the peaceful enjoyment of their economic and social existence; not to disturb them in their religion, their language, their mores and their habits; respect the covenants, statutes and generally accepted customs; do not increase taxes, or ask for them only in moderation and for obviously useful objects; finally to use only favors and disgraces to achieve purposes that can not get through by other means... A sovereign who observes them will certainly have nothing to fear from his subjects, and can, in this respect, count on the stability of his empire. Even if he would conquer the country by the force of arms, there will be no need, on the advice of Machiavelli, to place many garrisons, nor to transplant the inhabitants, nor to disarm them or to establish among them foreign colonies, nor to always reside there in person, still less to exterminate those

who previously had been powerful and free. Provided that he does not overturn the rights of others, even the most rigorous exercise of his own will should not make him formidable enemies; it will be accompanied by numerous errors, partial faults and other human weaknesses, which, without offending the generality of the people, strike only a few individuals; and, although we always do better to abstain of these mistakes, since they are contrary to duty and harmful in other respects, however, it is certain that they will not inspire insurrections.”

Outright conspiratorial leagues are infrequent and “no considerable insurrection has ever been undertaken against the existence and the real rights of princes, not even against partial and temporary abuses, but that all have been provoked by a general and unbearable oppression according to the particular character of the peoples; for example, religious persecution, by harassment related to language, customs; by despotic innovations, by the suppression of private pacts and civil laws, etc.”

Banishing internal enemies, though clearly useful, may not be a permanent solution if these emigres and exiles start conniving with foreign powers to undermine your rule. Huguenot emigration to the Netherlands is cited.

If insurrection does break out, wage forceful counterinsurgency and never treat the insurgents as a united front, but divide and conquer among their ranks wherever you can:

Besides, this conduct is commanded as much by the force of circumstances, which one never thwarts with impunity, as by natural equity; because as soon as the insurgents measure their forces with those of the prince in open warfare, they cease, at least momentarily, to be his subjects; and after all, it is nevertheless not an unforgivable crime to fight, in case of need, for real or perceived rights. But the great political advantage of treating the insurgents as enemies, and not as culprits, is that, on the one hand, this maxim authorizes more energetic and decisive measures, and that, on the other, it nevertheless has something noble and loyal of it, which tempers the mutual exasperation and opens a door to reconciliation. **Because we are thus exempted from all these legal and judicial formalities which would oblige us to note first by a long and uncertain way to prove its illegality, the degree of premeditated guilt, etc., formalities which by the public justification of the accused and by odious recriminations, could compromise the position of the prince,** and would be all the more absurd and out of place if the rebels, for their part, observe neither laws nor forms of procedure towards the prince and his friends.

However, it would also be a barbarism, and that cause of terrible reprisals and irremediable determination, to not obey certain precepts of humanity against insurgents that are generally adopted in wars against far enemies; for example, to not kill prisoners of war, to not observe armistices and capitulation treaties, etc. **The maxim to consider the insurgents as enemies is therefore to its great advantage that it softens and opens a door to peace, since we can negotiate and compromise with the enemy, never with the guilty. Moreover, the insurgents and their leaders would necessarily be driven to despair and forced to unite even more closely, if they were to be constantly and indiscriminately punished as rebels or criminals; they cannot submit with honor as long as they still have to fear a penalty or a scourge equivalent to a punishment. Great characters, who are always the more dangerous enemies, disdain and even repel the grace that we offer them, because it still supposes the existence of the crime: this is also why the ordinary and general amnesties that are commonly published in such cases, are absolutely unsuccessful, null and void, towards a party which is still in arms, and tends to tempt the fate of combat.**

LI. On concluding advantageous treaties.

“The result of these kinds of relationships can be called a power which is made up of good friends, or a federative power, the acquisition and maintenance of which is the most important part and the most difficult of high politics, because the powerful neighbors are those from whom there is the most to hope or to fear, and that moreover these relations do not always remain the same, but change and must necessarily change in the course of events. In truth, the art of contracting advantageous alliances can hardly be reduced to general principles. It not only requires a thorough knowledge of people, things and the circumstances, but still a talented individual to negotiate that which nature seems to have granted in preference to some nations, and more or less refused to others. A preponderant power and influence, capable of offering the adversary advantageous compensations, is, without doubt, the best means of facilitating the success of all negotiations. Only it can, even

without injuring justice, satisfy all kinds of worth, meet with many interests and get in exchange for other services, other services; between sovereigns, as between individuals, one contracts always more easily and more usefully when one is stronger.”

Interestingly, Haller is strongly critical of the idea of “armed neutrality,” and regards it as a major cause for Switzerland’s downfall in 1798 and its inability to return to the status quo of the ancien regime during the negotiations at the Congress of Vienna. Not having enemies is only the flipside of not having friends, and this is no good; full-blown isolationism could only be a greater folly in his view. Treaties of perpetual peace and permanent alliances are also rejected as a burdensome submission. He also rejects the idea of “natural borders” and “natural frontiers.” Geopolitics is not a substitute for personal considerations from friendly states.

In its heyday, the Swiss Confederation was never neutral; it is by far the more frank and moral policy to join one or the other side in a bilateral conflict. It has only adopted this selfish system since the Protestant Reformation, which caused such discord between the various cantons, which had to declare the neutrality, to disguise the inner weakness and to prevent a smoldering fire. If, in the admirable epoch of 1814, ancient Switzerland was not re-established; if no legitimate sovereign has returned to his rights and his possessions; and if, finally, a revolutionary mediation of Russia replaced that of Bonaparte: the cause is still in the deplorable neutrality that was followed at that time. That of the Elector of Hesse-Cassel, in 1806, made him lose without striking a blow his whole political existence, which he would undoubtedly have saved by his junction with one or the other of the belligerent powers, and that he has regained in 1814 as a sort of miracle. And the other neutral states of Germany, how many have not been despised, insulted, plundered, ransomed, reduced to bearing all the burdens of war, without enjoying any of its advantages! What other much more honorable role would Denmark not have played without this miserable neutrality, which nevertheless ends by degenerating into an alliance with the dominator of France? To whom, if not to her selfish conduct, does she owe the ruin of her commerce and the loss of Norway?"

"Moreover, it is only by loyal assistance that one deserves the recognition of one's friends and through which one inspires respect to his enemies. Whatever the outcome of the struggle, the condition of the belligerent will ultimately always be better than that of the neutral state. If the ally remains victorious, we find in him a grateful friend; for men, and especially sovereigns, are however neither vile enough nor traitors enough to abandon, in moments of success, their friends and supporters; instead, gratitude is often manifested by remarkable favors by of powerful intercession, and to this day, as formerly, many small princes owe their rise to greatness and future of such services rendered against perpetual alliances and friendship treaties."

"So the perpetual peace turns into a perpetual renunciation of any resistance, friendship into submission, the consistent obedience to the share of the lower: and more clear-sighted statesmen who predict the imminent danger, are decried as fearful alarmists and as enemies of peace. As a last result, these states, as well as the neutrals, find themselves friendless and at the first shock fall the prey of a preponderant neighbor; they have dug their own grave and are the victim of an impolitic alliance, which, contrary to the nature of things, had been made in perpetuity, without considering the ultimate purpose of all treaties and without regard to possible changing circumstances."

LII. On shrewd disposition in the face of unfortunate circumstances.

At the end of the day, nothing lasts forever, and when God has made His decision that the time has come for any particular state, one must resign to His judgment and salvage what one can accordingly:

If, for example, of little princes or republics that previously had enough means to defend their independence against their neighbors of equal force, or the states which were held in this freedom by the mutual jealousy of several great monarchs are, by the natural vicissitudes of human things, suddenly or little by little they are surrounded by the territory of an obviously superior power, realizes that their own forces are no longer sufficient to defend their full freedom, and that their old friends will be wiped out or removed: then it would be foolish on the part of these princes to still count on complete sovereignty. If the relative power, necessary to securing independence disappears, the vital force of the state is off. Although such a prince still retains all his acquired rights, he can have no further use for them, and under penalty of total ruin, is imposed by the law to be resigned to dependence or to the voluntary service of strongest.

Once things have reached this point, there remains no other recourse than to understand his position and to adjust his policy accordingly; of not formally renouncing his rights, but to claim those that will be more usefully exercised; to lend himself to amicable arrangements in case of conflict; finally commit to some services or other acts of kindness, and to obtain friendship and good intentions of a dominant neighbor, when he can no longer claim it by his own forces. No doubt such a necessity is hard and painful; independence or the sovereign power which one has actually enjoyed is such a rare and eminent fortune, but one may take advantage of the first favorable moment to shake off the yoke, and to regain on's former sovereignty.

If, on one side, abuses of power are unjust and reprehensible, for another, it is foolish and impolitic to stiffen uselessly against the inevitable effects of a higher power. Nature in its eternal decrees, has conferred the head of the empire to the higher, the arm or voluntary service to the lower, and nothing can escape the universal and irresistible law...

Besides, there are infinitely varied degrees, either of freedom or of dependence. Alongside the great thrones, and without enjoying complete sovereignty, there are still lives that are honorable and worthy of envy; **and as soon as one cannot remain entirely free, it is nevertheless better to be a favored vassal than a mistreated slave. That if, therefore, the maintenance of absolute independence has become impossible, there are still other goods to be saved, such as a less eminent degree of freedom and authority which may still have quite a large extent; territorial properties, from which all other rights emanate; seigneurial income, honorary distinctions and existence itself; advantages which are very well reconciled with the interests of the strongest, and which he does not usually refuse to those who recognize his authority.**

LIII. Historical remarks and conclusions regarding patrimonial states.

Haller summarizes the nature of the patrimonial state very well, the essence of which is the patriarchal relation of independent territorial lordship, the wide variety of obligations based on personal status, land tenure and vocation, and a natural freedom of every subject to be the master of that personal sphere which is properly his:

“But not only was it so in remote centuries: even today, and in all current monarchies, the authority of the reigning family or of its predecessors, to whose rights it succeeded, rests, according to the testimony of history, on an originally free territorial possession, which usually gives the name to all the rest, and which is called, for this reason, the cradle of the kingdom; or, as when before these families already existed other states, this authority is based on a heretofore feudal property or responsible for certain services, but in the following, either by natural increase of forces or by advantageous transactions, or finally by the simple relaxation of a superior bond, has been freed from all dependence, consequently elevated to the rank of a sovereign principality. To prove this truth, it will not be necessary to go through here the origin of all our current monarchies... **It was not conquest which founded states, they only enlarged them; because before subjugating other peoples, the conquerors were already in their country of heritage and hence sovereign princes. Moreover, by the very conquest, they did not do anything else than to succeed in the estates and rights of a previous prince, a mode of acquisition which, as we have shown in the forty-third chapter, is just or unjust according to the circumstances, but which, in both cases, always proves that the patrimonial bond was the first, the oldest, and that it preceded the military bond.**”

“No human authority can long endure unless it is attached to land ownership. **The generals and heads of nomadic hordes, of which we will speak in the following book, and who reign only in this military capacity over their retinue and their comrades in arms, cannot keep their empire, nor ensure the obedience of their subordinates unless sooner or later, justly or unjustly, they acquire a country, establish themselves in a fixed residence, and consequently pass into the category of free owners.**”

“We may speak of both domestic usurpers or victorious insurgents, who, by a sort of conquest on their own sovereign, seized on by force of his domains and of his power to reign in his place. Although such a belligerent title of acquisition is almost always illegitimate and criminal, it can however be considered only as an individual and temporary injustice, which produces, it is true, a change in the person of the possessor, but not in the essence of the thing, not in the very nature of the social bond. It is of the same in spiritual states or of the authority of heads of religious doctrine on the minds of their followers and of their followers. Once such companies should exist independently and especially to continue, there must necessarily be a more solid bond joining the first, and only as through purchasing, of donations or otherwise, these spiritual leaders or their successors should become also possessors of land, freed from any dependence.

Finally, the republics themselves, moreover born in a legitimate manner, or these free communities which, by the force of their union, rise to independence, cannot subsist if they are not also territorial and collective lordships; it is absolutely necessary that they acquire common properties which strengthen the bond between their members and give a legitimate title to the authority they exercise over other men, who inhabit this territory, who commit themselves to their service, and come to place themselves under their dependence. If indeed, it is the natural disposition of men to increase their power and their possessions to the result of strife, of wars and of treaties of peace, or finally by the ordinary course of things, such as through the

introduction of the right of primogeniture, or by virtue of purchases, from weddings, legacies of absolute or conditional submissions, several small states often merge into one, and that old sovereignties vanish or are subjugated to those who were their equals: **on the other hand, it is not uncommon either that, by opposite and just as legitimate means, by means of shares, allotments and partial waivers, or as a result of privileges and concessions, for land that a conqueror received as a profit or a fief, or finally simply by the loosening and gradual extinction of a higher authority, that vast empires dissolve into a lot of small [patrimonial states], and that the sovereignty and perfect freedom which previously belonged to only one, suddenly becomes the share of many.**”

“In the second place, it would follow from the supposedly philosophical system and based on the social contract, that all men would be uniformly subject to the political authority of their creation; that all would have sacrificed their freedom to the same degree; that without motive and without necessity they would all have become completely slaves: and this is why we meet this sad and despotic rule in all countries where philosophical principles have been more or less adopted as a rule of conduct. **On the contrary, in states concordant with their natural form, and as they had existed so far, freedom and subjugation have shades and infinite gradations; the subject, the extent and the duration of the services are admirably diverse; each one contracts as he wishes, according to his faculties, his needs or his views; each is as free as he can be according to his position and his fortune, which depends in proportion to his needs and of the advantage he sought. The peasant, for example, held to fixed services, is freer than the one who, as punishment for his crimes, has been condemned to indefinite labor, or who, forced by extreme poverty, is voluntarily committed to services to ensure his existence. The farmer, who owes only an annuity in money or in kind, is more free than the subject, who is also obliged to do personal work. The vassal, by virtue of his pact, is not held to anything other than to keep the promised faith and to discharge, if necessary, the military service towards the one from whom he received his lands. Among the many officers and employees, from the smallest to the most important, those pass rightly for the freest and most noble, whose service is less common and less painfully demands of their time, and provides more power and influence.**

Finally, the simple owner or domiciled inhabitant, living on his own fortune, is really the freest of all; his time belongs to him alone, he has hardly any other duties to fulfill than those which oblige all men to one another, and to abstain, moreover, out of prudence, from any offense, of any dangerous conflict with the interests of the prince. **In addition, this limited and graduated submission following the difference of pacts and positions, is not perpetual and indissoluble like that which the philosophical system claims to impose on us. In the natural relationships, not everyone is in the dependence or in perpetual services beyond the necessity of his needs. The child ceases to be subject to his father, at least in many respects, as soon as he no longer remains in the paternal house, and can himself provide for his maintenance. Servants are free, as soon as, being able to do without a salary, they give up their place; and this is why we are used to say, even in private relationships, that such and such preferred his independence or that he achieved it, when he placed himself in a**

position where, free from any direct and personal service, he no longer has any other obligations towards his former master than the general duties of justice and humanity. The feudatory, the farmer, the vassal recover their freedom as soon as they return the good which they enjoy, or when the true owner frees them from obligations they had contracted; and it is thus that, in the testimony of all history, one can legitimately escape even from the authority of a sovereign, when one can do without it in all respects, that is to say when we no longer want to inhabit their territory, or when we obtain either from ourselves or from others territorial donations or acquisitions freed from any dependence, with enough strength to maintain this new sovereignty.”

“On the other hand, the rights of a territorial and independent lord are neither arbitrary nor variable, and far from lending themselves to an indefinite extension, **they are rigorously determined, for the very reason that they are based, not on a delegated power, but on personal power.** The patrimonial prince only directly administers his own affairs, and only reigns over men in an indirect way; that is to say, as their rights and interests are linked to his, and that is why this relationship of dependence is so sweet and so light. Such a sovereign has at bottom his own natural or acquired rights; the former are common to him with all the other men, only they seem more elevated, because he has more ways to use a legitimate freedom; as for the latter, he must be able to show his titles; these deeds and securities, which prove the acquisition of his domains, or the various conventions he has made and he makes every day, both with individuals as with corporations of his subjects, which have nothing imaginary or fictional as the social contract or the mandate of full power; but they exist in fact, they are of public knowledge.

The true patrimonial sovereign cannot therefore demand or impose on his subjects other duties than those to which they are bound, either to him or to others, by the law of nature, or those which they are incurred as a result of covenants and special promises. Add to that which is yet willingly, by voluntary commitment, for convenience, sometimes wisely deferred: and you will have accomplished all that in this relationship as in any other, is just, commendable and worthy of praise. That if one remained faithful to this rule, if one abstained from the abuses of power, which no doubt remain possible in any state of affairs, but which the philosophical system authorizes and requires much more and makes it more irremediable; according to the simple nature of this social relation, or of what is called its constitution, no one would have to complain of the slightest restriction of his legitimate liberty. **This hereditary bond, considered in its primitive purity, is the most pleasant form of human existence; it is in a nutshell the most complete freedom, only tempered or rather embellished by the diversity of means for mutual assistance set by the divine law and voluntary engagements; conditions without which, it is true, no social relationship, no peace could exist on the ground.”**

“On the other hand, the patrimonial lordships with their simple and varied ramifications, have a solid foundation in the nature of things, in a stable power by itself, and in a permanent need of men; their same attitude, if I may put it that way, is something affectionate, peaceful and harmless; they can only be destroyed by extermination or by the complete dispossession of their

owners; they are, therefore, more gentle and more stable, so that **it is still necessary here to admire the goodness and the wisdom of the author of nature, who, sooner or later, leads all states in a primitive or patriarchal bond and causes them, so to speak, to lay their roots in the property of the soil.**”

LIV. On the natural origin of military states (empires).

Military states, in contrast to the pure patrimonial state, are founded on a strict vertical relation between a leader and his retinue; it is originally a *Personenverband* and only when it becomes sedentary by permanent territorial settlement does it fuse with the patrimonial state, but having its own distinctive modifications like fief-holding, a warrior nobility, slavery, etc.

The second relation of power and authority, by which simple individuals can liberate themselves from all dependence, attain a sovereign power and consequently found monarchies, is that of a captain, or a leader of troops, towards his soldiers or his companions in arms. This military authority is founded like all others on many means, on a superiority of valour and skill, and on the need the weak have to be protected, either against physical dangers, or against acts of violence from their peers. One man precedes and leads; all others follow him, either because they have formally promised their assistance, or because his valour and his means are indispensable for their protection and well-being. From the moment then that such a leader is not under the orders of anyone or succeeds in breaking free of all bonds of dependence, he becomes a sovereign prince and the founder of an empire, which, in its origin, is not attached to any particular soil, but which relates directly to men and is exercised everywhere the general and his army reside. It is thus that empires and states arise which we call military and which one could give the name generalship in opposition to patriarchy, or purely territorial lordship. Thus, the founders and leaders of such a social link carry the title of emperors, dukes, captains and those who serve them are called companions in arms, vassals, heroes, soldiers or men of war, to distinguish them from servants of many kinds or simple subjects of a territorial lord.

Without retracing the origin half-unknown, half fable, of the first States which, most certainly, were formed according to the natural laws which govern the universe, simple reason makes us understand, and all of history attests that kingdoms have been founded and often are by the sole authority of one military leader over his companions in arms. These kingdoms, like all others, are formed from above; they emanate from the predominant individual to which others rally later. In principle it is not the army which makes its leader, because for this to happen it would already need to be united and organized; it is on the contrary the leader who makes the army, since he individually recruits the men who compose it and which it receives in its service. The captain is before his soldiers, just as the father is before his children and the master is before his servants. In truth, it can happen afterwards that, if such a leader dies without leaving successors, or if his seat becomes open by other extraordinary means, and if, nonetheless, the band interested in remaining united does not wish to dissolve itself, it is momentarily free to and can choose its new leader or recognize those who will come forward to replace him. One can at least conceive a similar case which presents the possibility of what we call, contradictorily, the election of a king; a fact which has occurred many times in history and which we will return to in the course of this work.

Ordinarily, what is represented in the idea of purely military leaders and groups levied for service, is something hostile, oppressive, fierce and often, violence and rapine walk with these organized bands. However, there is nothing unjust even in the nature of this relationship.

Firstly, it could never be formed by coercion and oppression. **Because the first auxiliaries are always freely hired and rallied voluntarily to their leader, either by affection and confidence, or by the appeal of the payment and other benefits. Later, it becomes in truth possible, but by no means necessary, to oppress others with the help of a primitive army.**

Here as elsewhere, injustice does not consist in exercise, but in the abuse of power. The tyrant or the most just prince, both enjoy a similar power by nature, which often was acquired in the same manner; but the first violated, the second respects and protects the rights of his subjects. Likewise also, a band of brigands is only distinguished from the most honourable and loyal army, neither by the fashion of its formation, nor by its organization or its interior discipline, but solely by the target or the use of its forces, which the first uses for invade or destroy, and the second to protect and guarantee the goods of others.

The pacts between a military leader and his companions in arms [or tenants in chief], differ from those which exist between a landowner and his servants, in that the former oblige everyone to nearly equal services by their nature. Indeed, the simple employees and subjects of a patrimonial prince do not owe him all the same acts and the same services. One is engaged in serving his person, the other in aiding him in the administration of his goods and revenues. A third is in charge of some such special affair. Each one has his distinct and determined functions, beyond which none can demand more. The great masses, to conclude, are placed in a simple state of dependence, without other particular duties; and that is why this relation is so sweet and so light; **it is different for the soldiers or companions in arms of a military leader: they are not only obliged, but especially instructed and trained in the same kind of service, and it is this which renders the social connection on the one hand stronger against the enemy, on the other more narrow and more rigorously fixed within.** Moreover, military service by its nature compels one to an absolute obedience towards the leader; well understood in everything which relates to service, and always under the tacit reservation of the divine laws, from which all can neither exempt themselves from nor be exempted by another.

But, unless the troop is disbanded, the head of the army must, in the limits of his right, the head of the army be able to command without contradiction. However, if a soldier found a command too onerous or contrary to duties of a higher order, it would be permissible for him to renounce his service. But he would not be able to receive his pay and refuse obedience at the same time; to enjoy the advantage of his station without fulfilling his obligations, even less so because it is not up to him alone to judge whether a commanded action is allowed or not allowed.

LV. On the possibility and necessity of uniting generalship with territorial lordship.

As with territorial principalities, military domains can be formed in two ways: either the general of the army was free and independent since the beginning of his empire, at the time when he formed his unit, or he only achieved this independence later, by the aid of his auxiliaries. Now, this subsequent advent of power can itself happen in two ways: sometimes by legitimate title, like by a just defence of oneself, by all manner of pacts, by donations and by fortunate circumstances, or unjustly; either by defection and rebellion against the former master, or by the plundering of any other legitimate possessor. Science is not charged with making all injustice disappear from the earth, much less make it impossible. Its mission consists in neatly indicating the character of the just and unjust, given that men sin more often by ignorance than by evil. **By showing that one can acquire sovereign rights by lawful and unlawful means, we wish only to prove that not all military force is unjust in its nature, and that for this not all kings who owed their rule to their swords, could be counted as usurpers. This prejudgment, unfortunately too widespread in our time, is just as absurd as it would be to say that all owners originally ravished the goods of others, and that it would be impossible to acquire them without crime. Power itself is never unjust, its use alone can sometimes merit this description.**

The independent general, or the great leader of a great military retinue, even when he wouldn't have the intention of taking over the land momentarily occupied by his troops, reigns sovereignly over all his companions in arms, and must rightly be counted among the sovereign princes. He is the founder and chief of a domain which can, at least for a certain time, exist without territorial property, and whose authority relates directly to men. It is thus that in ancient history, as in modern history, we see many examples of nomadic states, of wandering hordes, of caravans and bands of insurgents which, without having any fixed establishment, obey one fixed master receiving orders from nobody. But there is in the nature of such a purely military bond, something harsh, savage and hostile, which forces leaders despite themselves to plunder, to acts of violence or perpetual wars, and which in the interests of the troop itself couldn't last long. Without personal territory nor a fixed home, the troop would be forced to live constantly under tents or to camp in open country; to renounce all commodities and all the peaceful pleasures of life. With provisions of food or money exhausted, the wandering horde must live on plunder, which it cannot always do with impunity. Soon there wouldn't even be anything to take, because warlike people do not like to work and without the work of men, the earth does not produce enough for their subsistence. Lastly, sooner or later vagrant tribespeople all arrive to the seashore, the end of all migrations. Moreover, the military bond will weaken on its own; because, besides that a warrior horde, as numerous and valiant as it may be, will eventually find its master; besides that it can experience defeats, perish under the influence of contagious illnesses, be dissolved by the death of its leader, be thrown into disorder and confusion; the motive for union slowly loses its strength and its appeal. From the moment that dangers are driven away; that enemies are vanquished and the horde can take over a country where people one can live in peace; in one word, from the moment that the aim of the military union is attained and that the need of common protection is no longer felt, man, from whatever nation he is from, loses taste for useless fatigue and aspires only to pleasure and

rest, as the end of his efforts. In this era then, each will seek to free himself from military service, to settle down in a stable home, or at least to remain with his old comrades in a less tight relationship. The leader animated with the same desire, will consider himself very fortunate to be able to dismiss his comrades in arms, or to satisfy them and preserve their affection by offering them benefits of another nature.

So history teaches that military domains never last for a long time, unless the general acquires in full ownership a territory vast enough to establish himself with his followers in a stable manner. Now, one can acquire, to this end, territorial properties by legitimate title. In the beginning nothing prevents occupying and taking a land which belongs to no-one, which is not inhabited and which no-one formulates claims on; a fact which ancient history offers us many examples of and which is, even in our time, not impossible. Then one can become the legitimate owner of a country more or less extensive, by purchase and by other agreements with the old possessor; or receive it under the title of donation, of dowry, or by virtue of a peace treaty, as has often happened in the course of the ages. One can also, in a just war, conquer a land by force of arms, and keep it as his property without deserving the censure of usurpation. If the armed corps has from the beginning only fought to defend its rights against evidently unjust acts of violence; or if, without disturbing anyone or committing any hostilities, it finds on its road enemies which attack it and strike it in all manner; who refuse it the simple obligations of charity, of peaceful passage, of the purchase of food, the drawing of running water, and that after these offenses or conflicts provoke a war in which the the general wins victory with his army, certainly none will be able to, according to human and divine laws, call such a conquest unjust.

Additionally, the attraction of retaining such conquests and establishing oneself in a steady manner in the conquered land is, according to the restorative views of Providence, the most simple and reliable means to temper purely military domination and even to change its nature. This desire inspires peaceful sentiments in bellicose hordes, heals the wounds of primitive violence and replaces the bond of force with the bonds of affection. Because sedentary life and stable residence in a conquered country, which one envisages as his property, unfailingly softens the mores and habits; new relations would form and be produced from new interests; the victors approach the vanquished and form all sorts of relationships between them. Their children are born and grow up among those of the country's natives; all help each other mutually and the ancient inimity changes bit by bit into mutual friendship. The head of the army, having become a proprietor and a territorial sovereign, will naturally seek to gain the confidence of his new subjects, were it only enjoy the the fruits of his conquest in peace and to protect it from the slightest hardship. On the other hand, his lieutenants and other companions gradually break free from the military bond, because they feel its necessity less; they will settle on lands separated by great distances; they thus contract new bonds and develop particular interests, which will even often be in conflict with those of the leader. It is likewise that they imperceptibly become the protectors of the people whom they were enemies of. They even take wives among the daughters of the vanquished, who, in turn, often marry the daughters of the conquerors. In the wise designs of Providence, these mutual marriages are like new means of

forming amicable bonds between different nations; to extinguish old hatreds and to join the victors and the vanquished into one people. A mixture as complete requires much time, and in the beginning it does not always seem expedient.

Now, the independent general, having become a territorial lord by the acquisition of vast domains, will enjoy in this capacity the same rights and will be subject to the same duties as patrimonial princes; his power will have the same extent and the same limits, for he has entered into possession of domains and consequently also the rights of the old master; and if the conquest is performed in a just war, he could even, as a conqueror, acquire more.

Among the new rights that the acquisition of a territorial lordship will give him, the most precious is the heredity of his power. **For heredity is not inherent, by its nature, in the authority of a simple general; for the reason that military virtues and talents cannot be transferred nor occupied like material properties. Nothing requires that the confidence of officers and soldiers pass on to the son or to the heir of the former head of the army. But from the moment that a territorial lordship becomes joined to military authority, heredity necessarily results.**

LVI. On the natural consequences of uniting generalship with territorial lordship. Digression on slavery.

This is Haller's digression on slavery, a highlight of the book. Among other things he is strongly critical of Roman law for classifying slaves as *res* and not *persona*, to which he attributes some of the bad reputation of that venerable institution. In 1906 the Jewish scholar Leon Kellner claimed that this chapter influenced Thomas Carlyle's *Occasional Discourse on the Negro Question* (1849; 1853), but this appears to be purely conjectural.

Nevertheless, the first natural consequence of a militarily founded emperor, which is always encountered, in the relationship between the former inhabitants of the country, is certain traces of the right over the vanquished; right which will manifest foremost more or less onerously in personal tributes and services.

One absolutely necessary thing, is that the conquering army be satisfied; that by one manner or another, the vanquished provide for its maintenance, for which the domains, for which the revenues of the former prince do not always suffice. In a word, the conquering army either buys peace, or is forced to accept the conditions imposed on it.

They offer presents to the victor, to prove their good will and to conciliate its favour; they pay a tribute for the goods that were left to them and could have been stolen. In all times and in all countries, vanquished peoples have always paid tribute to the victors.

The Canaanites, who continued to live in the midst of the son of Ephraim, were made tributaries. It was the same with the Amorites, the Hittites, the Perizzites, the Hivites, and Jebusites, whom Solomon allowed to remain in the country among the sons of Israel. David having subdued the Moabites and the inhabitants of Syria, they brought him presents. The Romans imposed determined tributes on their vanquished enemies, either by right of conquest, or by virtue of peace treaties. Among the Burgundians and the Franks, the Romans, subjugated in turn, and the serfs were the only tributaries: the former paid a tribute for the goods which were left to them, the latter for the ones given to them. It is still the same today in the Ottoman Empire, where the Greeks and the other vanquished nations are alone tributaries. The same among the Hungarians and in all nations where conquerors have settled with their armies. Finally our principle applies to the work and personal services that the victors sometimes require instead of money, or to which the vanquished are enlisted by voluntary conventions. These services and fees are a trace of primitive servitude.

Nonetheless, it would be an error to believe that the various degrees of slavery or forced servitude which persisted or still persist in the world, only owe their origin to wars, to conquests, to the feudal system and to an unjust force. These sorts of relationships have existed in all times and in all countries.

We seize this occasion to deal with slavery in general: we flesh out its nature and origin, and we call attention to the mutual rights and duties between the master and his slaves. Slavery, which could also be called complete servitude, is nothing, by its nature, but the obligation to perpetual and indefinite services, for an equally perpetual nourishment, and this obligation is not fundamentally anything too harsh or too inhuman. The slave and the free domestic servant, both fill the same functions and provide the same services; only the latter engage voluntarily in predetermined services, for the time which suits them, and under conditions they themselves stipulated; while the slave is held to forced, indefinite and perpetual service, to the extent that they can never recover their liberty without the consent of their master.

It is clear that slavery is not the ordinary and natural condition of man, but it does not follow from this that it can never, or in no circumstance be established in a legitimate manner. Nature made every man born neither into a complete independence, nor into perpetual and indefinite servitude; but the actions of man and specific circumstances can very well produce, afterwards, one or the other of these positions without harming natural right. Thus did the most famous doctors of natural right, such as Grotius, Puffendorf, Locke, Montesquieu, Gibbon, Garve and others, recognize that slavery is born legitimately in the majority of peoples. Among the Israelites as well as the Greeks and Romans, among the Gauls as well as the ancient Germanics, people fell into slavery either by captivity, or as punishment for committed crimes, or for insolvable debts, or finally following an extreme poverty, which leaves no other resource for the indigent but to offer his body and his work in perpetuity to a wealthier man, solely for food, clothing and housing. In principle nobody can become a slave in another manner, because servitude by birth or by purchase is only derivative. Now, the first kind of slavery, that of prisoners of war, still exists in Asia; and even during the wars of revolution, it was on the verge of reviving in Europe; the refusal to exchange an immense number of prisoners, or their transfer and their leasing sometimes to private individuals, sometimes to other powers, is to a certain extent led by the way of things: for a man who surrenders by will, solely to save his own life, remains, whatever is said, the slave of his new military master until the time of his exchange or his deliverance. He depends on his good will, and necessarily submits to his orders. Let us say more: this type of slavery owes even its origin to a feeling of humanity, since in the rigour of the law, he could have killed his enemies, either before or after their capture, and that the hope of benefiting from their work or of obtaining a ransom for their freeing presented a powerful motive to leave them their lives. That is why Grotius says that the word *servus* comes from *servare*. On the one hand, the use of prisoners of war, in certain jobs, still turns to their advantage, because they obtain a softer treatment and better sustenance.

Servitude for crimes, where one finds for example all the evildoers condemned to forced labour, either for a time, or in perpetuity, is a punishment like any other, which there is nothing to say against.

Servitude for debts is not contrary to justice either; it is rather a way to satisfy it. **He who has no other means of returning what he owes to someone else, can still offer his person, that is his physical or abstract services which make him able to pay his debt by his service; and it seems to us that this expedient would be much preferable to useless detentions or banishments, which aggravate the wrong instead of remedying it, and are of no benefit either to the debtor or to the creditor. Finally, as for servitude following extreme poverty, it results of a voluntary contract, it is a sort of loan on the mortgage of the body, i.e. personal work; loan the possibility of which can easily be conceived in great national calamities, following ravages of war, in eras of scarcity or famine.** History has even preserved for us forms of such engagements. Moreover, it is an entirely false opinion to hold that there do not exist rights and mutual obligations between master and slave, so that the former could use the latter as material property. **The Roman jurisconsults had added credibility to this error by an inexact expression: not only did they incorrectly explain, but**

they were even in opposition with their own principles, as well as with the laws and customs of their country, when they said that a slave is a thing [res], since he can be bought. For natural law is obligatory in all relations of any kind, and property embraces many other concepts than an object's alienation. Nobody has ever held that one can unjustly use and abuse a slave according to his fancy; to consume him, to destroy him, to change his form and substance, to break him into pieces as can be done to a material thing. On the contrary, according to the nature of things, masters only have the following rights over their slaves: they can firstly demand indefinite work and service; for they are held to that for the life they are allowed to keep and the perpetual nourishment provided for them; Secondly, to chastise them for disobedience and punish their crimes even by capital punishment, as without this masters would have no means of ensuring themselves against the attacks of their slaves, nor even of assuring the right they have to their services. What is extraordinary in this when the heads of families enjoy a similar authority with respect to their children? Third and lastly, masters also enjoy the ability to sell their slaves, that is to transfer the usufruct of their labour to another. While this power is repulsive to our modern ideas, it is nothing harsh nor unjust, when the slavery itself has its origin in a legitimate cause. **To speak precisely, one does not sell a slave, but only the right to his services or his work, and this sale does not make him an object; otherwise all debtors would likewise be objects, since one can transfer the obligations he has from him, and by this even the obligation to pay annuities until the original capital is reimbursed. Here, as in other relationships, the master only cedes his own right, and not that which belongs to the slave in his capacity as a man.** Moreover this right of transmission must have been all the more generally recognized, since it was exercised nearly all the time in the interest of slaves; for on the one hand, this ability encourages masters to treat their slaves humanely, even to instruct them in the practical arts; on the other hand their fate normally improves because of this, because the one who buys them thus proves that he cares for them more than the one who sold them. Finally, skillful, loyal and educated slaves were rarely sold by their masters; or else merchants and rich proprietors would buy them at great cost, protect them with care and thus provide them a sort of advancement, a sweeter and more agreeable existence.

As for the children born to slave parents, they are necessarily subjected to the same servitude, either because they are de facto under the power of their masters and receive all their subsistence from them alone; or because they would not even exist, if the lives of their parents were not spared. Having become adults, it is just that they repay the costs of their education by work, and this tacit agreement is so equitable, that if the child could make it, he certainly would; such that we can presume his consent here.

Moreover servitude of children turns once again to the advantage of slaves, because it encourages masters to treat them with humanity, to not forbid their marriages, to not impose excessive work on women, to treat them gently when pregnant, and to give aid is to their newborn children. Nonetheless equity prescribes, and it is also general custom, to treat slaves from birth more gently than others; to consider them a bit like voluntary domestic servants; to more easily grant them liberty, or to otherwise help them in attaining their freedom.

Another false opinion, is that slaves, among the ancients, never had rights, or, identically, that masters never had any obligation towards them. These masters could without doubt indulge themselves in many illicit things with impunity, because every head of family was considered as a sort of sovereign within his house and enjoyed on those grounds the highest judicial authority, as much over their servants as over their children; however not every act of violence against slaves has always been considered legitimate. Between the impunity which depends on accidental circumstances and right, there is an immense difference. The duties of masters towards their slaves results from the very nature of this relationship; and to remedy grave abuses they have often been regulated and determined by positive laws.

The slave, i.e. the perpetual and forced servant, always remains a man and can claim every right he holds in this capacity. As such: 1) masters had to provide healthy and sufficient food, habitation and clothing, for that is the just compensation for their work, even the condition without which servitude cannot be conceived, 2) the right to punish, or what we improperly call the right over life and death, has always extended under this natural restriction, that masters must exercise it, not arbitrarily for revenge and even less for simple capriciousness, but only as an act of domestic jurisdiction, for the punishment of crimes in order to guarantee security from offences or those which could happen in the future, 3) by inflicting other corporeal harm a certain moderation prescribed by the laws of humanity must be used. We see in Holy Scripture that to enforce this precept, Moses had ruled that the unjustly mistreated slave would regain his freedom; 4) regular work and services should only be demanded in just measure and having regard for the strength and health of slaves. It goes without saying that they could only be employed to legal actions, and not to commit crimes that neither the master, nor the slave had the right of committing. 5) If the slave did more than his duty; if without receiving any order he rendered important services to his master, by zeal and affection in important services, this devotion gave him a right to recognition, to benefits from his master, and often it obtained for him his freedom. 6) Among many peoples, slaves were permitted to acquire property, and whatever our modern books say, they always had something of their own.

Finally, the true religion corrects all. As soon as one recognizes a divine law of justice and benevolence, and the master respects this law, and the slave, in his turn and by the same motive, fulfills his duty with eagerness and good will, slavery itself is neither anything harsh nor inhuman; it becomes on the contrary a bond of mutual affection, which continually fortifies itself. It is not rare, notably among the Spaniards, on the island of Cuba, for slaves, who have acquired a considerable enough fortune, sometimes do not wish to buy themselves back, above all when they belong to noble and distinguished families which treat them with kindness and humaneness.

However, as these natural duties can also be violated by harsh and pitiless masters, the Hebrews, the Greeks and the Romans had already passed laws in favour of slaves, just as such laws exist today in America, in the European colonies, and in many other countries. Thus did the slaves obtain their liberty, when their masters provided them neither suitable food nor clothing, or if they neglected them in illness or age. A slave gravely and unjustly mistreated by

his master, could request to be freed or sold to a more humane master. Repurchases and gradual re-enfranchisements had been supported in various ways, sometimes even to excess. The laws of Moses, in favour of slaves was filled with justice and humaneness. Nerva appointed officers to hear the complaints of slaves, and the emperor Hadrian ordered investigations to those who killed them without motive and with premeditation; these two measures attesting, it is true, to the corruption of the era, prove that such acts were regarded not as a rule, but as a criminal violation of the rules. The Koran also orders Mahometans to treat their slaves well, and in cases where they have merit, to share the riches that God gave them. Finally, the Lombards who are presented, as well as a ferocious and barbaric people, have published a law stating that: if a master abused the wife of his slave, this woman and her husband would both be given freedom.

Besides, without speaking of the many leniencies that charitable masters grant in full will to their slaves, servitude itself had various degrees; and one conceives that it could be restrained and mitigated, as much from the point of view of duration, as in relation to the nature of the demanded services. Moses only authorized, among the Israelites, a period of servitude of 7 years: foreign slaves could be kept for life, but nationals had to be freed at the end of a fixed period, unless they provided their consent to extend it.

Domestic slavery, particularly common among the Romans, is the most pernicious to morality, and it is not without reason that they themselves called it a source of all the vices (*sentina malorum*).

Ordinarily it depraves the master as much as it does the slave: the former because he become used to looking down on men, consequently to becoming harsh and cruel; the latter, accustomed to being given over to the most criminal acts and the most demeaning service, can no longer respect himself and loses even his sense of honour and virtue. It is for this that the Christian Church has insisted with such force on the abolition of domestic slavery, and that the personal servitude of prisoners of war has, indeed, been progressively abolished by the customs and conventions of Christian peoples, and even the Mahometans. Among the Romans, the freedmen (*liberti*) were always in a less rigorous degree of slavery since they stayed outside of the house of their master and could acquire property; but they remained no less obliged to render indefinite services. Those who were condemned to servitude for debts or by judicial sentence, *nexi et addicti*, only served for as long as their punishment lasted, or until they could satisfy their creditors. **The slaves of the ancient Germanics found themselves in an even less onerous position; they were nothing but, as in many countries in our day, serfs tied to the land (*glebæ adscriptis*), i.e. cultivators or types of mobile farmers who could not leave their land without the consent of their master, and their masters did not have the right to sell them except with the land itself. This type of perpetual servitude is gentler than the others. One can very well conceive their legitimate origin by reciprocal and voluntary commitment in less populated lands, where cultivators had to be secured and consequently given permanent benefits. Another type of serfdom, a diminished form of complete serfdom, was that of people called *mainmorte*, who were freed under the condition that, if they died without children, the ceded good would return to the master,**

and that if they left any, they would offer him the best piece. It could be that other services and royalties also originally came from a previous and personal servitude; but very often they were the result of the granting of real estate and voluntary services, just as in our day a free worker often does the same type of work which a criminal is condemned to by force. As we cannot restate it enough, the essence of slavery is neither in the nature nor the extent nor the difficulty of services; rather it consists solely in the constraint that it imposes, and this constraint is not unjust in all circumstances.

In addition, personal and indefinite servitude has been softened and even eliminated in a thousand different ways. The religion which, without abolishing slavery, because it sees a legitimate origin in it, preached gentleness and charity between all men and taught masters to see friends and brothers and fellow men; the example of bishops, monasteries and other ecclesiastical corporations, whose merit in this regard is not appreciated enough; the crusades and other wars which compelled lords into freeing a great number of serfs, either to make soldiers out of them, or to obtain financial aid from them; the example of kings which did just as much in their domains and who, to obtain benefits of another kind, liberated all their serfs from onerous services; finally, the establishment of communes or cities of the middle ages, which formed a new class of freed men, all joined together to mitigate and even to abolish harshness or at least the perpetuity of ancient indefinite serfdom everywhere.

From the moment that personal servitude is changed to servitude attached to the land, which happens nearly always in the procession of time; from the moment that indefinite services are replaced with work or fixed royalties, there is nothing more to say. All returns naturally to order, and takes the character of justice. For, to even suppose, which is not always true, that in the beginning the service was unjustly acquired or extorted by force, there is nothing illicit in itself; and in the first transfer of property, as in all other transfers with follow, the new acquirer can no longer complain of any injustice. He has received or purchased the land on which the serf is tied; he has obtained him for this reason for the best price, whereas he would have been obliged to pay more for a territory free of all servitude; such that after the first generation, everything becomes legitimate. On the one hand, the new owners of similar lordly rights are not the offenders; on the other, the new tenants are not wronged and cannot say that the least harm was done to them.

Moreover, while complete servitude and more or less onerous service has always been born in wars and conquests, it would be wrong to think they are a necessary consequence, and it is an equally false allegation, that the people who invaded and destroyed the Roman empire had despoiled all the inhabitants of the conquered land and forced them into servitude. This assertion is disproven by incontestable historical documents. Before the conquest, already the natives of the land had been divided between free men and men submitted to serfdom, and history states that those who were free and who were called ingenui, remained free, preserved their property and could even attain honorary jobs. Furthermore, vanquished peoples were left with their laws and their customs; they were not even subjected to military service nor tight and severe discipline which was placed on the conquering nation or the companions of the king.

Churches retained their possessions, and nothing was changed in municipal institutions. Slavery only persisted where it was already established, or in places where it was born later, under the domain of particular circumstances and by legitimate causes. **Without doubt, there were still ancient vestiges for a long time of the ancient right over the vanquished, right, which manifests foremost by the aid, the taxes and the tributes, or corvées, i.e. the personal work imposed on the vanquished or consented to by them, by virtue of formal pacts to repay themselves from complete and indefinite servitude. This here was the origin of the majority of ancient subsidies and payments in kind, that a patrimonial prince would not have the right of demanding from his free subjects without their consent. But, on the one hand, all these services were softened, eliminated or changed into debts by the transfer of property and new agreements; on the other, these were much preferable to the taxes established in modern times and for which the taxpayer receives, at base, no advantage. Long ago, at least, all payment rested on a natural and legitimate grounds. The serf enjoyed an estate of land for his well-being and that of his family; even the slave found in the house of the master, food and clothing, habitation, education and care in sickness and age.** After all, it was a relationship from man to man; one did not always use his right thoroughly, and mutual affection corrected many things which could seem harsh by their origin and nature. In our day, on the contrary, and according to our so-called liberal principles, in the moment when men denounce all natural dependence, all free men are tied to the land; firstly by the prevention of emigration, secondly by military conscription and the demand of all sorts of forced services, by arbitrary and indefinite taxes; their persons and their goods are left to the absolute disposal of a State called rational; complete slaves are made of rational beings or rather of imaginary beings, who in reality do not exist but in whose name however, masters and their passions govern sovereignly and arbitrarily.

LVII. On military organization and subordination in imperial administration.

How personal authority must give way to proprietary authority for it to be more enduring.

The second modification inherent to all militarily-founded empires and which distinguishes them from patrimonial states, is that their administration is established on the army model, and always bears the seal of military organization and subordination. As we have already shown in its time, a patrimonial prince has, in the beginning, no other employees than those who are necessary for the service of his person, or for the administration of his goods and revenues, or finally to aid him in all sorts of personal affairs. If his kingdom is composed of various lands and different successively acquired lordships, in each one he establishes an intendant to administrate his domains, to collect revenues, pay expenses and administer justice to his subjects. And when his intendants are numerous enough for him to place a certain number of them under the surveillance of a superior administration, what is called provincial government, this is only done to accelerate the flow of affairs, and to prevent them from all being carried before the prince or before his immediate chancellors. If finally, a patrimonial sovereign ends up maintaining a more or less considerable army, it will be distributed, in times of peace and in certain cantonments, or in garrisons which offer more facilities as much for lodging as for the means of subsistence, but the commanders of the troops, far from being in charge of civil and financial administration, will be completely subordinated to it.

In one word, the purely territorial sovereign considers his domains as the principal thing, and authority over men as an accessory thing. He is completely different in this from a general, who settles himself with a numerous army in a conquered country, and only becomes a propertied lord by this acquisition. His first goal is to keep the country, whose inhabitants he more or less considers enemies; from which results the necessity for him of establishing surveillance authorities everywhere; sometimes even to have strongholds constructed and to take multiple other measures of security. Moreover, the general will always have before his eyes the image of the army, where authority relates directly to men; where order is only maintained by that gradual and military subordination, which places one single man above 10,000, another above 1,000 and another yet above 100 men, and this type of administration will serve as a model for the kingdom's. This is also called, however unfittingly, hierarchical administration, not as if it were copied from the government of the Church, but because it also exists in religious societies, and is found **everywhere where authority over men is considered the principal thing, over goods and revenues as a simple accessory.** Finally the army general who has become a territorial prince, must necessarily reward and satisfy his companions in arms, to connect them as in the past with a part of his power. For, on whom could he count more surely than on his military entourage; on those who were always his friends and never his enemies; who has given him proof of attachment and shared all dangers with him?

Thus do we see in all of history that empires of military origin are divided, not according to successively acquired domains and lordships, but according to geographical and strategic considerations, either along the course of rivers and the formation of mountains, or from the point of view of the population; that one forms circles and districts either greater or smaller, the latter being subordinated to the former; that at the head of each of these divisions are not placed collective administrations, but individual authorities, the lieutenants and sub-lieutenants of the

king, generals of divisions and brigades as well as colonels, as it were; finally that civil and military power are ordinarily united in the hand of these heads, such that in the territorial empire roughly the same administration as the army had before is preserved. Once the Assyrian monarchy and the Babylonian monarchy were organized on this basis. Moses instituted leaders among the Israelites, for some to command one thousand men, others one hundred, others ten; and after the conquest of Palestine, the land was divided in the same manner among the princes of the tribes.

The empire of the Persians, composed of 20 satrapies or lieutenantcies, was governed militarily by the generals and sub-generals of Cyrus and his successors. The same form of government was established in the Macedonian monarchy (year 373 B.C.) where the lieutenants of Alexander the Great reigned, so to speak, without limits over the provinces under their command; and after becoming sovereigns themselves, they introduced the same organization into their kingdoms. The Romans ruled their conquered provinces with procuratores and praefecti who, uniting civil and military power, ascended to such a degree of power, that they became dangerous to the republic and to emperors themselves. Alboin, king of the Lombards, after having conquered Italy in 568, placed Dukes into the great districts, having under their orders skuldheises themselves in turn commanding centenarii, all vested equally with civil and military authority. The caliphs of Baghdad, spiritual lords in origin, but later transformed into purely military leaders, also had sub-caliphs under their orders in all provinces, i.e. lieutenants equipped with a great power, since it was so easy for them to achieve independence once the great caliphs were weakened. Among the Huns, there were, besides the general-in-chief, twenty-four generals, each of which commanded ten-thousand men, 240 captains or colonels commanding one thousand men: then two thousand four hundred captains in charge of one hundred men, then twenty-four thousand who only had ten men under their orders. The empire of the great Khans of the Mongols was governed along military lines by various subordinate Khans, from whom later emerged many new kingdoms. The great Mughal in the east Indies, last offshoot of the empire of the Mongols and successor of Timur Beg or Tamerlane, had Sabahs or Rajahs and Nabobs under his command, the former being his subordinate commanders, and the latter being subjugated Indian tributary princes, among whom sometimes the one and sometimes the other broke their yoke and rose again to a complete independence. The kings of the Franks and their successors, in France and in Germany, established dukes and counts in their conquered provinces. The vast and powerful Germanic empire was for a long time shared between ten imperial circles, which had a duke at their head. The kingdom of Hungary was in the beginning governed by seven great provincial chiefs, that King St. Stephen of Hungary, to rid himself of dangerous rivals, replaced with seventy-two counts, who held both civil and military power. The Ottoman empire is administered in the same manner by Pashas and sub-Pashas, chosen from the class of former conquerors, and spread out in the provinces as lieutenants of the Sultan to exercise power locally in his name.

As long as the leader of a like empire preserves his superiority in moral and material force; as long as he holds the reins of authority with a firm hand and bends his lieutenants to obedience, military organization in truth increases his power and affairs proceed with much more rapidity

than in patrimonial states, where subordination is less rigorous and less absolute, where the officers of the prince are not spread out over every point in the country, and which do not unite civil and military power in one set of hands. That is why purely military empires are in the beginning extremely formidable to their neighbours. **But from another side, this organization and this power, greater in appearance, conceals the beginning of their more or less impending fall. Indeed, the lieutenants of the king who possesses so large a power in the provinces submitted to their authority, are the centre of all and can be neither controlled nor surveilled by anyone. Moreover, by the means of the fiefs which they enjoy and their successively acquired properties, they become powerful in themselves, all their subjects having no direct relationship but to him, nothing is easier for these lieutenants than to make use of the first favourable occasion to detach themselves from their master, and to render themselves independent.** Now these sorts of occasions may present themselves at all times when a mediocre spirit is placed at the head of the kingdom; when kings are weakened by external or internal wars, enervated by softness, troubled by the disorder of their finances, challenged by courtly factions; finally, when they are minors and under tutelage; when the male line becomes extinct; when the succession is contentious, etc.

LVIII. Continuation of LVII: rewards of the tenants-in-chief, court dignities and expenses, territorial donations, digression on feudalism.

Haller adopts a Germanist interpretation on the origins of feudalism in line with many legal humanists. François Hervé's *Theorie des matières feodales et censuelles* (1785) is a prominent source. He correctly notes that feudal law was a system of real property and not an economic mode of production, much less a totalizing social relation that eclipsed all others. Haller praises feudalism as a milestone in liberty.

Thus do we see that all conquerors settled in a foreign country, have given their principal companions in arms high civil and military dignities; for example provincial governments, duchies and counties; or that they are kept at court for ministerial services; or finally that they rewarded their warriors by giving them conquered lands. All this with the intention of firming their obedience, of maintaining their loyalty and their devotion. First, concerning high military and civil posts, such as lieutenancies and general commands, we have already shown that these charges are found in all military states, and that a completely particular form in the administration of these empires results from this. **Then the services which are called ministerial, or court offices, lead without doubt more rapidly to power or to fortune, but they were much more lowly regarded. As these offices related directly to the individual person of the king, they resembled a vulgar service which derides the dignity of the free man, in lowering him to the level of serfs submitted to similar professions. The Germans above all, who always distinguish themselves by a great love of individual liberty, did not look highly upon courtly offices, and it was only after the establishment of the feudal system, that the younger sons of families began to seek them, in order to draw closer to the source of favours and attain power and riches.**

Finally, concerning the donation or concession of territories; concession which can take place in very diverse conditions and which the feudal system of Europeans is only one particular kind of; it so necessarily follows from the nature of an empire founded by a victorious army, which we already find in the most ancient times and among all conquerors without exception.

Everything was a fief or simple usufruct in Palestine. It is the same for the life of man and all his physical and moral faculties, they are nothing but a fief received from God, a benefit that can without doubt be enjoyed with joy, but which also must be employed for the glory and the service of its originator.

Earth itself fundamentally only belongs to God the Sovereign Lord, only the lifetime enjoyment of which is given over to men. That is why Moses said: "The land shall not be sold for ever: for the land is mine, for ye are strangers and sojourners with me." The year of jubilee was nothing other than a periodic termination of all fiefs, where everyone returned to the possession of his goods. Tithes were a royalty of the fief and not a tribute placed on goods. The book of Joshua tells of how that general of the army shared the conquered country between the leaders of the Israelite tribes. A sort of military fief existed in Persia under the Arsacids, since free warriors received the munificence of the king, lands and houses. The Romans also sometimes gave lands to warriors, in reward for their services; and if this did not result in a true feudal system, it is only because, according to the simple and judicious observation of [François] Hervé, the Romans were not a wandering horde who ended up settling in a foreign land, but the mass of troops always remained united to the army corps and the greatest always sighed after Rome, their only fatherland. They even considered all permanent settlement in foreign lands as a form of exile. Odoacer, king of the Heruli, who destroyed the western Roman Empire in 476, shared a third of the conquered lands with his warriors, in such a way, however, that the former owners continued to cultivate them under the sole obligation to furnish from their produce whatever comfortably maintained the new masters. Seventeen years later, the year 493, Theodoric, king

of the Ostrogoths, seized all of Italy, and similarly distributed a third of all arable land. The same system was followed by Alboin, king of the Lombards. After having broken, in 568, the domination of the Ostrogoths in Italy, he founded a new kingdom which lasted until the time of Charlemagne. Among the Burgundians, as well as the Gauls, there also existed a type of fief. Military leaders received property by favour of the king as long as they did not incur his disgrace. Similar territorial donations were made by the Saxon generals who conquered England; by Rurik, founder of the first Russian dynasty in 860; and by Arpád, first duke of the Hungarians. The latter conqueror kept a great part of the conquered lands to himself, and each chief in turn shared his portion with those who composed his army. The Timariots, in Turkey, held their domains on the whim of the Sultan; but for life only, and even their name means usufruct. In general there exist, even in the European provinces of the Ottoman empire, territorial endowments made to men of war since the conquest and known under the name of cemaats of Timars; endowments which obliged their possessors to military service on horseback; but these fiefs differ from the Germanic and Frankish ones, in that they were only lifetime benefits or even ones revocable at will; that they are not subdivided into sub-fiefs, that they cannot be transmitted hereditarily or otherwise, and that except for the usufruct of these domains and a limited authority over their inhabitants, feudatories remained in all else, submitted to the orders of the Porte. The Spaniards, after the conquest of Peru and Mexico, gave themselves full ownership of various lands; and if one wished to go through the trouble of conducting more precise research on this point, he would at once find certain that all generals were in a position to make similar territorial donations.

But the feudal system properly speaking, i.e. the abandonment or the concession of lands joined to the complete freedom of the vassal, under the condition of loyalty and the obligation to military service, is an institution of the Germanics, and notably of the Lombards and the Franks. The Franks, under the direction of their general Clovis, reversed, in 486, the roman domination in the Gauls and founded the French monarchy, from which the Germanic empire was dismembered in 843. This Clovis, first Merovingian king, distributed a part of his conquered territories between the principal heads of his army. They did the same for the men of their retinues, in order to provide them, in lieu of their former pay, a secure and permanent subsistence. Nonetheless it is an entirely false opinion disproven by history, that to enact this distribution the old owners of their domains were despoiled, expelled even, and that, consequently, the feudal system was founded only on brigandry and acts of violence. Such a complete despoiling of the former inhabitants of a vast country is impossible; it would suppose on the one hand a pitiless cruelty not within human nature; and on the other, a superiority in forces that the young Clovis, twenty years of age, entering France with a very weak army, was certainly far from able to amass. Necessarily as well, a similar despoiling would have pushed the inhabitants to hopelessness and provoked the most fierce and stubborn resistance; which history does not make the least mention of. That is not all. Firstly, the conqueror entered in legitimate possession of many goods and domains which had belonged either to the Roman government, or to the vanquished princes, that he could consequently dispose of at his will. Then, it is very probable that the land was only lightly populated back then and, that after wars and ravages, most of the inhabitants had perished or fled, so much so that there were a great

number of unoccupied lands, which the victors could have seized without injustice. One recalls that the Burgundians in Switzerland, in the year 456, peaceably shared the completely depopulated and entirely devastated country. By all appearances, the numerous and inferior classes, workers, domestic servants and simple colonists, were not disturbed in their possessions. Finally, things were shared even with the former owners; they were left on their lands as farmers by means of a fixed royalty, or a predetermined part of their annual produce. Numerous historical documents prove in an irrefutable manner that the former free proprietors, far from being reduced to servitude, were often elevated to high places and that their goods were not disturbed. As for the Burgundians, their laws still existing, and the chronicle of Marius tells us that, by a formal transaction with the vanquished Romans telling us that, instead of war contributions they received a third of the slaves or serfs (who thus existed before the conquest), two thirds of all arable land and half of the forests. The Burgundians who arrived later, even had to content themselves with half of the lands, without slaves. The Visigoths adopted the same proportions in the Gallic provinces which they conquered from the Romans. Historians make no mention of a division of lands between the Visigoths and the subjugated Spaniards. Equally still, one finds no trace of a division made by the Anglo-Saxons. The Vandals, in Africa, left the small lands of little value to their former possessors, but the owners of the better ones became subservient to the victors.

Concerning the Franks, history has not preserved any formal act of division for us; but their own laws made in favour of the vanquished Romans, obviously prove that the majority of them remained in peaceful enjoyment of their possessions, and that they were treated by the Franks with more gentleness even than by the other Germanic peoples. As for the Heruli and the Ostrogoths, we have already remarked that they only kept a third of the conquered lands for themselves, and that they made the former owners cultivate this third, only reserving a part of the annual produce.

The victors thus did not seize all land from the vanquished. Those that did not come from the munificence of the king, but which remained owned by their former masters or which fell to warriors by the divisions we just discussed, or by conquests made in their name, were called Allods and were not subjected to any charge.

On the other hand, the kings of the Franks gave out many domains which returned to them, either to their principal comrades in arms, or to high functionaries; but what distinguished those territorial donations from those of other conquerors, and what at the same time proves the spirit of liberty which reigns in the German nation, is that according to the Germanic principle, everyone is master in his property, these concessions were made without reserving any direct authority; under the sole condition of loyalty towards the donator and the offering of military service, whenever it would be required. Let us add that these donations originally bore the name of benefits; and in fact they were nothing other than a benefit or reward for certain services given. At first benefits were only awarded for a determined and very short time, for fear that the funds for royal beneficence would eventually be exhausted; but soon they were given for life, and finally they became hereditary, for multiple reasons.

Not only did vassals improve and embellish their lands, but even acquired new ones, which blended with each other, and soon, seemed to be confused with the former, such that it became difficult to separate royal fiefs from private property. Moreover arbitrary revocations, one will understand without difficulty, were a rare enough event. Thus after the death of the possessor, the son or the closest heir petitioned for his investiture or the renewal of the fief, and ordinarily benefits which cost nothing, and are only the extension of an ancient favour, are awarded easily. Finally kings had themselves been so weakened by the dissipation of their fortune, by repeated divisions of the kingdom and by the internecine war which followed that, to obtain the aid of their vassals, they ended up being forced to treat them mercifully and favour them in every way.

It is for these reasons that the great feudatories of France succeeded in 587, then in the treaty of Andelot, renewed in 615, to force the king to change custom into right, favour into formal law and to enshrine the heredity of benefits; something which, in Germany, where the feudal system was established later, was not done until around the year 1084, under the emperor Conrad II. The same step was followed for high imperial dignities, duchies, counties etc. These positions were originally, by their nature, revocable by the will of the king; but they were soon given for life. Moreover, as the enjoyment of considerable lands which mixed with private properties was added to this; as moreover under the successors of Charlemagne, kings had fallen in such a weakness that often the son of a deceased duke or count took possession of the duchy or county, without waiting for royal investiture, it came to pass that the heredity of these places became an acquired right like that of fiefs. Hugh Capet, who replaced the Carolingians on the throne of France in 857, was compelled to confirm the heredity of fiefs, to obtain the submission of his large vassals. In Germany it was similarly extended, first to brothers and nephews, then in 1106, to daughters, later in 1136, to uncles and other relatives of the third degree, finally in the year 1156, to parents up to the seventh degree.

It was also only in the era when benefits became gradually hereditary, that they were given the name of fiefs, because the son or the heir of the last possessor had to, while receiving investiture, give faith and homage to the donator, i.e. promise to be loyal to him and give him military service. In the beginning, the benefit was the result of or the reward for service; now service is the price or compensation for the benefit.

But that is not all the feudal system consists of; the first and greatest barons, those for whom goods came directly from the whim of the king and were called fiefs of the crown for this reason, divided them to grant to secondary vassals; these in turn subdivided their portion into sub-fiefs, and so on. Each sought, by donations, to make liegemen or devoted supporters, who would offer themselves up either to the aid of their benefactor in times of war, or to defend his castles and his strongholds against every aggression; or finally, to open their own castles to him to staff them with garrisons. Soon custom gave offices, mobile goods, houses, mills, kilns, hunting rights, casual income, tolls, etc., just as they are still practiced in our day in some countries. Finally, the necessity of guaranteeing a protector in the times of anarchy which followed the reign of Charlemagne, compelled owners of allodial goods great and small, to

fictively cede their lands either to the king, or to another great lord, on the condition that they would be returned instantly as hereditary fiefs. It is from there, that the fiefs known by the name of offered fiefs (feuda oblata) were born; it is from there as well that many free men, noble or not, became feudatories or liegemen of the great. From the foremost baron to the smallest landowner, each was so to speak, lord on the one hand and servant on the other; everyone was the liegeman of his superior and had, in turn, other liegemen in their service. **This natural subordination, founded on benefits and voluntary commitments, similar to a tree whose trunk is divided into branches, branches into twigs and twigs into leaves, bearing the name feudal regime, as opposed to a purely military regime, where one does not see any similar gradation of power and liberty, but where all subjects, equal between each other and placed at an equal distance from the sovereign, depend in all respects on him or on his subordinate officers.**

Now, one can easily comprehend, that in this subdivision and multiplication of fiefs, pacts of alliance do not contain all the same conditions, but they had to vary infinitely. Not all of the founders of fiefs needed men of war; neither were many of them rich enough to give lands almost freely, and to only receive the homage of loyalty and recognition. In the general meaning of the word, a fief is nothing other than a good conceded under certain conditions; and these conditions can vary infinitely in relation to people, reciprocal services, the duration of the pact, eventual mutations, etc., etc. **Thus, people granted lands, not only for the promise of loyalty and commitment to military service, other benefits of all kinds were reserved, like for example tithes and rents on property; annual prestations, whether in kind or as money; even personal jobs, carriages or means of transport; certain royalties related to the transmission of fiefs, by sale or by hereditary succession, almost like it is still done in our day in farm leases and simple rental contracts. The good whose enjoyment do not oblige one to military service, bear the name of noble fiefs, either because it is noble and generous, uncommon, to give domains in exchange for a simple prestation of homage, or because they were only granted to the class of victors, who were already noble and distinguished by themselves. The other fiefs were called rural or vulgar fiefs, for the reason that they did not differ at all from ordinary private pacts, which could be made by everyone.** The greatest number of fiefs were hereditary, i.e. irrevocable by the lord, as long as the feudatory fulfilled his agreed-upon obligations (emphyteuses). Some could only pass to male heirs (male fiefs), but others could fall to women, who were then obligated to present a male to give military service (distaff fiefs or female line fiefs). Sometimes, fiefs were limited to the person of the current possessor, until the first mutation (free fiefs) and often they were like our term leases, limited to a certain number of years and annulable by either of the contracting parties.

The enumeration of all these fiefs, to which were even added those which came from a softening of personal servitude, the theoretical explanation of their nature and their many constitutions, formed a particular science which bore the name of feudal law; science which had become very complicated and vast, because of the infinite variety of pacts and customs which constitute its subject. The so-called philosophes represent the feudal regime as the source of

slavery and as the cause of anarchy, disorder, troubles and all social calamities, which brought grief and desolation to the earth. However, nature itself shows us that it had to support individual liberty, and history teaches us that it had spread the greatest benefits everywhere.

The feudal regime was certainly the simplest and easiest of means to form a great number of tutelary principalities; to give the most distanced of guides, of protectors, of fathers, to the villages, and to at the same time satisfy the conquerors of the land; to calm their hearts, to soften their mores, and to preserve the relations which unite the whole kingdom to the king by a bond of love and reciprocal affection. The whole world sees, and facts tell us, that far-off provinces were better governed by feudal lords, remaining in the midst of them and becoming natives of the land by birth or a long stay, than by temporary and revocable royal officers, who each only sought to enrich themselves quickly. Via the feudal system, those who had received a fief became free in their lands, better understood their interests and those of their subjects, and could aid them with their own guidance. By defending their own rights against the abuse of royal power, they at the same time protected the rights of their subjects more effectively than those in question could have done themselves. Laws and regulations were more appropriate to the needs of each region; the aid of authority closer and less expensive; taxes and subsidies, by the way rare in this era, on the one hand more modest because one paid nothing to the king; on the other, less onerous because they were levied according to the resources of the inhabitants and because their produce remained in the land. The better administered, embellished and improved domains, became more productive; many establishments for charity and public benefit were formed in each local capital, and not only in the residence of the sovereign.

[...]

On the other hand, the anarchy which upended certain eras of the middle ages, cannot be attributed to the feudal regime; it had for its cause and origin the prodigality of kings, ruinous divisions of the kingdom, poor success in foreign wars and even more in internal wars, that kings and their brothers made without end against each other.

In such a state of things, private quarrels were also birthed between vassals; and the right to enact justice oneself, a right which was once universally recognized, became their only recourse, since failing royal protection, each was reduced to his own strength.

Here is why we see, on inaccessible peaks, that multitude of castle forts, meant not to oppress the weak and small, but to defend them against attacks from outside, rise in that era. One could also hold in truth, that the feudal regime had quashed anarchy; that it mitigated it in its furor and constrained it in its effects, since order was maintained at least in the territory of great vassals and the whole empire did not at once fall into disorder and confusion. In addition it is certain, and revolutionaries agree to this themselves, that the anarchy of the ninth and tenth centuries, had singularly improved the condition of the serfs and peasants. For it was then that innumerable enfranchisements were accomplished, and that cities and communities were founded which have so strongly contributed to the weakening of feudal lords, as well as to the progress of civil liberty, the sciences, arts, and commerce.

Finally, as soon as public tranquility was re-established by the consolidation of the throne, one saw the feudal regime existing without issue beside many other social relations for seven or eight centuries, without the least anarchy resulting.

And what simple reason makes us comprehend about the salutary effects of feudal government, history confirms on every page. It proves by incontestable testimonies that, thanks to this regime, countries rose from their ruins, with an incredible rapidity, and that the traces of wars and former devastations disappeared as if by magic; that deserts changed into pleasurable and populated lands; agriculture prospered; that the lower classes settled themselves on the lands of nobles and there found, with security, numerous means of existence; that the population went on to multiply, and that around the residence of great and small vassals, rich cities and flourishing towns sprang up: general prosperity, always increasing, but which would not have spread its good deeds through Europe, if all power and all riches were concentrated in the court of the sovereign and in a single capital. The most authoritative historians unanimously recognize this truth. **It was there, goes the remark of the knowledgeable and judicious [Ludwig Timotheus] Spittler, this prosperous march and ascending movement, that one saw accomplished everywhere, when the great masses are subdivided into smaller corporations, and when public security assures the rewarding of work and industry, even in a limited circle. Without doubt, the ancient and vast domain of the king, much too extensive to be well-exploited, was lessened by continuous donations; but the culture of the country gained and the people received greater development. It is the feudal regime which Italy owes the benefit, after the terrible invasions of the Heruli, the Ostrogoths, the Visigoths, the Lombards and other barbarian peoples, to have risen again with such splendour, that in the eleventh century, adorned with its principalities and its free cities, it projected the image of ancient Greece.**

France was, in truth, less powerful and less formidable than its neighbors, but perhaps more happy and flourishing internally with its dukes of Lorraine and Burgundy, of Normandy and Brittany, with its counts of Provence and of Champagne, that it has not since had under its prefects and its functionaries, so to speak nomadic and salaried like day labourers; happier in our day where the relaxing and abolition of feudalism has concentrated everything in the capital and where many cities, once opulent, now widowed or orphaned have lost their resources, their franchises, their customs, their laws, their schools, their parliament, everything, up to their population. The most judicious observers attribute the great prosperity of England, not to what is unsuitably called its constitution, but to the feudalism which still exists in that country, to the natural patronage which follows from it, and above all to the right of primogeniture established as common law for the succession of territorial property.

It is not the Roman legions, but bishops and feudatories who have cultivated, built, civilized Switzerland and Germany. Germany, once so harsh and so savage that the only the natives could bear staying in it, according to Tacitus, to what did it owe such a high degree of culture and civil liberty, such a great amount of well-being and material prosperity, if not to the division of its territory into fiefs and sub-fiefs? One cannot take a step in this happy country without

encountering, either the flourishing residence of a prince, or free and opulent cities, or monasteries either scholarly or hospitaller. How different is the spectacle of the great military empires, which did not receive the benefits of the feudal system! See Russia, Poland, Turkey, for example: there, no true liberty, no development, no variety, but a monotone uniformity, a desolate stagnation, a fatal immobility; there, provinces wither and fall into ruins, because blood and life do not circulate in all the veins of the social body, and members away from the centre wither and dry away for lack of food.

Ah! if small states are in general more conducive to freedom and to the happiness of peoples than large empires, how much should we not thank Providence for having birthed feudalism which was able to reconcile the interests of the victors and the vanquished, the gain of the king and his subjects; which strengthened order and liberty, justice and dependence; which brought well-being and life to the lowest of provinces, and made, of fierce warriors, peaceful proprietors and benevolent princes.

LIX. On the formation of nobility.

Haller names four primary kinds: territorial nobility, ministerial nobility, military nobility, ecclesiastical nobility. Patrician nobility in republics is mentioned as a subsidiary and less stable form. Beyond that, Haller also enumerates those non-titled forms of nobility resting on superiority of a particular faculty, like literary, pecuniary, pastoral, commercial, etc.; it is in this general sense that he argues the phenomenon ought to be understood. He also gives his proposal for a restoration of nobility, and against fictitious orders of merit that are not grounded on actual personal power.

As a result of their victory and of their superior freedom; by the high offices which they occupy and the territorial possessions or the hereditary fiefs which they enjoy; the victors, that is to say the military companions of the king, become quite naturally and without positive law, the first and the principal citizens, the most important and the most distinguished men of the country. A new nobility is born in the light of day, and this is the fourth modification, which distinguishes military empires from purely patrimonial states.

However, considered in itself, the nobility owes its origin nor conquests, nor the feudal system; only the feudalism has produced a new nobility, which eclipsed the former; that is to say, it put in the second rank those who occupied the first. Therefore, we believe that it is not only appropriate, but also necessary in the interest of science and to satisfy the needs of the century, to speak first of the nobility in general; then to come back to the military or feudal nobility in particular.

The nobility is not an arbitrary institution, established by human laws, but it is a creation of nature, the inevitable result of the inequality of native means and acquired fortunes. It is not constituted in its essence neither by diplomas nor by privileges; because the true nobility can not be given to those who do not have it on their own, just as science can only be communicated to the ignorant by the patience of the doctor. Strictly speaking, the diploma does not confer the nobility; and the so-called privileges against which we cry out so loudly do not exist, or they are a necessary and legitimate consequence of the real diversity of positions and social relations. The nobility is only a high consideration, based on the possession of power and a superior freedom. It is based on the predominance in all good and useful things, and is only this recognized superiority.

The Latin word *nobilis* obviously comes from *noscibilis* and designates a notable man, easy to recognize, distinguished, famous. During the Middle Ages, mainly in the capitularies and public acts of the Franks, the words and expressions of *nobiles*, *homines boni generis*, *potentes*, *seniores*, *proceres potestatis*, *optimates*, *barones Regni*, *nati majores*, *meliores nati*, *virii illustrius*, *divitiis* and *honoribus caeteris antecedentes*, were used as synonyms, and they still are to this day.

The German word *edel* (noble) generally refers to all that is rare and perfect in its way, all that excels and stands out for the kindness, by the strength and brilliance. It is also in this sense that the noble attribute applies to both animate and inanimate things; to man as to his actions and feelings. Why does one call gold and silver metals, noble, if not because they are rarer, brighter, more durable and above all more useful than others? Why diamond, ruby, sapphire are they qualified as noble gems (*Edelsteine*), if not equally because of their rarity, for their strength, for their purity? The deer and the horse are called to noble animals, why again? Because they report and rise, the first by the elegance of its forms, by the height of its timber and lightness from the race; the second by its beauty, by its utility, by its inoffensive force, which it applies entirely to the service of man. And among the horses themselves, some are considered more noble than

others according to their race and occupation. It is in the same order of ideas that men are credited with the epithet of noble, when they rise above the crowd; whether they are famous by a higher power, by brilliant qualities or by great possessions.

Noble is generally the opposite of vile and of vulgar, and that's why we also speak of a noble architecture; of noble virtues and of noble thoughts and noble style; of noble professions, and of noble diversions, etc. These therefore form the nobility in all countries, which are the most powerful and the freest, the first and the principal which shine like the light on the candlestick; who enjoy the highest consideration, and attract the consideration of men. Now, what gives them consideration, what calls the attention of the multitude? Obviously anything that indicates their power and their superiority; undoubtedly also the high virtues and the great talents, when they are well recognized and generally appreciated; but even more all that is visible, palpable and falls, so to speak, under the direction, like the birth of illustrious parents; a name which occurs frequently and honorably in the history of the country; local properties that advertise their greatness; the honorary offices and high dignities, by which one is placed above the great number; generous and meritorious actions, services rendered to his compatriots; finally and together with all this, a kind of life corresponding to the superiority of means; a set of actions, occupations and leisure, which assume opulence and may not be shared by everyone. One degree more prominent of these benefits, the meeting of several or of all of course is what is called the high nobility. The high nobility does not form a class apart and strictly separated from the others by an absolute line of demarcation. On the one hand, it descends in imperceptible nuances towards the less illustrious nobility; on the other, it rises by degrees to the sovereign princes, who pass for the noblest, because they are the most powerful and the richest.

Thus destroying the nobility would be equally as foolish a business as that of wanting to abolish all property, any inequality of wealth; and in addition, would dissolve all social ties, all authority and relations of dependence among men; in short, to overturn the natural and immutable order of things.

The oldest nobility, that which exists among the agricultural peoples and in the patrimonial states, it is the territorial nobility or seigniorial. It is made up of the free owners of the land, especially when their property is transmitted hereditarily and without division in the same family, either by birthright or by the right of permanent substitutions. This sort of nobility is the most natural and the most honorable, because it rests on a visible and permanent object. It is also the most beneficent and the most popular, because without taking anything away from anyone, it gives and does service to many men.

The second kind of nobility is the nobility of service, also called the ministerial nobility. It is based only on eminent jobs in the service of princes and the resulting power. To serve is less noble than to be free, and this is why the great territorial nobility generally holds the first rank; the ministerial nobility predominates in the great despotic empires, where the honors and power emanate from the favor of the prince and get lost with it. It is often a passing illustration and

stops with the officeholder, unless his descendants will succeed to the same honors or the wealth, and not joined with landed property, in which case the ministerial nobility merges with the territorial nobility.

The third kind of nobility is distinguished from the previous by more of grandeur and elevation, it is the military nobility. Everywhere and always great feats of arms and heroic actions have ennobled and will ennoble their authors; when free men alone had the right and the obligation to make the war, and they bore all costs, military service doubled as it honor and the glory that spread over the warriors, because it assumed an earlier nobility. It is indeed a noble act, generous and unusual, to sacrifice without reward and without personal interest, one's life and fortune to the defense of one's fellow men. The military nobility is justly deemed the first in conquering nations, and in general among people who have distinguished themselves by wars and by many victories. It existed among the Persians and the Medes; among the Macedonians, Turks, Tartars, etc. The indigenous nations of North America and in South America did not know of any other.

Now here is the fourth kind of nobility, that receives the most just tribute: the ecclesiastical nobility, based on great service to the Church, on high ecclesiastical dignities, on the enjoyment of the benefits and also on the beatification and the canonization, offering to the public reverence the name of those who have particularly distinguished themselves by eminent virtues of self-denial and consecrated life only to serve God and not men. In all the countries of the world, the mission of the priest, master of the celestial doctrine and interpreter of the divine law, has constantly held the first rank among the social conditions, either by the elevation of its object, or by the high influence that is given to a superior wisdom, or finally by the splendor of the goods and the revenues attached to the ecclesiastical dignities. The priesthood gave power and consideration, that is to say, nobility, and the nobility in turn sought the priesthood.

The patrician nobility existed in Carthage and Rome, in the Italian republics of the Middle Ages, in those of Venice and of Genoa, in the cities and free communities of the Swiss and Gray Leagues, in the imperial cities of Germany, in the Netherlands, and already we see it emerging in the United States of America. It really surpasses the ministerial nobility, founded solely on offices in the service of a prince... Moreover, the officer of a prince, even the highest, always has a superior and does not participate in the sovereignty of his master; while those coated with the first dignities of a republic ordinarily jointly exercise their sovereignty.

However, the purely patrician nobility certainly can not walk in hand with the high territorial or feudal nobility, still less with the nobility of princes. For it is a greater degree of fortune and of superiority to be strong and independent by itself, than to share authority with a large corporation. Finally when the republic tilts into decadence, staggers and falls down, the patrician nobility collapses with it, unless it is a principle of power guaranteed by additional sources, such as territorial property and high offices in the service of a prince....

Monuments that attest to the ancient nobility are: family genealogies , baptismal certificates, the contract of marriage, titles of property, letters patent for appointment to high offices, busts, family portraits, coats of arms, almanacs... All of this is at bottom very natural, even laudable, provided it is not done out of pure vanity and in a manner offensive to other men.

“Isn’t it strange that, in countries and at a time when the destruction of the feudal regime is lavishly proclaimed, we seek and venerate the honorary marks of this regime which we lavish more than ever? The titles of dukes, of earls, of viscounts, of marquis, and of barons, when there are neither duchies or counties, or marquises or baronies... In a word it is claimed we can reconstitute the nobility on the basis of empty words, while it can not rely on the facts of real superiority of power and freedom. Let us leave the titles to those who have owned them for a long time; they perpetuate respectable traditions and the memory of our fathers; but do not invent new ones, that would be devoid of all meaning. If we want a new institution of nobility, true and natural, founded like the old one, on a solid foundation capable of rendering useful services to the state; a nobility that causes neither hatred nor jealousy, because it will have nothing exclusive about it, and can be acquired and perpetuated not only by the favor of the prince, but by personal merit: if we want this, I say, there is a sure, infallible way, but only one, to achieve this goal.

That being to promote the establishment of large landed and permanent properties, instead of just breaking them up, to reduce everything to the same state of misery and weakness; that one re-establishes, as it exists in England, the full and entire freedom to test; that we decree and respect the birthright for land, or at least majorats and entails; that we attach to these territorial possessions, perpetuating themselves without division in the same family, certain special freedoms, certain honorary rights, for example the right of jurisdiction in first instance; one of hunting that is inherent in the real property; that of sitting in the general or provincial estates. That one grant to the large owners special tribunals, moreover required by the nature of the things and the interest of justice; that we even invest them with some hereditary employment, as much as that can be done without inconvenience; that they be allowed to borrow their names from these kinds of lands or from some famous deed, in order to perpetuate the memory of virtue; that they be allowed to represent them by coats of arms or other symbols; that we create real orders and associations, which are not reduced to the point of simple trappings, but that bind their members by strict statutes, requiring of them honorable duties and services to the fatherland. In short, let us establish or let establish these natural and beneficial institutions.”

LX. On the convocation of the Estates-General.

A purely consultative body in nature with no lawmaking power of its own; votes by order and not by head.

By the nature of things, when a military leader becomes a territorial lord, he organizes the conquered countries and bestows the height of favors to his warriors, giving them land and high offices as a reward for their services; in the same way, it is quite natural that he consults, at more or less frequent intervals, his principal comrades in arms on the general affairs of the empire, much as it was practiced before in the councils of war. These kinds of assemblies are called the Estates General of the Empire: general, because they are more numerous and more brilliant in military empires than the provincial estates in purely patrimonial kingdoms; of the empire, because according to the nature of social relations, their members, depending only on the sovereign, strictly speaking are all the immediate subjects [tenants-in-chief, crown vassals] of the king.

In vain do modern writers transport their revolutionary ideas into history; in vain do they place sovereign communities and national assemblies everywhere. Given their origin and their nature, the Estates General are neither the legislative power nor the representation of the people. In the beginning the king, that is to say the primitive general, possessing supreme independence, made laws of his own person. His friends and loyal servants, isolated individuals, scattered and headless members, did not constitute a body or a community. The king, their master, was the only link that united them in a bundle. However the king could require their subsidies, their support and also their advice. So it was natural that in the cases where he wanted to dispose of a common affair that he should ask of their aid and to ensure their goodwill and edification. Also the Estates General are, typically, only consultative assemblies, gathered to enlighten the king, give counsel, or to adhere to his proposals. They do not have the right to refuse their help; they can present wishes, demands, opinions and grievances, but they cannot make laws.

Another consequence derives from the nature of the Estates General or of the consultative assemblies, it is that the sovereign has everywhere and always the exclusive right: 1. To summon them; 2. To appoint the members who must be present, that is to say to call on those who he will consult. Therefore, the mode of convocation differs in different times, although it ends up taking a constant and determined form; 3. To propose the matters for deliberation, that is to say to determine the objects on which he requests advice or consent; 4. To dissolve the Estates General when he no longer needs their advice, with or without their consent; 5. To validate the decrees for its sanction, i.e. to accept or to reject the proposals, either in whole or in part, for at bottom it is always the will of the sovereign who decides.

These various rights are not “prerogatives,” a false expression, coined by Locke and Montesquieu; they are proper and personal rights which the king derives from the nature of things and from his very position, so that they cannot be infringed without injustice.

Note also that the convocation of the clergy and cities in the Estates General departed from the purely military regime, which was to meet the king and his trusted servants, the army gathered around its head. It was a beginning of fusion, a successful routing to the pacification between the conquering nation and the conquered nation; and the feudal nobility was all the less opposed to this institution, as on the one hand it found the easing of its charges, and that in any case every order of the estates represented only itself, so that we do not replace, as is done in our

century, arithmetic to justice; the majority was not allowed to arbitrarily dispose of the property and rights of the minority. In Spain, where the towns were formed earlier than in other parts of Europe, they sat in the Cortes from the twelfth century. In England they were called there for the first time in 1265, by the usurper Simon de Montfort, during the wars he waged against Henry III and against Edward I; while before this time, the Parliament was composed, as everywhere else, only of spiritual and temporal barons. However, the appeal of towns and communes was not yet made by right, but only by the good pleasure of the king; it was only in 1297 that a law was made so that in the future no subsidy could be granted without their consent; a provision which was in the interest of the king as well as that of the prelates and nobles, since the former obtained thereby larger sums, and the latter saw their responsibilities reduced, or at least shared. In 1343, the parliament split into two chambers, only because one could no longer contain the large number of its members. The ecclesiastical and secular barons formed the high chamber, also called the House of Lords; the petty nobility of the provinces, joined to the deputies of the towns, formed the House of Commons, and this division has subsisted to our day, in spite of all the religious and political revolutions which have desolated England for several centuries.

According to the testimony of history, the Estates General could deliberate only on the proposals of the king, and that for the simple reason that the king alone had the right to determine the matters on which he sought advice or consent. This principle, recognized everywhere, gives us new proof that these Estates-General, far from being the legislative power, were only a purely consultative assembly. No doubt they were allowed to present grievances, proposals, petitions, and demands to the king, but everyone has the same right, and the lowest of the subjects can do the same; only that for the wishes of important personages, we need to spare the good disposition, and which naturally have greater weight and are usually better listened to than those of private individuals. That is all. Sometimes, too, general assemblies have obtained or usurped privileges; they obtained the privileges for example, that the king would not wage war and the peace, or carry general laws nor borrow money or raise fortresses without their consent; but read history, you will see that these privileges were due either to free conventions, or the kindness of the king, or the tolerance of authority, or the weakening of power, or the need to calm internal disturbances, or foreign intervention. In a nutshell, you will see that these exceptions prove the rule.

LXI. On favors and privileges gifted to the triumphant.

A defense of noble privilege, showing how it injures no one's right, nor was it anywhere as absolute as often believed. On the question of whether personal status supersedes the services attached to land tenure, Haller argues that distributive justice would demand it doesn't, and so a nobleman couldn't escape labor services if he inherits a land with such servitudes attached, nor can a commoner or serf give exorbitant services on a freehold. The example of the *ministeriales* in the Holy Roman Empire gives credence to this view.

“From a conqueror’s bond to his companions in arms, it follows that the winners and their descendants naturally enjoy some favors, certain legitimate franchises, and that their particular position requires special laws, which do not concern and oblige other classes of society. However, these privileges, against which the revolutionary writers declaim with so much of violence are not [the essence of] the nobility itself. They were not conferred on it until later and in much smaller numbers than one might think. On the other hand, they are neither unjust nor odious, they do not harm the honor or injure the rights of anybody; they derive from the nature of things, and do not deserve more blame than the prerogatives of other classes formed by the clergy, merchants, artisans; nor the franchises enjoyed by whatever cities, particular societies, simple individuals. **The victors, who voluntarily followed the king, who always fought for his defense and never against him, are, at least under this consideration, not the equals of the vanquished; and it would even be a revolting and absurd injustice to equate them with the latter and to treat, therefore, not enemies as friends, but friends as enemies. From that everyone sees, to say firstly, that the triumphant conquerors are as such exempt from taxes; and this frankness [freedom] is not a privilege granted to them, but a natural right inherent in their position; a necessary consequence of their relationship with the king. Since the forced contributions are based on the law of war vis-à-vis the vanquished enemies, or on the state of complete servitude, it is evident that the king’s companions in arms, being neither vanquished enemies, nor serfs, may not be subject to arbitrary taxes.**”

“The application of this principle seems to have more difficulties when annual tribute imposed on the vanquished is, as often happens, spread on properties and later these lands change their master; to ensure that, for example, servile/dependent possessions pass into the hands of free people, and vice versa frank (free) possessions in the hands of servile people. The question then arises as to whether the exemption from taxes or the obligation to pay them remains attached to the person, or whether they pass with the soil to each new master, whatever his personal quality. Without doubt, and not only due to right order or the need to avoid confusion and ensure the royal revenues, but strict justice itself admits to us that ground itself does not have rights and duties, since each owner can only transmit what belongs to him and that, therefore, the holder does not receive something for nothing. In these kinds of conveyances, due consideration must be given, not to the personal rights of the new purchaser, but to the rights and obligations of the former owner. If a man of the feudal nobility bought, inherited or acquired in any other way the dependent property of a non-noble man, he can not overcome this by virtue of his personal quality; but he must continue to render the tax with which the land is burdened, because the former master could only deliver his own right, without harming the sovereign, to whom the tax is due. The kings themselves, when they buy fiefdoms or simple private properties, are obliged to pay the debts and to fulfill the obligations which the lands are charged to third parties, unless they are freed from it by a new treaty.

On the other hand, when a noble fief or freehold becomes the possession of the plebeian, that is to say of a man who does not belong to the military and feudal nobility, this land does not fall under the burden of his personal capacity, because the old master could, without doing wrong to others, pass it on with all the rights and all the privileges he enjoyed. In a word, what was free

from the start, remains free, and what was encumbered remains encumbered, notwithstanding the personal quality of the purchaser, and thereby everything imperceptibly returns to a natural order. The tax which, in principle, was a mark of subjection or of servitude, changes into a voluntary debt with nothing odious or even expensive, since the land with these charges is bought cheaply, compared to paying for free land at proportionately higher prices. Moreover, the exemption from taxes, enjoyed by feudatories and nobles, is understood only to mean arbitrary taxes or taxes properly so called, and not subsidies that the former owners would have voluntarily granted thereafter. Finally, the exemption from tribute maintains its rights, as everyone will understand, only with regard to the king and natural lord; it disappears before the enemy from outside who would have invaded the country. As long as it keeps its limits, this franchise is legitimate not only in its origin, but also in its duration.”

“Another privilege, no less just nor less natural, it is that the warriors or comrades in arms of the king, who make up the military and feudal nobility, have and must have a special tribunal (*forum privilegiatum*) when they appear as defendants in civil matters, or as plaintiffs in criminal matters. This privilege does no more harm to anyone than the last; and far from injuring justice it tends on the contrary to strengthen compliance. Equality before the law only requires that everyone be protected in their rights; it does not require everyone to have the same judge. Other classes of society: ecclesiastics, soldiers, merchants, sometimes even artisans, servants, minors, etc., also have or had particular judges, for the very simple reason, that no man can know everything or know well equally the rights, duties and relationships of all estates, in all conditions, and that in general, everyone is judged by his natural superior, who in his superiority has even the power to compel the offender to court, and to provide the injured party with the enjoyment of his right.”

“A third privilege, also very true to nature, but strongly attacked because it excites the jealousy is that members of the feudal nobility are usually appointed in preference, sometimes exclusively to high dignities of the empire, at the expense of the court and in military employments. But what is it really, if not a simple favor which depends on the goodwill of the prince and not a privilege which belongs by right to the nobility? For the same reason that the king may give his warriors lands and fiefs, he also has the right to their seats and to distribute jobs, to promote those he believes most skilled in government and most worthy of reward. By acting in this way, he does not take anything away from anyone and does not infringe the rights of any of his subjects. Much more, in the beginning of the empire, this preference is necessary to assure to the sovereign the fidelity and the devotion of the employees; but as a result, when the conquering nation and the conquered nation blend together better, it becomes less frequent, less exclusive, never and nowhere it continues as [an absolute] legal privilege. For kings would hardly have consented to allow their hands to be tied in this way, and to restrict their freedom in a matter as important as the appointment of officials; at least it would have been a great fault, which could only have been wrested from weak princes, as a result of internal dissensions, or after numerous and manifest abuses. Again, even in this rare case, the inconvenience is

corrected and even annulled by the letters of nobility, that is to say by the elevation [of commoners] to the class of men capable of receiving fiefs, and nothing prevents this favor from being granted at the same time as the job.”

LXII. On (so-called) national freedoms, franchises, and charters of rights.

In which Haller goes through the golden bulls, great charters and articles of the Reich, England, Hungary and Poland-Lithuania. In summary:

First, so-called national freedoms are found in military monarchies, where the conquering warriors form a distinct class, specially favored by power; but one would seek them in vain in the patrimonial states, which do not know two different peoples, two kinds of social relations. Second, the so-called national freedoms never belong to the general public; they are the exclusive share of the first conquerors or of those who were later aggregated into their ranks, to ensure that the nation is formed only of the new nobility. However, these freedoms or franchises do not take away anything, do not harm the former inhabitants of the country; they do not change much their civil status, nor alter their position, and each class or corporation has natural rights or of those it has legitimately acquired by covenants and promises. Thirdly, when they go beyond the limits of natural law, the national freedoms are and cannot be by their nature and by their origin only royal benefits; and they never took their existence nor found their sanction in constitutional laws made by the nation. If you assume from modern ideas that the sovereign nation constitutes itself, what would it do? She would keep her entire freedom, and not just a few special privileges. It would institute removable officials and not sovereigns succeeding one another by right of inheritance. It would distribute prerogatives and receive none. But why do kings grant privileges, franchises, freedoms? They grant them sometimes out of kindness and weakness, to please their subjects or to after a contested or threatened succession; sometimes by form of agreement, to obtain subsidies or other assistance. Sometimes the usurpers offer themselves in order to create followers, and often wage insurgencies by their strength and forces; but they are never born or established without the will and consent of the princes. And whatever the price that one attaches to these kinds of freedoms granted or established by constitutional charters, they are reduced to very little. Usually they consist only in the rectification of some abuses contrary to the old usages, in the guarantee of certain private rights, which had been infringed, and they never imply the concession of political rights, that is to say, the participation in sovereignty. This shows that charters, usually, do not establish anything new, only they call into effect the old law; and it is a rather rare thing, when they change certain duties of humanity into duties of obligation, certain favors based on usage in rigorous law, and certain rules of prudence into rules of strict justice.

LXIII. On the reciprocal struggle or perpetual rivalry between kings and magnates.

Fiscal prudence and restrained bellicosity are essential to avoid frequently convoking estates and parliaments, which are burdensome since this generally means there is a crisis in need of resolving through general legislation or large subsidies, and thus becomes odious to the great vassals (after all, these were traditionally unpaid duties attended by obligatory summons, requiring expensive lodging and often ending prematurely), tempting their lust for power.

“The great vassals are, in principle, it is true, the comrades in arms and the most faithful friends of the king, since they have received from him their lands and their fiefs, their offices and their prerogatives; but sometimes they gain considerable power, and, following the slope of human nature, they aspire to greater independence as soon as they feel able to defend themselves and feel less need of protection. No doubt the gratitude was real, pure and sincere among the first feudatories; but it will change in their successors, who no longer regard the fiefs inherited by them as benefits, nor kings as their benefactors. However, a recognition that must last forever hurts self-love; obedience that relies only on memories and duties of convenience is poorly seated; so those who can be self-sufficient seek to shake them both off like a heavy burden. Let us add that often the rights or interests of the king and those of the great vassals face off against each other. The powerful vassal seeks the peaceful enjoyment of his land and of his income; but the king, reduced to his own forces, often needs subsidies that become expensive to the vassals, to aid in men and money which require heavy sacrifices from them. On the one hand, it is important for kings to maintain the obedience of their lieutenants and of their vassals, and they are only too apt to regard any claims, even when they are within the limits of conventional law, as an act of hostility; on the other hand, the interest of the vassals is to preserve their rights, to guarantee them against any possible attack, and even to increase their possessions, their power, their authority. From this opposition arises many conflicts, which can only end in new agreements or armed struggle. From there, a rivalry, so to speak, perpetual, between the sovereigns and the great ones of the kingdom. Brought about by the nature of things, this antagonism is found everywhere and always in states founded militarily and governed by lieutenants or hereditary vassals.”

“When kings triumph, which happens most often, the great lose almost all their privileges; the difference between the former victors and the vanquished disappears; the prince’s authority becomes more absolute; but by breaking down the limits which separated the social classes, it overturns at the same time its firmest support. Sometimes, too, for a smoother transition, large fiefs are successively brought to the crown [i.e. reduction], to ensure that the monarch becomes almost the only direct lord of the country. Then the administration takes a new form, the traces of the military origin are erased, and the empire changes into a purely patrimonial state.”

“Let not kings restrict their legitimate authority, and let them regulate the succession to the crown by wise laws; that they carefully preserve their domains, surround themselves with faithful and able servants, avoid all that could harm their honor and compromise their dignity; that they avoid disagreeable innovations, odious rigors and unjust annoyances; maintain fiscal prudence, which prevents the need to frequently assemble the estates asking for subsidies: So, we can say with certainty, the power of the monarch will be bracing for more, while exaggerated claims of the nobility will weaken every day and vanish like a faint ghost. A policy contrary to those cautionary rules will lead by necessity to diametrically opposite results. If, instead of dealing with internal administration, the king gets involved too often in external wars; if the ruin of his finances obliges him to frequently convene the estates, and to transform them into a permanently sitting corporation; if, by a disastrous reversal of the natural order of things, the sovereign needs the vassals more than the vassals need the sovereign: in these

disastrous circumstances, the power of the feudatories will increase without measure and will prevail over the authority of the monarch. Add to this the early and frequent deaths in the reigning family; the long minorities of the princes; the incapable or unfaithful regencies; struggles and internal wars of succession; interregnums and the extinction of dynasties, and we will have enumerated the main causes which ruin royal authority in military empires.”

LXIV. On so-called elective kingship.

A long chapter of some 80 pages in which Haller seeks to refute the idea of elective monarchy, as this would imply that the mandate to rule is conferred by collegial election, and not by personal power. He embarks on a rigorous historical survey of Aragon, Germany, France, Denmark, Sweden, Hungary and Poland-Lithuania. I will not bore the reader with all the detail, except to give the summary. For Haller, all alleged examples of royal election are only judicial acclamations, or adjudication and arbitration of a pre-existing right in case of disputed succession, where a lord or magnate voluntarily consents to an inquiry by his peers so that his right carries a greater solemnity, but which does not confer it, only recognizes it. Interestingly, he regards the Holy Roman Empire to be an aristocratic republic due to the constitutional mechanism of prince-electors. Overall this chapter is rather academic, aiming to rebut claims of a popular origin of these judicial ‘elections,’ and does not carry great relevance in our day.

The wealth and territorial possessions, in short the power of the prince comes first, and passes in the ordinary course of things, to its natural or legitimate heir. But as the first vassals, in the militarily founded states, are in possession of great hereditary offices; as they are often united in body, to participate in the affairs of the state with their votes and their subsidies, and they are in almost perpetual struggle against the sovereign authority, there may be certain circumstances that lead to three kinds of irregular events at the throne, or apparent royal elections.

First an usurper gets his hands on power, and, to ensure obedience and prevent competition, he is recognized and proclaimed king by men of influence and authority. Then doubts can, at the death of the sovereign, arise on the right of succession; then the great ones pronounce judicially between the suitors who dispute the throne. Finally, the extinction of the reigning dynasty sometimes breaks the bonds of the social body; in this case the great vassals who had the preponderant power after the sovereign power, choose a new leader to prevent the dissolution of the kingdom. Common historians refer to these acts which accompany irregular events at the crown as elections proper; but if we look at it closely, we see that this denomination rests on a gross misconception. So what are the acts described earlier? As we have undoubtedly understood, they are the recognition of an existing power, although more or less contestable; the judicial determination of a doubtful succession, and the exercise of a preponderant power, acquired *de facto* if not *de jure*. These things are easy to prove.

The first kind of so-called royal election, that is to say, the recognition of a usurped power, but one actually existing, appears more often than the other two in the annals of history. Let a powerful vassal rise under extraordinary circumstances to independence and ascend the throne of his master; there is nothing there which can surprise us; but we will understand better still, that after the success, to obtain obedience and surround himself as a bulwark, he has his authority recognized by other vassals and notable figures. There is more. In the old state policy of Europe there was not yet a regular body of troops and the rulers were, more than today, borne of loyalty, attachment, and the benevolence of the subjects; sometimes legitimate princes, firmly sitting on a secular possession, asked, so to speak, the “national confirmation,” in order to prevent any company against themselves and to facilitate the transmission of the crown to their heirs. However, generally, the usurpers have only needed the popular ratification to hide the theft under the guise of law and to inspire more to fear the legitimate prince. But in both cases, that of the usurper and that of the reigning sovereign precisely, what do we see? First an existing power, then the recognition of the nation. Well, it is one thing to recognize an existing power, another thing to confer it by election; and to proclaim a king who is already by fact, it is not to create a king who did not exist. In real elections, when there is a choice between several competitors, the elected leader receives the power and rights of the election, and that is why he must give his consent; in the fictitious elections, when the choice can only fall on one, the king has power before the election, which gives him nothing; and that is why its acceptance is not necessary. In the first case, the elected official takes the oath to the electors; in the second, it is the electors who take the oath to the elected official. These simple observations should, it seems to us, leave no doubt in our mind.

Let us come to the second kind of royal election, which is not an election, but a judicial sentence. Election and judgment are two very different things. The election belongs only to the superior of the eligible; judgment belongs to everyone who has received the mission and who has the power to enforce its decision. When the absence, lacunae or obscurity of the laws give rise to quarrels over the succession to the crown, as the nobles of the kingdom alone possess the means of rendering the sentence effective, they pronounce by arbitration an award between the competitors. Now, who will see an election in this judgment? The election depends solely on the free will of the voters; but the judgment must be based on the rights of the parties. When the judgment is an arbitrary advantage issued by the court, it is called an iniquity, a punishable transgression; but the election is never charged with iniquity, it can incur at most only the reproach of imprudence. Let us add that, after the election, the unelected candidate must resign himself, because he had no personal and exclusive right to the requested place; but after the trial, the losing party, may appeal to a higher court, and even defend its right by the force of arms. Royal elections of the third kind are, in some respects, akin to real elections. When the reigning dynasty comes to an end, the vassals, who reported only to the sovereign, become free from any higher authority, independent in law and in fact. So they necessarily must be of two things: sometimes they refuse to submit to a new master, and keep the independence and the freedom they have recovered by the death of preceding; in this case, the kingdom is divided into as many of the small states as there are lordships. Other times and more often, they carry the most powerful of them to the throne. Several reasons can motivate them to take this side: a custom which is established like a second nature; the ambition of the great, who far from being satisfied with their own independence, aspire to take the place of the old king, to reign over their equals; the need to give an owner to the royal domains, which several competitors always claim with more or less legitimate titles; finally, the need for united front in the highest position of the state, to ensure peace at home, or to resist external enemies. It is doubtless that the great, when they raise a new dynasty, strive to elevate themselves by obtaining favorable concessions from the elected monarch, and this is sometimes seen in the course of history; but electoral capitulations are rarer than one might think, and are most often confined to confirming the existing state of affairs and to maintaining the privileges and prerogatives already granted.

1. The royal elections are not determined according to the particular capacity and the personal merit of the candidate; but they take as their sole basis the right to the crown and almost always fall on the closest degree of kinship, that is to say on the natural heir of the last king. In the republican elections, however, the merit and the capacity can become a major cause; but no candidate can claim a personal and exclusive right to such or such office, to such or such dignity.

2. Women have often been named or recognized as king, young minors, and even unborn children. But these choices would have been repugnant in good sense, if it had been a question of choosing the most worthy or the most capable; but they are understood well when it comes to recognizing a personal right and granting the legitimate owner of the domains income and all the rights inherent in this possession.

3. Apart from the Germanic Empire, where Charles IV had organized the disorder, if one can express it thus, and legitimized the abuse, at no time and in no monarchy, one saw the law designate the voters and the eligible ones, nor to determine the form and the mode of the election, and even less to require the relative majority or the absolute majority of the votes: the ballot admitted to the vote, here the great lords only, there all the vassals. Sometimes the court appoints or recognizes the master of the palace, sometimes it is the parties which elect their leader; we have even seen several circles naming several kings at the same time. This infinite diversity proves, we do not need to explain how, that the royal elections are not elections, but sometimes individual recognitions or submissions more or less voluntary; almost always subversive enterprises and usurpations; we will say: Look at the republics, at least as we imagine them; there everything is fixed, regulated, legally prescribed; the right of election, the conditions of eligibility, the operations of the ballot and the plurality of votes.

4. For the very reason that the royal elections are mostly what we have to say, vain formalities or criminal attacks against the old policy, they are almost always paralyzed in their action, also powerless either to give power to the chosen one, or to keep it in his hand. When they have not declared the rightful heir, it is usually by the force of arms that it must draw the new throne, which can rarely stand without this support.

5. Finally, in monarchical states, where the legitimate pretender is not favored by the ballot, as his right rests on a natural basis, and does not depend in any way on the plurality of votes, he does not believe himself bound by the election of his competitor. On the contrary, he regards it as a theft that can and must be combatted by all means, and the winning party does not look at the armed resistance as a rebellion, but as a war or a defense of personal honor. And justice has a thousand times, in these kinds of circumstances, crowned by the strength which is inherent in it, the efforts of its defender. Things are different in republics. Here the majority of the votes reigns supreme: it decides in the last resort by its supreme authority, all disputes in the elections, and the lowest of the citizens would treat as a rebel and usurper anyone who would have the audacity to speak out against its irreformable decrees. Moreover, the language was not named to designate the elective kingdoms, these hybrid states which are neither monarchies nor true republics. On the one hand, the king elected and bent under the yoke of an electoral

capitulation, is neither king nor independent prince, because he has a superior to whom he is at least indebted for his existence, and because he does not have his own personal power. On the other hand, the elective kingdoms retain too many locutions, too many forms, too many debris of the old royal power, to be called republics. Take away from this same head the supreme jurisdiction; deprive him of the right to dispose of public property and income; forbid him to appoint alone all posts and to call himself lord and master. For a republican constitution, you need to most categorically determine who are the citizens who belong to the community, and what relations unite them, and the rights they have delegated; then regulate all that pertains to the elections, the electoral right, the eligibility for the presidency and the installation of the elected official. However, none of this was done in the elective kingdoms. What are these kinds of states? They are aborted revolutions, incomplete usurpations, or political monstrosities. They hold too much of the monarchy for us to call them republics, and too much of the republic to deserve the name of monarchy.

LXV. On the macrobiotics of military states.

Firstly, indivisibility of the crown, agnatic primogeniture and a well-ordered law of succession, as they are “incomparably more necessary than in the patrimonial states. For precisely because in a great militarily founded kingdom there are many vassals who have received donations and who are powerful, who through their own forces always try to increase their privileges, and to escape little by little from their obedience, or even aspiring to the crown itself.”

The king of a military state ought to guarantee his preponderance in territorial wealth and ceremonial display:

“He must possess many and great possessions, mainly because he has donated many others, or invested as hereditary fiefs; otherwise he could easily run the risk that some powerful vassals with large incomes and small expenses would surpass him in wealth and possessions, and so they could either ascend the throne themselves, or at least escape from all obedience. A good economy not only raises consideration and true power, but still gives the opportunity to the continuous enlargement and fortification of the same. Similar to the patrimonial prince, the military commander who became a territorial lord, through donations and with the alienation of his domains, erodes the foundation of his sovereignty, which rests not only on the command of troops, but, on the possession of acquired territories. The dissipation and the bad state of the finances lead, as they have already proved it, necessarily either to negotiating the debt burden, or to the increase of subsidies and taxes. But a gathering of great powerful vassals is seldom too affected from the excess of debts, nor from the payment of continuous voluntary subsidies. Ordinarily they remain entirely free from them, and all the weight falls on the inhabitants of the villages themselves, which is contrary to sound politics, since the immediate royal subjects should on the contrary have more interest in them than those of the vassals, so that the lower classes could not enter service for advantage of the vassals and to the disadvantage of kings. It is undoubtedly possible, in calamitous times, to obtain even from the great feudatories, powerful corporations, etc. some considerable help, but rarely, and only for certain serious cases; for there is nothing more dangerous for the independence of kings than to solicit the help of the great and powerful too often, because they are thus given the opportunity to prove their strength.”

It is expected that the first and greatest vassals, those closest to the crown itself, occupy, even with a simple title, certain court offices, or the so-called dignities of the crown, constantly renewing and reviving the idea of their relationship to the king, to remind them of their duties, and to unite them with a double bond to their king. A steady continuation of service and gradual promotions, if some particular principles do not require an exception, are not only generally recommended by justice towards the people.”

“After all, the king must support the superiority of his rank over the great, even with an outward appearance. Hence a brilliant court, a large number of servants distinguished by their rank and wealth, certain formalities; and from time to time certain solemn ceremonies with all the symbols of supreme power, palaces, sumptuous buildings, and magnificent institutions, and where everything bears the imprint of a superior character in greatness and power, a noble and distinguished group, certain occupations, recreations and amusements worthy of a king here, are undoubtedly necessary and useful as they want to hold the supreme consideration against certain great rivals, and to the extent that their voluntary and even friendly obedience is to be maintained. The vassals would serve with aversion, and not without a feeling of shame if they did not stand out for nothing above them, and if outwardly it were not greater than them; on the contrary, their self-love is flattered and elevated when their king and sovereign truly stands out above them, and appears more and more powerful in all respects.”

“New territorial acquisitions are seldom necessary for them; they are more in need of faithful friends who act as levees against distant rivals. They do not need to pay such close attention to the advantages of trade and economy, because their power does not rest on this basis, and therefore in this respect they can satisfy many desires. It is not convenient for these great potentates to want to govern everything immediately, what the limit of human forces and the remoteness of places makes impossible. The force which should be transferred to the great vassals or employees, can equally be left to the friendly or dependent princes and to the communities, as being those who glorify their freedom, and which, furthermore, bear all the burdens. Therefore, it is the unequal alliances that make the other party subsist with honor, it is the protective guarantee of sovereignty that leaves all primitive rights to the one who conditionally submits, through his loyalty, the help of his troops and other aid, and when these servitudes have nothing humiliating about the party involved, such contracts are most proper to the military state, and not calculated with partiality but for mutual benefit, they can make such a kingdom almost invincible.”

Fiefdoms and territorial donations should preferably be non-hereditary benefices that frequently escheat to the king and his fiscus, and moreover labor services should not be commuted by cash rents: “The accumulation of benefits is against nature, since the feudal lord is already sufficiently rewarded with them; and therefore the king can prevent its accumulation without harming justice, he is also a debtor of something to his other servants, and cannot deprive himself of every means to restore them... But in the great fiefdoms it is very dangerous to surrender, by means of sums of money or otherwise the obligations of the oath of fealty, to appear before justice, to administer military aid, as well as royal services, the honors to the change of owners etc, for these personal and even lasting services of men cannot be bought with money which is quickly consumed... Fiefdoms have been given to provide services and not to receive offenses, to buy friends, and not to reinforce the power of an enemy. And therefore the greater need to exercise this right with rigor. For not only does severe justice raise the consideration of kings while the impunity of the crime totally weakens it, but the privations of fiefdoms, when they are just, still have many other essential advantages. They provide the prince with opportunity to withdraw important countries with some large revenues, and to reunite them either to his own domains or to give them to certain friends.”

“Fiefs and territorial donations must be held religiously, but not augmented afterwards, and according to the rules of prudence, neither go beyond their natural limits, nor be of such a kind that I tie my hands to the same, nor that they offend the other remarkable classes of the inhabitants. Some of these privileges and favors, such as the primitive freedom from subsidies and impositions, a particular court of justice, a higher rank, etc, must necessarily belong to the military and feudal nobility, and what is simply a natural consequence of its possessions, or what has been given to it by statutes and contracts by authorized private persons, must and can also be left to it, although this does not offend the rights of a third party... Thus, it is very disadvantageous to give up regalian rights, such as, for example, the

postal monopoly, the right to coin money, mining rights, etc. partly because considerable and independent revenues are thus lost, partly because they are a means of continuous and daily remembrance of the existence of royal superiority.”

The estates are to be convened sparingly and never from a position of weakness or in grave need: “Such imperial estates, therefore, must be gathered only in favorable times, when the power of the king is in its vigor, as for example after victories and after favorable peace contracts, etc, when spirits are in good harmony and full of hope, when they are free from care and fear. In these circumstances the royal power through the meetings of the diets, comes more often to be strengthened than weakened, while the appearance of a suffrage of the nation increases confidence, procures goodwill, and particularly elevates the consideration of the prince abroad. But even in this case the imperial estates must never be united for a long time, but as soon as they have reached the purpose of their convocation, they must be dismissed, so that their members return to their private state, and always remember that they are but servants called to give advice and help, and not companions and equals to the king.”

Nonetheless, the nobility in a militarily founded kingdom are the bedrock of the monarchy, a mirror image of royal authority, and to dispossess them is to sign one’s own death warrant: “But the feudal and territorial nobility on the contrary, and, mainly in the militarily founded kingdoms, are the true natural support of the throne, since its rights and interests rest with those of the king on the same basis, and differ only by degree. What the king is large, every vassal or landlord is smaller. Its domain rests on an infinite number of private contracts. Here it is independent towards its feudal lords, towards the king. Here it appoints many clerks and servants, here it gives laws and regulations, and enforces them, here it lends its arm for leadership, and exercises supreme justice, or at least a lower one, here it communicates favors of different kinds, here it possesses domains, smaller gifts, contributions from fiefdoms, and other income, it administers and employs it at its pleasure; here finally this power is like that of the hereditary prince. The most common human spirit can notice in a small way the nature and the basis of these relationships; mounts to the greatest, and therefore when the rights of the subordinate landlords are recognized or remain unharmed, those of the king will still be honored and esteemed by the same principle. The feudal and territorial nobility must not be intent on real power, but always for its preservation; for while it defends it, it defends itself too; and if the king came to be annihilated by false principles, the nobility would similarly go to ruin. But a king who violently offends and destroys the natural or acquired rights of the feudal lord, thus destroys the foundation of his own rights. If feudal relations are regarded as usurpations and contrary to nature, on what basis are the obligations of the subjects towards the king? If the feudal lords cannot appoint and dismiss their employees and servants, why is this allowed to the prince towards his employees? If it is unjust for them to protect their subordinates, decide their quarrels, or punish their shortcomings, on what then must the jurisdiction of the prince rest? If kings take away their property, they deprive themselves of their income, and if they are abolished, they strike at themselves.”

“Destroying the powerful territorial lords to make their subordinates happy would be the same as killing all the fathers, so that the children would be better off,” Haller says.

Concluding the entire volume on military states, Haller comes to the following verdict:

“With wars and conquests, one suddenly takes possession of large countries, which have not been gathered by the ancient patrimonial principles in different districts through a peaceful occupation or through purchases, exchanges, inheritances, etc. Since the limits are not marked in military states, certain goods are not bought here and there; the mountains, the great rivers, must ordinarily limit them; dominion and territorial possessions march with the power of arms, and arrive where the army is encamped, or has taken an advantageous position. They always recognize this character and also in the titles of their sovereigns, which are conceived in a superb brevity, and always taken from the generalate over the army, from sovereignty over men and not possessions.”

“They can never come to be loved by the peoples, because they always keep within themselves something hard or hostile, and because military power is their only aim. Peaceful fortune is neglected, the sciences and the arts are to be used only for warfare, and are esteemed only according to their use in warfare. As a consequence of the primitive conquest, everything is almost uniformly disposed in such states; and this military uniformity is the sign and proof not of freedom, but of a regimented servitude. Their external form, like their internal organization, therefore has something terrible, which distances the human heart from itself. Diversity and true freedom can only be introduced into these states by means of a regulation similar to the German feudal system, by which they change invisibly in nature.”

“Since the army is not only their support, but also their root, they must necessarily live and die with it, while, on the contrary, the patrimonial prince always retains his fundamental property, the feeling of his right, the remembrance of previous benefits.”

“But what in the military realms was held in check only out of fear will become its undoing with rising hope; the powerful vassals, governors who become subjects without a leader, they divide among themselves, and each tries to support his freedom for himself. As such, these immense [imperial] masses always break up in the end into many smaller states which will rest on primitive goods or fiefdoms, but which can no longer be counted in the number of the military empires. The consequences of this are by no means always as disadvantageous as one thinks, rather a new life then blossoms into new variations; false peace, founded solely on power, is replaced by natural law or by just conventions: and here again we must admire the strength and wisdom of nature which sooner or later leads all states back to the sweet patrimonial bond, a natural rapport between a powerful territorial lord and his subjects, who are amicably obliged to him through certain voluntary contracts.”

And with that we end our journey.

