

Karl Ludwig von Haller: his life and work

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Nulle Terre Sans Seigneur

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[Chapter-by-chapter commentaries on the Restoration: 1. patrimonial states and military empires; 2. republics and free communities.]

Opposed to both these tendencies of liberalism, separated from them by the breadth of the heavens, was Carl Ludwig von Haller, the dreaded “restorer of political science.” The Bernese aristocrat had seen the power of the Swiss patricians collapse amid the storms of the Revolution, and subsequently, as an exile in Austrian service, had constructed the political system which was “to re-establish monarchy upon its true foundations, to overthrow the presumptuous revolutionary science of the godless eighteenth century, and to make the Catholic church shine with renewed effulgence.”

With the proud consciousness of his claim to rank as a universal historian, he announced his doctrine, first of all in *Allgemeine Staatskunde* (1808), and subsequently, from 1816 onwards, in *Restauration der Staatswissenschaft*. It seemed to him a wonderful dispensation of Providence that from him in particular, the born republican and Protestant, should proceed the anti-revolutionary doctrine of salvation. And indeed the sledge-hammer dialectical blows of his severe reasoning fell with crushing force upon the imaginative structures of the doctrine of natural rights. It was the incontrovertible demonstrations of this blustering naturalist which first shattered the belief in the state of nature, in the social contract, and in the innate sovereignty of the people, even in those circles of the uninstructed who were unable to follow the ideas of the historical school of law. Yet all that he advanced in place of this obsolete doctrine was a crude popularisation of the principles of patrimonial law upon which had been based the authority of the Bernese aristocracy. Just as in former days the rulers of Berne had treated the conquered subject lands of Aargau and Vaud simply as the property of their glorious republic, so Haller founded the state solely upon the right of the stronger. Land belongs to a prince, a corporation, or a church; upon this property of a suzerain lord, and under his protection, settlers appear; if the people should disappear, the state would still continue to exist in the person of the prince, who can readily find new subjects. Consequently the state resembles any other association based on civil law, differing from others only because it is more powerful and independent, and because its prince is “an owner, a man equipped with absolutely independent rights”; he rules the nation through the instrumentality of his personal servants, is entitled to regard (it is even his duty to regard) himself and his house as the principal aim for which the state exists, but he must resist the dispersion of his own property and must protect his subjects with his own soldiers.

A caricature of the ancient feudal state, which even in the fourteenth century existed nowhere in such crudity as this, was now propounded as the universally valid political ideal, was announced with the same air of infallibility that had characterised the writers who constructed the model imaginary constitutions of the Revolution. The subordination of the citizen, established by constitutional law, became degraded to a state of servitude defined in terms of civil law. *In a word, the restorer of political science practically abolished the state.*

Nowhere did his doctrine seem more utterly devoid of foundation, nowhere did it seem to conflict more hopelessly with facts, than in Prussia, for nowhere else had the majesty of the state-idea been esteemed so highly as in Prussia, where the princes had always been the first servants of the state. It was precisely upon this that depended Haller’s fierce hatred of Frederick

the Great, of that enlightened Prussian absolutism which had discovered the detestable conscription, and of the Allgemeines Landrecht [Prussian System of Common Law promulgated in 1794]. "Except on the title-page," said Haller, "there is nothing to show that this system of laws may not be intended rather for Japan and China than for the Prussian state." Yet it was in Prussia that Haller secured numerous and powerful adherents. The crown prince and his romanticist friends considered that in the idea of the state as private property they could rediscover the motley glories of the middle ages. Marwitz and the feudalists among the knighthood of the Mark hailed with delight this resolute thinker who reduced the monarch once more to the ranks of the landowners, who divided society once again into the three castes of teachers, warriors, and manual workers, and assigned such valuable privileges to those "who had the freedom of the land." The absolutists found it satisfactory that in Haller's state the prince was above all the people. The ultramontanes were delighted with the praise of theocracy, which the convert had extolled as the freest and best of all political forms. The timid found their own fears confirmed by the complaints of the Bernese fanatic who imagined that the entire world was endangered by the great conspiracy of the freemasons, the illuminati, and the revolutionaries. To all opponents of the Revolution, the victorious polemic against natural rights was welcome. Whereas amid the simpler and wider relationships of French political life, the feudal and clerical party was already the open enemy of bureaucratic absolutism, in Germany all the aspects of the counter-revolution were still indistinguishably confused.

Far less support was secured by the purely ultramontane political doctrine of the skilled sophist, Adam Mueller. The Roman Catholic system could not truly flourish in the homeland of heresy; not one of our clerical authors could go so far as the Savoyard noble Joseph de Maistre, who, glowing with all the ardour and religious fanaticism of the Latin races, demanded, now half jestingly and now again wrathfully, that the sinful world should be subjected to the pope, and who fiercely contested the "bestial" science of "the century of folly." The able German convert lacked this emotional impulse, this crusading enthusiasm. Adam Mueller, with clear insight, descried indeed many of the weaknesses of liberalism, especially in respect of its economic doctrines; he showed incisively how inadequate was the system of laissez-faire amid the struggles of social interest, how impossible was the complete international division of labour between independent nations, and prophesied that from the modern economic system would proceed a new plutocratic nobility more contemptible and more dangerous than the old aristocracy of birth. But in his *Theologische Grundlegung der Staatswissenschaft* we find no more than a repetition of Haller's doctrines, adorned with some of the frippery of theology and natural philosophy. In a manner even more arbitrary than that of Haller, he artificially effected a "natural" classification of society, sometimes distinguishing the teachers, the warriors, and the manual workers as the respective representatives of faith, love, and hope, and sometimes classifying the population into nobles, burghers, and rulers. Mueller, like Haller, denied the distinction between constitutional law and civil law, and declared that every state must to all eternity be composed of a union of states. His ideal was a rational feudalism; he hoped to solve the contradiction between politics and law by the power of faith, elevated to the rank of law!

Thus everything which German political science had secured during the last century and a half, since Puffendorf had delivered our political thinkers from the yoke of the theologians, was once more put in question, and political doctrine was degraded anew to the level of the theocratic conceptions of the middle ages. Friedrich Schlegel hailed the church as the greatest of all guilds, after whose example all the other corporations of civil society should be reconstituted. [Franz von] Baader spoke of the teaching caste, the warrior caste, and the caste of manual workers, as the three orders of every nation, rejecting the expression “the state” as an impious modern discovery. “Corporation, not association,” was the catchword of the political romanticists, most of whom associated with this term no more than the indefinite conception of a debile state authority, limited by the power of guilds, diets of nobles, and self-governing communes, and in spiritual matters subjected to the control of the church.

— Heinrich von Treitschke’s verdict on Haller, from vol. 5 of *History of Germany in the nineteenth century* (1894)

Of all men of the reactionary school in Germany, Gentz was the most practical, Adam Müller the most ingenious, so K.L. von Haller was indisputably the most honest, most consistent and most ruthless. The writings of this man, who seems to me like a dormouse that fell asleep in the Middle Ages and woke up again on the sheath of the 18th and 19th centuries, have a similar use for the livelier knowledge of medieval history as the discovery of Herculaneum and Pompeii for the livelier knowledge of Roman antiquities.

— Wilhelm Roscher, *Zeitschrift für die gesamte Staatswissenschaft*, vol. 26 (1870)

As much as Haller has an advantage in learning, he is so much more tedious and tasteless than Rousseau.

— Constantin Frantz, *Ueber die Gegenwart und Zukunft der Preußischen Verfassung* (1849)

Herr von Haller means well and is well disposed towards humanity. He is no friend of despotism, even though his political principles would in the end lead to this.

— Wilhelm Traugott Krug (1817)

Why does he not bear in mind that even if Switzerland is not exactly an Eldorado, nevertheless it has produced the prophet of the future princely Eldorado, once again a certain Herr von Haller, who in his *Restauration der Staatswissenschaften* [sic] laid the foundation for the “nobler and true” press, for the *Berliner politisches Wochenblatt*?

— Karl Marx, in a May 5, 1842 editorial from the ‘*Rheinische Zeitung*’ on press freedom

After the great upheaval that started at Versailles in 1789 had shattered the moribund forms of the old feudal state and leveled the foundation on which the modern national state should be built; when millions of freed men pushed forward in the broad riverbed of liberal progress; a man dared to breathe his broad chest against the overpowering current and in a wide-sounding voice the battle cry: “Stop!” With astonishing persistence and tremendous exertion of strength, he set about the futile work of trying to recapture the freed spirits and to force the grown-up peoples back into the clothes of childhood.

— From a biography in “Galerie Schweizer der Neuzeit” (1871)

Haller has not been wrongly called the Rousseau of the counter-revolution... All misfortunes in the world, Rousseau asserts in his first writings, come from culture; therefore, in order to become happier, we must step back into the state of nature. Similarly, Haller finds the culture of thought, philosophy, and all of their schools, by which the modern age has become richer and therefore more joyful, an abomination; he wants its opposite, a state where there are no philosophers, no independent judges, no laws.

— Karl Riedel (Young Hegelian)’s position on Haller (1852)

It has finally come to this, the climax of the blog: the Haller post. The rough plan, when I first started writing this blog, was to reserve the Haller commentary near the end, as I intended for the blog to have a definitive completion. Over 4 years later, I will have to revise this, and place the Haller commentary earlier. I have already written a good chunk of what I wanted to write anyway, so this does not ruin the original spirit much. In fact it is quite appropriate that I finally get this out; since joining Twitter in January, I have been flattered by the growing interest in Haller, and so it is about time. On such questions as “what are the roots of conservatism/reaction/counterrevolution” and “what is a good defense of the old regime,” the best approximation is to read Haller, in any event a very good start. It has been 205 years since the first volume of the *Restauration der Staatswissenschaft*, that magisterial work, the crown jewel of the counterrevolution, but to this day English-language scholarship is next to nil. Why is this a bad thing? For one, it was Herr von Haller who popularized the term “restoration” for the period following the Congress of Vienna up to the revolutionary wave of 1830, and quite explicitly coined the term for that same period specifically in Swiss history. But further, it was Joseph de Maistre who once implored a group of emigres that “you ought to know how to be royalists. Before, this was an instinct, but today it is a science” — and it so happens that Herr von Haller was the man who most thoroughly made royalism into a science, virtually unbeaten in his comprehensiveness two centuries later (though perhaps not too surprising, given the dearth of thrones to defend).

Yet far from being an ideological monarchist writing polemics on the ideal form of government, Haller’s goal was to “restore political science,” and he took up that task quite earnestly and capably. Himself a Bernese patrician and a heir to a state tradition marked by centuries of non-dynastic communal and corporate liberties, his analysis of republics in vol. 6 of the *Restauration der Staatswissenschaft* is as full as the rest of his oeuvre, giving a solid

theoretical basis to that misunderstood form of government on private law and medieval historical principles, stripped of the baggage of Roman law and the totalizing ideal of the *polis*. Out of all the counterrevolutionaries, Haller stands at the apex precisely because it is he who put the greatest effort in reconstructing the political rationale of old Europe to a modern audience.

In English-language scholarship, Haller's name will most often be encountered in two contexts: i) in reference to Max Weber's theory of patrimonialism in *Economy and Society*, where Haller is credited for the concept; ii) in reference to Hegel's vociferous denunciation of Haller in the *Philosophy of Right*, frequently used to (correctly) rebut the ridiculous designation of Hegel as a Prussian counterrevolutionary thinker. Most often, any mention will boil down to no more than a paragraph, and any in-depth coverage of Haller's thought is none. He is a footnote whose name means "reactionary," and that is about the extent of it.

The exceptions I know of are, firstly Charles Edward Merriam, Jr. (1874-1953), an American progressive political scientist and New Dealer from the University of Chicago who once used to be at the top of his field but has since fallen into obscurity. His PhD thesis, *History of the Theory of Sovereignty Since Rousseau* (1900), devotes several pages to the "patrimonial theory" and Haller specifically, and was probably the most comprehensive treatment at the time. William Archibald Dunning also devoted a chapter to Haller in *A history of political theories from Rousseau to Spencer* (1920); a testament to the influence of German social science in American academia at the time. It wouldn't be until 1989 that Robert M. Berdahl would devote a chapter to Haller's doctrines in *The Politics of the Prussian Nobility: The Development of a Conservative Ideology, 1770-1848*, which probably remains the most significant treatment in English-language scholarship (until now, anyway), though still quite meagre compared to what is available in German, and scarcely covers any biographic details. More recently, Swiss-Hungarian historian Béla Kapossy published the 27-page essay "Karl Ludwig von Haller's critique of liberal peace" in 2017 as part of an essay collection titled *Commerce and Peace in the Enlightenment*, which serves as a great introductory essay balancing both biography and theory, but ultimately is still just that, introductory. After that, he also published an essay "Languages of Reform in Wilhelm Traugott Krug and Karl Ludwig von Haller" in 2019 dealing both with Haller and one of his main opponents, the neo-Kantian W.T. Krug, which reiterates a lot from his previous, and though interesting is again far from any systematic treatment. But overall that is about all English readers had 'till now.

Through a twist of fate, the "patrimonial state," a term that Haller coined (or certainly put on the map) to describe a model for both the origins and constraints of political authority, has after being filtered by Weberian sociology, become a largely pejorative term often used to describe African kleptocracies. How funny that what started as a restorative framework for the rights and duties of princes and subjects should end up a descriptor for ethnic clientelism, but there you go.

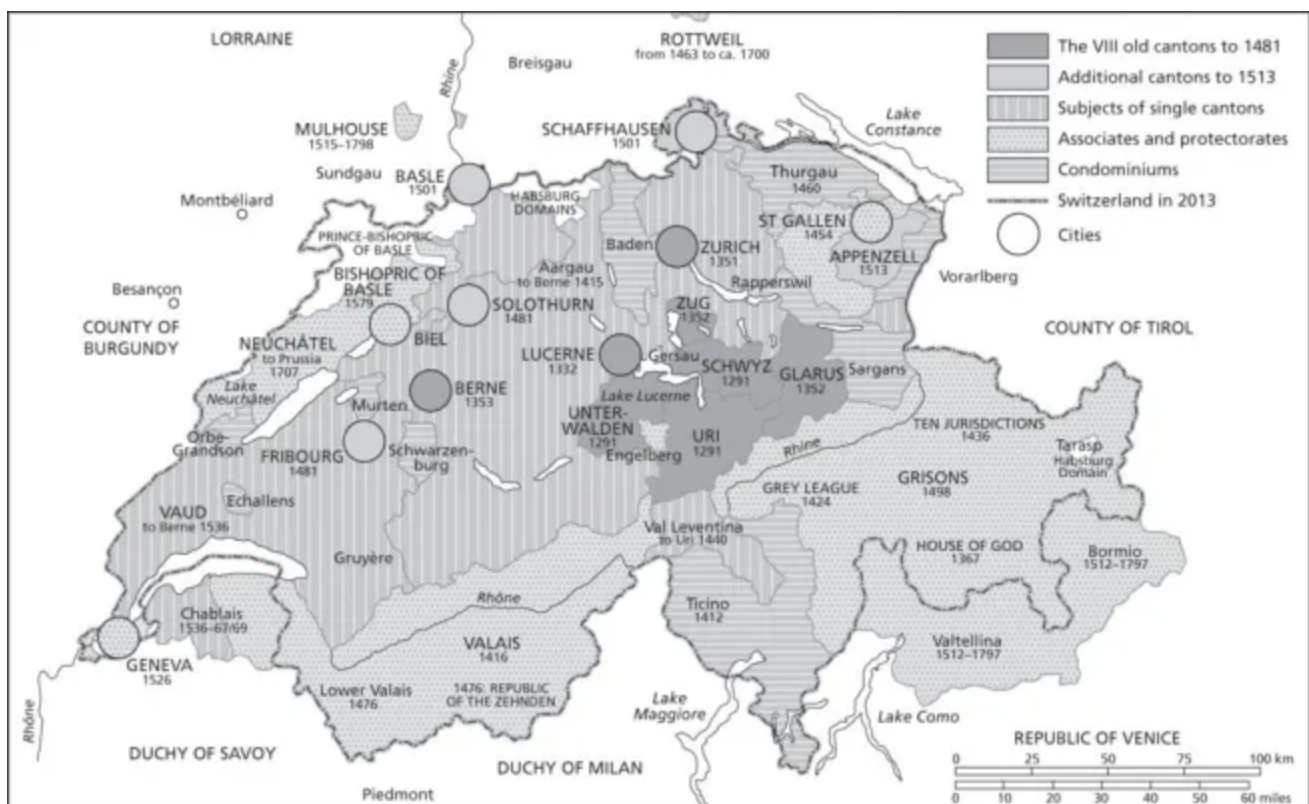
It is also worth noting that Haller had a significant if indirect contribution to the modern understanding of “totalitarianism” and “political religion.” He was one of the first people to analyze the “spiritual state” [geistlich Staat] or “theocracy” as a fundamental kind of state in its own right, initially in the *Handbuch der allgemeinen Staatenkunde* (1808) and later in vols. 4 and 5 of the *Restauration der Staatswissenschaft* (1820; 1834). He mostly used it to describe Christian churches (esp. the Catholic) from the perspective of an *universitas* holding temporal goods, but he also traced a perverted form of theocracy (a ‘demonocracy’) as lying within Freemasonry and the Illuminati. From there the Prussian conservative Heinrich Leo would take it up along with the rest of Haller’s taxonomy in *Studien und Skizzen zu einer Naturlehre des Staates* (1833) to coin the term “ideocracy,” a state legitimated by an *idée fixe* or ideology, of which revolutionary France was the paradigmatic example. The term “ideocracy,” although now obscure, was widely used in the 19th century, survived into the early 20th, and became the forerunner of totalitarianism and political religion. This has been documented by Uwe Backes in *Ideocracies in Comparison* (2016).

Haller is often incorrectly associated with “political romanticism.” Carl Schmitt’s book of the same name peripherally discusses him, yet acknowledges that he cannot fit into that label. It seems that Wilhelm Roscher was the first person to draw this association, on the tenuous basis that certain neomedieval aspects of Haller’s thought should be counted as romantic. Herbert R. Liedke’s essay “The German Romanticists and Karl Ludwig von Haller’s Doctrines of European Restoration” (1958) reaffirms this judgment, but devotes very little attention to Haller’s doctrines as such, rather he traces links from Haller to the likes of Schlegel, Arnim, Steffens, etc. Interesting, but not too germane to understanding the man himself.

Other than that, Haller is often brought up in his connection to the Prussian camarilla of Friedrich Wilhelm IV, including the Gerlach brothers. Friedrich Meinecke’s seminal book *Cosmopolitanism and the National State* (1908) devotes a chapter to Haller which analyzes this link, and has since become one of the most common interpretations. Meinecke, as a representative of German national-liberal historiography, naturally dismisses Haller as a backward-looking utopian with a caricatured view of the past, and ignorant of *raison d’état*, power politics and nationhood. In other contexts Haller is mentioned in the same breath as the likes of Maistre, Bonald, Lamennais and Gentz. Though correspondence and mutual influence undoubtedly existed among these men, especially during Haller’s stay in Paris from 1822 to 1830, neither French ultra-royalism nor the high diplomacy of the Holy Alliance was ever his primary milieu.

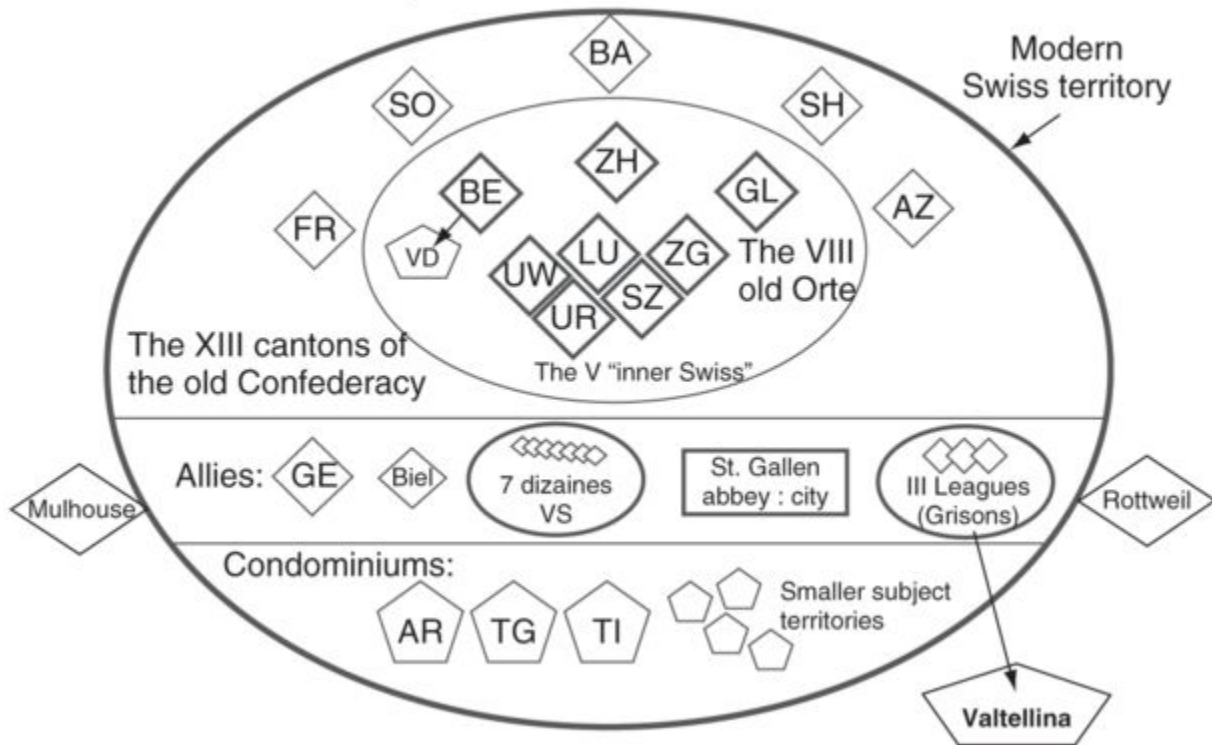
It is therefore imperative to recognize the Swiss (and particularly Bernese) background of Haller, which his two greatest (both untranslated) biographers, Ewald Reinhard and Kurt Guggisberg, both did. Meinecke briefly alludes to it himself. Bela Kapossy has also made it the central focus.

Chapter 1 is an overview of the old regime political structures of the Old Swiss Confederacy. Chapter 2 is a biography of Karl Ludwig von Haller, cobbled from publicly digitized source material. Chapter 3 is a survey of Haller's political writings from 1806 to 1814, before his magnum opus, tracing the development of his doctrine. Chapter 4 discusses historical antecedents to the patrimonial conception of the state. Chapter 5 covers a partial selection of how Haller's work was received among contemporaries and by some later writers. Additionally, I have two addendums respectively on Haller's 1820 essay on the Cadiz Constitution in Spain, and an 1830 essay on reforming the Bourbon monarchy then under constitutional crisis into a proper patrimonial state; two essays that I regard to hold some of Haller's most brilliant insights and have thus reproduced.



<i>Canton (year of the treaty)</i>	<i>Constitution</i>	<i>Confession</i>	<i>Share of popu- lation 1798 (%)</i>
<i>Uri</i> 1291	communal assembly („Landsgemeinde“)	Catholic	2
<i>Schwyz</i> 1291	communal assembly	Catholic	3
<i>Unterwalden</i> <i>Obwalden</i> 1315 <i>Nidwalden</i> 1291	communal assembly communal assembly communal assembly	Catholic Catholic Catholic	2
<i>Luzern</i> 1332	city (patrician)	Catholic	9
<i>Zürich</i> 1351	city (guilds)	Reformed 1524	18
<i>Zug</i> 1352	communal assembly (city + rural districts)	Catholic	1
<i>Glarus</i> 1352	communal assembly communal assembly communal assembly	bi-confessional 1529	2
		Catholic	
		Reformed	
<i>Bern</i> 1353	city (patrician)	Reformed 1528	41
<i>Freiburg</i> 1481	city (patrician)	Catholic	6
<i>Solothurn</i> 1481	city (patrician)	Catholic	5
<i>Basel</i> 1501	city (guilds)	Reformed 1529	4
<i>Schaffhausen</i> 1501	city (guilds)	Reformed 1529	2
<i>Appenzell</i> 1513 <i>Innerrhoden</i> <i>Ausserrhoden</i>	communal assembly communal assembly communal assembly	biconfessional 1524	5
		Catholic 1597	
		Reformed 1597	

Swiss Political Structures, 1536–1798



It is appropriate that we open our survey by letting Haller's own words speak for the political state of Switzerland prior to the French conquest, from an essay of his in the 1830s:

The old social and natural order of Switzerland, a country so often visited and nevertheless so imperfectly known, consisted of these three fundamental points:

1. ° In the internal or private constitution of seven free cities, namely: Zurich, Bern, Lucerne, Basel, Fribourg, Solothurn and Schaffhausen, and of six regions or valley communities (Thalgemeinden), namely: Uri, Schwytz, Unter-Walden , Zug, Glarus and Appenzell, which together made up the thirteen states of the Swiss league proper;
2. ° In the areas and territorial possessions, which these towns and communities had successively acquired under various titles, and in their legitimate relations, either natural or by agreement with the inhabitants of this territory; relations, which for this reason were not everywhere the same. Some were based on simple territorial superiority, like those of a particular seigneurie; others on kinds of alliances, favorable capitulations, patronage treaties, etc. The major part of these domains was the private property of the free towns or communes, others which were called common lordships (condominiums), belonged to various states together, as a result of a conquest or a common acquisition;
3. ° In the mutual covenants of the thirteen States, either among themselves or with other spiritual or temporal lords and communities, called in the old terminology “places” [lieux, Ord] or adjoint states, because they were not allies with the whole Swiss confederation, but only with a few of its members. These deputy or indirectly allied states were made up of the Prince-Abbot and the city of St. Gallen, the Liges Grises [Grisons], Valais, the city of Geneva, the principality of Neuchâtel, the Prince-Bishop of Basel and the city of Biel.

Switzerland was therefore never a single state, much less than the Empire or the Germanic Confederation, which nevertheless had a natural and legitimate head; but it was a voluntary league of several towns and communities, which became more or less independent; France also had an ambassador near the thirteen cantons or the Swiss Leagues , and private residents in Valais, Geneva and the Grisons or the Grey Leagues. Likewise again, the House of Austria maintained a charge d'affaires near the Swiss Confederation at Basel, and a resident near Graubünden [Grisons] or the Rhaetian Confederation which, in terms of its internal public law, was perhaps more still remarkable than that of Switzerland. The word “canton,” which is of French origin and which indicates the part or the subdivision of a single whole, was unknown in the old style of the chancelleries; but used first in vernacular language, it passed improperly into the public language where it should never have been adopted, nor the vague and inaccurate expressions of aristocracies and democracies, which produced so many false notions and gave rise to so many unjust judgments on the social condition of Switzerland. Thus, the country which was called Switzerland, contained within its bosom, not only republics, but also principalities, both ecclesiastical and secular, and several monasteries which, although detached from the Germanic empire, and enclosed in the territory of the states of the Confederation, had nonetheless retained their rights and their former freedom, Likewise there were in Switzerland, as everywhere else, on the one hand, individual or collective sovereigns, and on the other, subjects, that is to say, men and private corporations who, in various respects, depended on these sovereigns, lived in their territory, owed them certain services, and received them on the

other hand, from protection and all kinds of help. All this was founded on private law, that is to say, on natural justice or on voluntary commitments, and consequently in accordance with the social order which subsisted throughout Europe. The astonishing variety which one met in this country, and which superficial minds or the partisans of philosophical despotism called a harlequin dress, formed on the contrary the charm and the special attraction of Switzerland; she was the reflection of true freedom, a sensitive and palpable proof of religious respect for all rights and for all legitimate possession.

As the historian Thomas Maissen has written, the term “republic” was something of a novelty in Swiss history. Haller himself said at one point that the day Bern began calling itself a republic was the day it signed its death warrant.

Maissen writes: “The foreign word “republic” itself was quite new in Switzerland and in German in general. The Swiss learned it before the Germans, through their contacts with France and their French-speaking allies. One of them, Geneva, was addressed for the first time as “Republique de Geneve” by Henry IV in 1602 in order to emancipate the town linguistically from the menacing Duke of Savoy who claimed to be the Genevans’ lord. Against such pretensions, the title “republic” expressed sovereignty. Therefore the Prince of Orléans-Longueville intervened in 1610 when the city of Neuchâtel, another Swiss ally, wanted to make the standard bearer swear to the “republic”—and no longer to the *bien commun*, the commonweal. The prince claimed sovereignty for himself and denied “*ledict mot de republicque*” to Neuchâtel because—unlike Berne, as he mentioned—this city was not sovereign. “Republic” hence was a controversial title. When, in 1628, the communes of the Valais explicitly claimed sovereignty and deprived their lord, the prince-bishop of Sion, of his secular power, they immediately started to mint coins with the inscription “*Respublica Vallesia*.” The Catholic cantons of central Switzerland, usually their allies, maintained however that “republic” was the very opposite of the “democracy” practiced in these Alpine cantons, accepting this new title only reluctantly and late, in 1657.”

Bern in particular did not start officially calling itself a republic until as late as 1716: “According to Samuel Henzi, who was executed after a failed conspiracy in 1750, Berne’s town councils had used “Machiavellian principles” to usurp their power from the entire citizenry. The former participation of the citizens in the commune had found its device on the medieval seal bearing the circumscription “*Civitas et Communitas Bernensis*” (city and community of Berne), but the urban patricians replaced it in 1716 by a new one with the inscription “*Respublica Bernensis*”—a transfer, according to Henzi, of sovereignty from the city to the councils.”

In fact, the shift in chancellery language from “city and community” to “republic,” far from being an aristocratic consolidation, spelled the rise of an incipient democratization that would destroy the complex territorial constitution of Bern in favor of unitary popular sovereignty, by erasing the distinction between citizen (*Buerger*) and subject (*Unterthan*), or in any event diluting citizenship into meaninglessness.

What is also important is that the Old Swiss Confederacy for centuries saw itself as a part of the Holy Roman Empire, and the law of the Roman Emperor (roemischer Kaiser) as the primary guarantee of their liberties and exemptions. Meissen continues: “When they had revolted in the fourteenth century, the Swiss had not fought the emperor but the Habsburg reeves whom they accused of alienating free imperial cities and valleys (Talschaften) from their only legitimate ruler, the emperor. He had granted the cantons liberty, lordship, and regalia, which were all seen as privileges accorded by the universal source of all secular power, the Empire. This fact was symbolically represented by the double-headed eagle over the canton’s coat of arms or in the middle of all the cantons, as it could be seen, for example, on the frontispiece of the first printed History of the Confederation (Petermann Etterlin, 1507). The same Etterlin’s chronicle contained the history of William Tell, invented a few decades previous, around 1470. In the meantime, his deeds and his comrades’ oath of federation against the tyrannical reeves had become part of national history and legitimacy. In his chronicle written in the 1530s, the humanist Aegidius Tschudi, considered to be the founder of Swiss historiography, combined the different elements of myth and history into a narrative that would become canonical, although it was not printed until 1734 (it later served Friedrich Schiller as the model for his drama William Tell).”

It is commonly held that the Treaty of Westphalia in 1648 gave Switzerland its sovereignty apart from the Empire. However, the treaty’s text never refers to sovereignty or any equivalent term like ‘superioritas territorialis,’ rather it speaks of ‘liberties and exemptions’ in the sense of imperial law (Reichsfreiheit). Switzerland had already been exempt from the Reichskammergericht that was created as part of the imperial reforms of 1495 following the Swabian War of 1499.

The significance of the Reich lasted in the Swiss public consciousness into the 18th century, as Meissen writes in “Inventing the Sovereign Republic: Imperial Structures, French Challenges, Dutch Models and the Early Modern Swiss Confederation”:

The Emperor's position regarding Swiss independence was always more pragmatic than legally binding, and although the final claim that the Confederation still belonged to the Empire dated from as late as 1801, German intransigency in this matter had already begun to seriously fade in the seventeenth century.

More surprisingly, perhaps, was that several Swiss authors actually remained devoted to the Empire. In 1684, Johann Caspar Steiner, for instance, revealed his loyalty by pointing out that the Swiss cantons still bore the Empire's two-headed eagle in their coats of arms. This symbolic subordination, according to Steiner, did not contradict the Republic's independence as confirmed by the Peace of Westphalia. The emphasis here is on 'confirmed', 'gut geheissen und bestätigt', because Steiner was not talking about sovereignty in the same way the Dutch had obtained it *expressis verbis* in Westphalia. He meant it as a privilege granted by the Emperor that could theoretically be withdrawn at anytime.

In 1704, an anonymous author also referred to the imperial eagle in the cantons' coats of arms as a sign of 'Lands-Obrigkeit, Juris Superioritatis, Souveraineté genannt'. This expression is a rather paradoxical mixture of two legal languages: the symbol of an immediate power within the Empire (Freyer Stand) was identified with the sovereignty according to international law – a status that a state of the Empire (Reichsstand) could logically not attain because it was always a subject of the Emperor.

Steiner was completely correct when he observed that the imperial regalia were on display in numerous places in the Confederation. The Swiss actually continued producing new two-headed eagles, and only rarely was there as deliberate a shift from imperial to republican symbols as when Zurich built a new town hall in 1698. Nidwalden's and Obwalden's town halls were embellished with two-headed eagles until as late as 1714 and 1733 respectively, and Obwalden, Appenzell Innerrhoden, and Schwyz minted two-headed eagle coins into the 1740s. In Appenzell, the institution that was equivalent to the court of law was called Reichskammer (imperial chamber) until well into the nineteenth century, and until 1872 the Reichsvogt (imperial reeve) not only presided over this chamber, but also supervised executions, while sitting on a horse and holding the 'imperial sword'. Still, the reference to the medieval office of the Reichsvogt shows why the original cantons maintained their imperial symbols for so long. The reeve represented the Emperor as the source of all legitimate authority and his most noble duty consisted of presiding over capital punishment trials. This is why even the patrician governments in Berne and Luzern continued to pronounce the death sentence using the phrase 'according to imperial law' (nach Inhalt keyserl. Rechtsens) until 1730.

In many of these free communities, there was a strict distinction between the *Altbürger* and *Neubürger*, based on antiquity of one's familial ancestry and service to the community. The "core" citizens or patrician families, those with the right to hold the highest offices, were known as the *regimentsfähig*. The largest non-citizen class was the 'Hintersassen,' literally meaning "back-seater," referring to the fact that they were 'in the seat of' [subordinated to] a lord, bailiff or other magistrate. They were akin to permanent residents.

The Altbürger/Neubürger distinction in, for instance, Solothurn, worked like so where the distinction wasn't too great: "The new citizen, on the other hand, receives a privileged position together with the old citizen; he is taxed less than the country peasant; the price of his salt is somewhat reduced; He does not pay the Ohmgeld [sales tax on wine, beer, etc] if he is not a tradesman; he obtains wood at a cheaper price than the Hintereassen. But he differs from regimential or ruling old citizens by not having a share in the distribution of the sums gained through the tax system. Because this innermost ring, the old citizens, has, as far as can be seen, only the privilege of receiving a measure of free salt for the New Year, so that they were essentially free from the salt levy, over the new citizens in terms of financial law; in everything else they are equal to the new citizens... And all this in addition to many other income of the councils such as council money, annual allowances, etc., whereby the mayor, Venner, small and large council are graded; Added to this are the special compensations that resulted from membership of one of the many chambers, typically in kind, like grain and wood..."

It goes without saying that the financial system was patrimonial in nature, and that there was no unified public treasury or bookkeeping. Bounties and emoluments were a standard way of paying remuneration to public servants and council members without having to administer fixed salaries.

The financial system and patrimonial nature of the state in Solothurn is described in detail in an essay titled 'Solothurnische Finanzzustände im ausgehenden Ancien Régime (ca. 1750-98)':

The municipality of Solothurn became independent in earlier times, had acquired sovereign rights, high and low jurisdiction, the right to mint coins, customs, etc .; then with its money it had acquired lordships and rights, land interest and tithes, land and people, redeemed its fiefdoms. Is it surprising that it regarded the same as its own property, that it had taken on the importance of capital that it had invested in customs duties, land interest, etc. in order to achieve a high return? One could compare this Solothurn estate with a large estate complex; the citizens are the landlords and the subjects are the servants, the servants who are supposed to promote the good of their rule; the annual profit is only too good for the landlord, not the servants. In other words: the city is less the master than the owner of the landscape. And within the city walls there is only a narrow circle, the heirs and descendants of those citizens who have acquired the landscape, who egotistically keep their gates closed in order to reduce competition for profit as much as possible, to increase profit for the individual; In return for extensive consideration, they accepted many new citizens into their circle, but only as citizens with inferior rights; only some of the privileges fall to them; they are excluded from the most important ones, from the distribution of the annual profit. And even if here, as in other cities, the economic as well as financial legislation is geared towards the goal of giving the citizen a sufficient head start in all activities over the subject and foreigner, allowing him to compete under the most favorable conditions possible in Solothurn **it was less through the monopoly of branches of industry than through the mere exercise of the power of citizenship to gain ample profit.**

We are dealing with a patrimonial state; the financial system is based – if we disregard the Schanzgeld [tax on maintenance of fortifications], which was introduced relatively later – exclusively on private income and services, land interest, tithe, capital interest, stocks, etc. and on purchased and expanded franchises and regalia such as customs duties, postal monopoly rights, the Ohmgeld [excises], the salt tax; Sometimes it even has a natural economic character if one thinks of the fact that the interest on the land was partly paid in cash, the tithes paid entirely in kind, also compulsory services were partly paid in kind. Even though over the course of time public-law taxes have been added to those earlier sources of finance, as the example of the Schanzgeld shows, the basic character of finance has not in the least been altered. Also those local differences and local privileges, the mosaic-like structure of some incomes such as the differently named tithes, all of this goes back to that development that is not based on the idea of a standardization of the individual parts or any fusion; no far-reaching reform has blurred the seams...

The Solothurn financial administration has now regarded it as its main task, in addition to the generous endowment of its councilors and officials, to provide for a state treasure. This came in two vaults, the 6-key and 3-key box, 1) for safekeeping, to which the so-called attachment to the 6-key box was added. At the time of its greatest content, around the year 1792, this state treasure might amount to about £1 million in cash, securities and validity. The pension book, that is, the capital invested in the country, the administration of which was the responsibility of the city treasurer, is included counted in. The greatest of all secrets, however, was the 6-key box; its contents were only known to the six heads of state; it was the savings penny collected

for the need of the future, which consisted of money and was never invested in an interest-bearing way. **When the French captured it, it still contained 900,000 francs, after the old government had already taken out the sum of 148,800 pounds in 1798.** The 3-key box was used for daily money transactions; In cash and securities it contained only 228,411 livres in 1733 and rose to £1,442,176 by 1791, for the most part in securities. The occupation of the frontier, from 1792-98, took these treasures with them, reduced them by 1,016,428 old francs; the increase in some taxes could by no means cover this loss.

In the course of time, the Seckelschreibererei, headed by the Seckelschreiber, had developed more and more as the central point for all monetary transactions of the estate; In the sixteenth century it was not possible to get an overview of the entire financial system from there. **There was no accounting in today's sense with a budget and balance sheet; the money transactions are simply recorded.** A general balance sheet of all assets was required in the 1780s; however, there was no reform of the accounting system. Government revenues in the decades before 1798 ranged from £150,000 to £200,000 net. The individual departments of the financial administration are now attached to these central offices, often in the loosest fashion; so we move on to discussing the major individual sources of finance: the tariffs.

Given the enormous size and unfavorable nature of the borders, it was a matter of course that Solothurn, dispensing with a border customs system, relocated customs to the busiest places, and this also resulted in a burden for the administration that was out of proportion to the income. The old Free State of Bern, including Aargau, had 33 customs posts with a population of 414,420, while Solothurn had 16, at times even more, with 44,957 souls. Of these, Solothurn, Olten, Trimbach, and the Klus were the main ones; of the others, some had only the task of preventing the evasion of the main customs offices; their yield was therefore minimal. In addition, the number of customs posts fluctuated, depending on the traffic, which did not always keep to the same roads; some disappeared in the course of time, new ones appeared. The Bernese citizens enjoyed duty-free goods on the Solothurnian streets; the citizens of Burgdorf, but not the Hintersässen [non-citizen country residents], paid half the duty; the residents of Büren and Wiedlisbach had free purchases in the city. In this respect, Bern, with its magnificent streets, had an advantage from the start. On the other hand, we often hear from the negotiations of the Solothurn customs chamber that the poor condition of Solothurn's roads is the cause of trade preferring foreign roads and that this causes serious damage to the customs shelf. They alternately sought to direct the transit onto their own roads; this also kept the transit tariffs at a moderate level, and indeed forced Solothurn to leave the transit of cattle duty-free. Solothurn filed several lawsuits in Bern when Bern wanted to change the previous situation in its favor by building new roads. But the two estates also had frequent friction in other ways, in that the guaranteed exemption from customs duties was violated in various ways; by introducing new tariffs or submitting citizens to the existing ones. In the meantime, such differences were soon settled in the most amicable manner, so as not to provoke reprisals from neighbors, who were always ready to do so.

For all of the author's indignation, this system had the character of being flexibly negotiable, balancing public interest with private ambition, and above all to create a system where councillors and magistrates could live off their common patrimony (and not a 'res publica' that fictionally belonged to the entire mass of people in a territory) without the need for direct taxation and overt crowding out of private investment.

Once more, Solothurn had a close connection to the institutions of the Reich ("Solothurn und das Reich im späten Mittelalter"): "Significantly, Solothurn's closeness to the empire, which was emphasized by civil oath, came from times of fundamental upheaval, for the first time in 1533, when the mayor and councilors had to fight for the stability of their rule under the pressure of the Reformation events. Kaiser and Reich seemed to be the best guarantors of the old order along with Roman beliefs, something that did not have to be specifically formulated in the previous century. In addition, the long "slide out" from the empire probably also a consequence of fear of loss of legitimacy vis-à-vis the nearest member of the empire, the bishopric of Basel, as well as vis-à-vis France, whose ambassadors have been housed within its walls since 1530, without always giving undivided support to its policy during the Thirty Years' War and after 1648, however also towards the fellow members, in whose district Solothurn had played a minor rather than a major role since 1481. **In the middle of the 18th century – a good 50 years later than in Bern, for example, the crowned imperial eagle disappeared from seals, coats of arms, discs and tablets in favor of the sovereign crown over the red and white national coat of arms. Leading families in the city such as the Besenval, the Sury or the von Roll, regardless of whether they were friends or opponents of France, even tried to enjoy imperial favor during this time and were elevated to the status of barons between 1695 and 1698.** The reference to the Reich on the days of oaths up to 1681 possibly had another consequence that went deep into the rulership and social constitution of the city. **The new civil rights order of the following year, like in other cities of the Confederation, divided old citizens from new citizens, backcountry [Hintersassen] from domestic people [Hauslileuten], and stipulated that old citizens capable of advising or regiment are only those who were before June 24, the day of oath of the year 1681, were accepted as citizens and entered in the civil register. These therefore basically possessed all political rights and freedoms, even if the real power, as everywhere, is on the small circle of the 'gracious.'**"

The latter paragraph brings up that crucial question of the *patriciate*, the governing class in most of the Swiss city-states. Even those rural forest cantons which retained the Landsgemeinden (outdoor assemblies with the show of hands) had their aristocracies and nobilities de facto if not de iure, and certainly had no liberal-democratic conception of themselves. Attendance at the Landsgemeinde required possession of 'community rights' (Genossenrechte) which classes like the resident *Beisassen* did not possess, a distinction the old guard fought to preserve. Grisons (or Graubünden), a secluded Alpine canton in the East formed by a union of three separate confederal leagues (the Grey League, the League of God's House, and the League of the Ten Jurisdictions), despite its communal character, was still

supervised by an elite circle of 26 families (Randolph C. Head, *Early Modern Democracy in the Grisons*), though not without cooperation and consent from the lower classes: “a group of families based in the Freestate’s communes took over most practical authority in the region. These families soon coalesced into a new elite that dominated the Rhaetian Freestate until the end of the ancien regime, and in some ways up to the present. Some forty-eight families were particularly prominent during the sixteenth century, and some forty dominated affairs during the seventeenth. Twenty-six families took leading roles for both centuries: theirs are the names most commonly found in leadership positions everywhere in the Freestate, and they formed the true heart of the Rhaetian social and political elite. The foundations of their influence were wealth, political office (in the communes and in the Freestate), education, and military leadership. Their dominance perpetuated itself, bringing them more wealth, a near-monopoly on federal offices, and deference except in times of social turmoil. All the available evidence suggests that wealth rather than noble background was the most important qualification for membership in this new cohort. Not one of the elite families in sixteenth-century Graubunden descended from the feudal nobility, and only about a third of them started as agents of the regional dynasts. Moreover, the leading families never became a legally separate estate from the general population, even after their members began intermarrying and closing themselves off biologically and socially. Well into the eighteenth century, the most distinguished Rhaetian aristocrats from the Planta or the Salis clans could advance politically only if they were willing to sit down as equals with the common peasants of their communes.”

(Among these Grisons elites were the Salis-Soglio family, who had the curious distinction of being naturalized British subjects since 1743, and hence developing a dual Anglo-Swiss identity. One of them, Count Johann von Salis-Soglio (1776-1855), was among the most ardent Swiss counterrevolutionaries of the 19th century and a devoted follower of Haller’s restoration of political science.)

The patriciate in Lucerne was some of the most closed and restricted (“Der luzernische Stadtstaat Bürgerrecht—Regimentsfähigkeit—Patriziat”), with the several branches of the Pfyffer family having a leading role. In 1573, Lucerne’s requirements were “that only the son of a new citizen should be entitled to the cooperative property; the requirement of previous residence in the city (four years for own subjects, six for other confederates and ten years for foreigners) remained in place, and the purchase rate for those born in the city remained unchanged, namely 5 gulden; those from the countryside 10 gulden, confederates 20 and foreigners 40 gulden.”

This was a conservative regime lacking an incentive to expand citizenship: “In 1761, another “enlightened Junker,” Jos. Rud. Meyer von Schauensee, Herr zu Oberstaad, wrote a paper on the “Reasons and Counter-Reasons for Accepting New Citizens in a Free Republic”, where he also came to the conclusion in the form of a dialogue that promoting the few old citizens was better than the admission of new citizens. This development shows once again that there was

no striving for equality in the current sense. One strived not for equality, but for privileges. As long as one felt strong enough, one did not share them with people other origin. On the contrary, they were deprived of their freedoms and closed even more decisively.”

The council often used very creative means to assess the wealth and social standing of those desiring citizenship: in one instance it compelled a foreigner to buy two wooden houses, tear both of them down, build a new stone house in their place, pay an admission fee of 200 thalers on top of that plus 2 thalers each to all the officials, and even after all that he was rejected on some technicality about his paperwork. This kind of patrimonial republicanism is, of course, quite opposed to the open borders policies of today, but the very fact that the state was a private association of independently wealthy magnates contributed to its closed nature, keeping it from leveling class distinctions and diluting the population.

The patriciate in Bern specifically, Haller’s native land, had its own Burgerkammer regulating heraldry. This being a ‘bourgeoisie’ in the proper sense of the term, it took some time for the Adelsprädikat ‘von’ to catch on. As recounted in “Patriziat und Adel im alten Bern,” this process largely arose in the 18th century for the purposes of elevating the patrician families’ dignity abroad and to equalize them with prevailing court etiquette: “Those eligible for regiment [regimentsfähigkeit] (whether of old aristocracy or of bourgeois origin, was irrelevant) formed the privileged gentry, the state nobility. In terms of civil status and constitutional law, all that mattered was the ability to regiment. In relation to other countries, however, a different situation arose over time: since the Bernburger usually had no title of nobility and usually did not even have the particle “von” in front of his name, he was disadvantaged abroad. The authorities, however, were keen to ensure that their citizens who were fit for regiment abroad were recognized for their aristocratic quality. On March 24, 1744, the State Chancellery was ordered to add the title “Edel” or “Noble” to the names of all those eligible for regiment in files that were sent abroad under a seal of status.” The terms “edelgebohrner” and “wohledelgeboren” (lit. “well noble born”) were used.

The same article cites a May 8, 1682 decree of the Bernese Grand Council (a.k.a. the Council of Two Hundred) that clearly shows its nature as, not a republic per se, but a *collective lordship*, one that exercises specific regalian rights of territorial superiority that were taken over from the historically acquired lordships, abbeys, counties, etc.: “This formulation leaves no doubt as to the sovereign position of the Grand Council, which states and organizes the “most important fundamental principle that the highest power and sovereign territorial lordship [*daß der höchste gewalt und landtsherrliche souverainität*] which are due to the council of two hundred of the instead of the city of Bern.’ The territorial superiority [Landeshoheit], which originally belonged to the municipality as a citizens’ corporation, was clearly in the hands of the Grand Council, which had usurped the territorial superiority and made itself territorial lord [Landesherr]. As a result, it can no longer be asserted that the city, as a civic corporation and as a legal person, had sovereignty and only allowed it to be exercised by the Grand Council, but that the sovereign had been at least since the 17th century, but de facto even earlier the Grand Council itself. The sovereign Grand Council,

which in this absolutist time knew no authority over itself other than God Almighty, so that “even if we are not accountable for our actions, we are unrestrictedly exercising the sovereign rights” over the vast area of the republic. **“All regalia, jura maiestatis, rights and justice, which consistently belong to a sovereign prince and supreme ruler as the highest head and power [souverainen fürsten und obersten landesherrn als dem höchsten oberhaupt und gewalt] in all well-policed orders”, rightly belonged to the Grand Council.** Among other things, this means that the sovereign in Bern was not a crowned head, not an electoral or hereditary king, but the Grand Council, as absolute ruler.”

The aristocratic nature of the Swiss urban patriciate is especially underlined by their use of the self-designation *gnädigen Herren und Oberen von Klein- und Grossen Rächten*, i.e. the gracious lords and superiors of the small and grand councils.

The foundation of the Swiss city-states did not represent any kind of building of “sovereignty,” since in the medieval era there was a distinction between being *in territorio* (residing in a territory) and *de territorio* (being subject to territorial law), which was necessarily obliterated by state sovereignty. Independence of ecclesiastical jurisdiction is the most obvious example, but in the Swiss lands there were also the so-called “Twingherren” or “Zwingherren,” from the expression “twing und bann,” which referred to conveyable manorial and judicial rights to adjudicate disputes, mandate the use of banalités (lordly facilities), and in some cases exercise capital jurisdiction. This was similar to the Anglo-Norman formula of “sake and soke, toll and team.” For a while these Twingherren often co-existed with the cities and even resided in their walls, but were judicially immune from city proceedings on their estates. In Bern this lasted until an incident in 1471 known as the Twingherrenstreit, which is described here:

A group of people typical of Bern, but rarely found in similar exclusive legal positions in other late medieval cities, were the so-called Twingherren. These lived in the city, but at the same time had extensive land and judicial rule in the country. **This gave rise to the problem that the noble Twingherren, as Bernese citizens, were subject to the unrestricted statutory rights of the mayor and council (Schultheiss und Rath) on the one hand, and, on the other hand, as rural lords, recognized the judicial powers of the Landgraves of Burgundy.** As holders of rural lordship rights, they and the residents of their twing rulers were often in a feudal relationship with clerical and secular lords (secular and clerical judges), whose duties and services they had to perform alongside those of the city (civic duties). In particular, the possession of sovereign rights enabled them to appear as independent rulers vis-à-vis the council and, if necessary, to act against the interests of the citizens. While the Twingherren residing in the countryside in the 13th and 14th centuries were still largely in an ambivalent legal position between the township and the landgraviate, the Council of Two Hundreds (Grand Council) subjugated them in the Twingherren pact of 1471 to the exclusive authority of the mayor and council.

What this shows is that the council succeeded to the rights and estates pertaining to these lordships, making the exercise of these rights a collective affair, but not fundamentally changing what was a factual private law relation, as opposed to a public law exercise of supreme power, much less 'state' power.

For Bern, there is an excellent study available from 2007 titled "State-Building without Taxation. The Political Economy of Government Finance in the Eighteenth-Century Republic of Bern" that treats both its constitutional structure and fiscal apparatus in ample depth. Direct taxation was absent:

It is sufficient to note that since the late seventeenth century, the state itself did not levy any direct taxes on property. The major tax revenue of the canton came from tithes, a 10% tax on agricultural revenue. It was mostly levied on former Church lands and had originally served the purpose of covering the costs of the local priest and poverty relief. Part of the former Church domain had been handed to communes or parishes when poverty relief was delegated to them. As a long-standing tax, the tithe was considered legitimate and never fundamentally questioned. In some parts of the canton, mainly in Alpine regions, tithes had been discharged in late-Medieval times...

This absence of direct taxation played an important part in the government's strategies to legitimate its rule in a paternalistic way. **The statement of Albrecht von Haller ['No taxes, no unconstrained minister, no standing army and not the faintest sign of any threatening war! Can one find anything like this in any other place on earth? This is how the golden age has been. Ambition and riches have deprived the rest of the world of it,' 1753]** quoted in the introduction to the previous chapter illustrates how proud Bernese patricians were to offer their subjects a state without taxation. In his Speech of a Swiss about the Happiness of Subjects under a Free Government, Alexander Ludwig von Wattenwyl went even further when he tried to convince the Bernese population that despite being deprived of political rights, they lived in a state of liberty because the republic hardly depended on taxes. Although such attitudes seem paternalistic from today's perspective, in the context of early-modern states Bernese subjects were relatively free of feudal obligations and, as will be discussed later, their fiscal burden was exceptionally low.

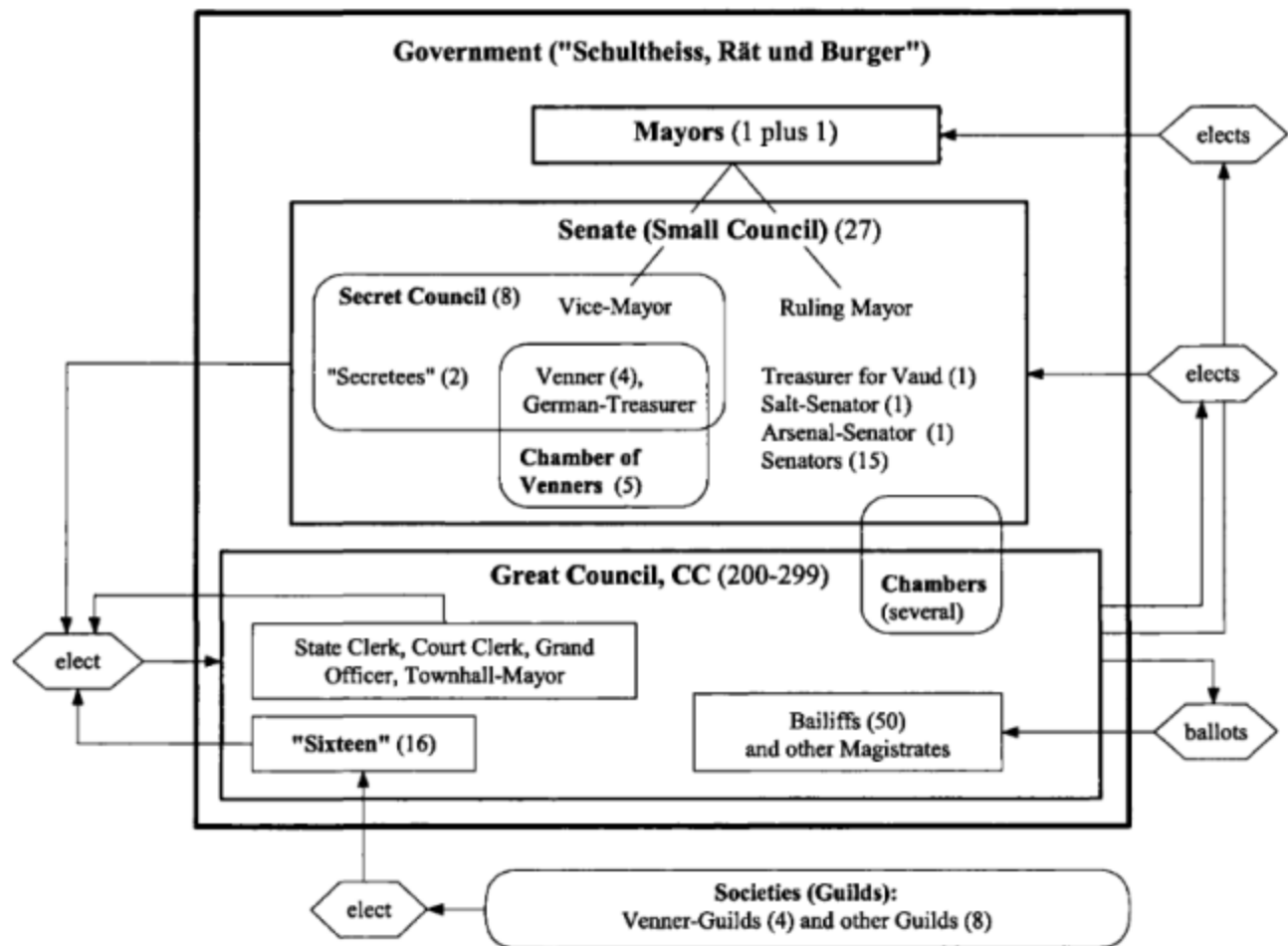
The nature of the Bernese state as a cadastery of territorial possessions under private law, unaffected by administrative rationalization, was apparent as late as 1782, and consisted of the following:

To clarify the situation, the government ordered a survey of its territory, which was published in the Book of Regions of 1782. By then, there were six distinctive types of administrative units:

1. The city of Bern and its surrounding parishes, directly ruled and administered by the government.
2. Four Landgerichte formally governed by the guild-master of a city-quarter [Venner] and administered by his subordinate.
3. Five municipal towns with far-reaching autonomy, governed by their elected Mayors.
4. 50 counties, or Landvogteien, which formed the bulk of the Bernese territory. During a tenure of six years, a member of the government represented Bernese rule as bailiff and monitored the local administration.
5. Several small boroughs under private rule [Twingherrschaften]. They were governed by their owners, which in most cases were patrician families from the city; these boroughs were formally under Bernese sovereignty.
6. Four Condominiums, or Mediatamter, for which Bern shared sovereignty and administration with the canton of Fribourg.

There were further Condominiums administrated jointly with other Swiss cantons, which were not considered part of the Bernese territory. In addition, seven former monasteries without territory were integrated into the state as Klostervogteien [monastic bailiwicks].

“The Bernese state had no written constitution, only a handwritten tome commonly called the Red Book which contained the government’s most important decisions. The government referred to itself as Schultheiss, Rat und Burger von Bern. This title encapsulated the three main layers of power: Mayor (Schultheiss), Senate (Rat) [a.k.a. Small Council] and Grand Council (Burger). The latter had formerly been an assembly of citizens and evolved into a parliament recruited by election and co-optation. Its position as the supreme source of power and sovereignty was confirmed in 1682 by a document that also held the state accountable solely to God. This affirmation of the Council’s absolute sovereignty formally marked the end of continuous attempts by the Senate to be recognised as sovereign. In reality though, the Senate possessed considerable powers by virtue of frequent meetings and exclusive access to information. To avoid dominance by any of the elements that comprised the government, the Bernese constitution possessed numerous internal checks and balances.”



As with most Swiss city-states, the government had a bicameral aristocratic structure where a 'small council' or senate was the coordinating body and core patrician institution that set the agenda for a larger 'grand council': "The next layer was the Senate, which was also called Small Council or Daily Council. 27 Senators (including the two Mayors) set the agenda for the sessions of the Great Council. Two important sub-Councils were staffed exclusively by Senators: the Secret Council and the Vennerkammer, or Chamber of Venners. The latter dealt with all financial matters of the state and was presided over by the (German-) Treasurer, who was elected for six years. Its other members, the Venners, had a four-year tenure and were designated by their respective town-quarter guilds. Of the remaining Senators, some had specific duties such as the Senator of the Arsenal, who presided over the chamber responsible for military armaments. Each Senator sat in several chambers or commissions, which had both governmental and administrative functions and combined members of Senate and Great Council. Mayors and Senators were all formally members of the Great Council, or Council of the Two Hundred, which met two to three times a week. It was also called the CC with reference to the Latin number for 200. The power of the Great Council was in practice curtailed by limited access to information. For instance, although it decided on all financial matters regarding expenses of more than 100 Taler (3,000 Bz), information about proposals prepared by the Vennerkammer was only transmitted orally. One important function of the Great Council was to elect all magistrates of the republic from amongst its members. While

Mayors, Senators and certain positions that required particular know-how were elected, the more lucrative bailiff positions were balloted since 1710 to rule out simony. To avoid appropriation by office holders, all tenured positions in the government were fixed and non-renewable.”

Revenue collection was not centralized, instead each bailiff kept his own ledger, which was audited first by the Vennerkammer in the Small Council and subsequently the audit was passed down to the Grand Council.

The primary sources of revenue were, as described by Abraham Stanyan in 1714: “The revenue of the Canton of Berne arise from five Branches. First, the Lands or Demesnes of the Sovereign. Secondly, The Tenths [sic] of the Fruits of the Lands. Thirdly, a certain Tax upon Rural Lands, which they call in French, Censes Fongieres. Fourthly, Duties and Customs upon merchandize. And Fifthly, the Revenue arising from the Sale of Salt [...]. I have not been wanting in my Endeavours, to find out what Sum these several Taxes may produce yearly in the Canton of Berne but could not get any Satisfactory Account, because its Revenue, consisting chiefly in the Sale of Corn and Wine, are more or less, according to the Price those Commodities bear; and, as the Sovereign sells none in cheap Seasons, it happens, that, during some Years together, they put little or no Money into the Treasury, and at other times lay up in one Year the Revenue of many.”

The overall result was consistent budget surpluses, a low tax burden, low defense expenditures, and the virtual absence of a national debt. In those days, there was no deranged Keynesian ideology about how public debt props up private savings:

The Bernese state ran consistent budget surpluses throughout the century. Revenue was larger than expenditure in 78 years between 1700 and 1796. In particular, profits (defined as the difference between current revenue and expenditure) could be invested. Investments, in turn, generated future revenue, though they were highly volatile. They could be several times the amount of ordinary expenditure, as the loans that were granted to the Dutch and English in 1710 illustrate. In other years, investments could be negative, when assets were liquidated, as was the case in the 1790s. Entrepreneurial returns were increasing throughout the century. The two main contributors to government finance were profits from the salt monopoly and interest payments on foreign capital investments; they were the 'cash cows' that fed Bernese administration. For extraordinary needs, the cash reserve provided a backup. When the government purchased grain overseas to avoid starvation during the 1770/71 harvest crisis, this venture was largely financed by a withdrawal from the cash reserve.

When considering Bern in the context of the surplus state model presented in the introduction, all elements can now be underlined with empirical evidence: budget surpluses, low level of defence expenditure, the absence of a national debt, investment surpluses, low taxation levels.

First, the Bernese state consistently ran budget surpluses throughout the century. As far as reliable aggregated data is available, this was the case in 78 out of 96 years, with most deficits occurring in the 1790s. On average, the budget surplus was 11.8% of revenue although with high yearly fluctuations. Current revenue regularly exceeded current expenditure, resulting in a profit that was then invested. Profit rates averaged 12.6% over the century and were even more volatile than budget surplus rates. If the state was able to increase its overall assets over time this was largely the result of accumulated profits.

Second, as both the long-run and the structural analysis illustrated, the canton was blessed with low levels of defence expenditure. In the two sample years, military spending was an estimated 4.4% (1732) and 10.7% (1782). The latter figure includes the cost of a small expedition to Geneva; if this is excluded, defence expenditure falls to around 6%. This is remarkably low in comparison with other European states, both in absolute and in relative terms. However, the cost of Bernese military measured through recorded expenditure alone can paint too rosy a picture. The main defence burden was shouldered by militia soldiers who were trained regularly and provided their own equipment without compensation.

Third, Bernese state finance was characterised by the absence of a national debt. In contrast to its European neighbours who invented sophisticated techniques of funding their budget deficits by floating loans on the newly established capital markets, the canton had no need to borrow money. This manifested itself in the complete absence of any records of public debt or debt service in the empirical evidence. Instead of amassing debt, the canton accumulated assets.

Fourth, the Bernese government was in a position to invest its surpluses with the aim of generating future returns. The main types of investments have been discussed in Chapter III; the data show that foreign capital investments were quantitatively the most important by far (see also Chapter V). Purchases of territories and judicial rights by the Bernese government, for

which there is only limited financial information, were relatively few in number as such objects rarely appeared on the market. The state also had relatively moderate sums invested in grain, wine and salt inventories. The cash reserve is a special issue, as it did not generate a direct financial return. Since the treasure was originally intended as a war chest, its 'return' was arguably the peace dividend that ensued for as long as the bullion fulfilled its function of deterrence. The Bernese government had a long history of lending money on the domestic mortgage market, which had fuelled its territorial expansion and reinforced clientelistic relationships. In spite of that precedence, the scale and nature of Bernese overseas lending in the eighteenth century was unmatched by earlier activities. The first massive loans to Britain and Holland in 1710 were partly politically motivated, but their conversion into purely financial investments on the London capital market less than a decade later was not. Bern maintained a loan portfolio that served as an income generator as well as a contingency buffer till the end of the century.

Fifth, to the extent that comparable data is available, the level of taxation in Bern was the lowest of any European state. Only the other Swiss subjects benefited from similarly light fiscal burdens. For the sample years 1732 and 1782, the canton levied an estimated 16-23g of fine silver per capita. This is roughly equivalent to four days' wages for a construction worker or some 2% of economic output (GDP). By comparison, in France tax revenue per capita was roughly three times higher; in the states of the Holy Roman Empire subjects also paid between two and four times as much. Direct taxation on property was virtually unheard of in the Bernese republic. Most of the tax income accrued from indirect taxes on salt – disguised as a monopoly profit – and tithes on agricultural returns. Since the latter were levied in kind, they were also immune to any detrimental effects of grain price inflation. Tithe revenue allowed the Bernese state to enlarge the content of its granaries, which in turn was used to stabilise grain prices as a tool of economic policy.

O, Bern! Here was a glorious and venerable free private law society, governed only by the laws of God and nature, with no legal fiction of a "state" foisted by unscrupulous lawyers and philosophes. It is no surprise that Karl Ludwig von Haller, the restorer of political science, should have hailed from this land. Haller's political science was no mere abstract theorizing, but the systematization of what was a centuries-long legal reality for the patrician class he was born from, and their subjects who were blessed to have such a mild and well-run government. It is therefore time that we talk about Karl Ludwig von Haller, the man.

2. Swept by the deluge: the life of Karl Ludwig von Haller

2.1. Youthful calm before the storm: 1768-1791

Karl Ludwig von Haller was born on August 1, 1768 to Gottlieb Emanuel von Haller, eldest son of eminent physiologist Albrecht von Haller, chief secretary of the Bernese War Council, member of the Grand Council of Bern from 1775, and Landvogt of Nyon in the Pays de Vaud from 1784. His mother was Margarethe Schultheß von Zürich, from a haute-bourgeois family.

Member of the prestigious Haller family, his line descended from the Protestant preacher Johannes Haller (1487-1531), who died alongside Huldrych Zwingli in the Second War of Kappel.

There are two publicly available sources on Haller's early life, digitized at the ETH-Zurich online library. One is his youth diary, "Aufzeichnungen Karl Ludwig von Hallers über seine Jugendjahre 1768-1792," compiled by the eminent Haller biographer Ewald Reinhard and his student Adolphine Haasbauer, and the other is Adolphine Haasbauer's compilation of letters from the young Haller to his grandfather, "Briefe Karl Ludwig von Hallers an seinen zürcher Grossvater, Hans Caspar Schulthess, aus den Jahren 1782-1797." The latter correspondence is in French, as was typical of his class.

Haller's twin brothers died in their infancy, and he himself suffered from smallpox at the age of 4, but by the grace of God survived. He was enrolled in Lateinschule (Latin school) in 1774. In 1776 he studied under "Pastor Wyss" in the village of Wengi (possibly Johann David Wyss?). A village surrounded by fertile valleys with oak and beech forests, and no major country estates at the time, the pastor taught the boys Latin, French, geography, arithmetic and the Calvinist religion (specifically the Heidelberg Catechism). Haller recounts numerous near-death experiences: "Besides, my life was often in danger, but what kind providence does not rule over children! Once I fell from a tree at least twelve feet high and did no harm to myself. Another time, when it was already beginning to get dark, I slipped up a mountain on a rather steep precipice, could not gain a foothold to return and saw dreadful death before me. As if by a miracle, another friend managed to reach out to me and save me. A third time I was on the verge of drowning at Baaden and was already pulled out of the water. Also once on a benchtop planer I cut two fingers of my left hand with a broad knife, a wound which has happily healed, but which left me with scars."

Upon the death of his grandfather Albrecht von Haller, he receives an inheritance amounting to 2,500 guilders. In 1779 he is now at a Greek school, where he is passionate about studying the language, under the tutelage of Philipp Albert Stapfer, who would go on to become an accomplice in the Helvetic Republic and a faithful adherent of Jacobin causes. In 1780 Haller's father is elected by lot as "Gerichtsschreiber" (lit. "court clerk"), where he was in charge of levying judicial fines for criminal offenses. The position paid well and secured a good upkeep for the family. Haller's father was already working on securing a chancellery position for his son at this stage. In 1782, Haller finishes grammar school. Moving on to the academy, he laments the enlightened nature of many of his professors, some of whom he had ample reason in retrospect to consider as Masons and illuminists.

Haller's father sends him on a trip with a group of merchants on horseback in 1782, where he went to the Catholic canton of Lucerne, the first time he had ever set foot in a Catholic locale, where he also finds out about the Friday fast for the first time; in his own words, "I was also received there with uncommon love and friendliness, which surprised me all the more as I had never been to a Catholic country before. Since my arrival fell on a Friday, to my

astonishment I was given a well-prepared dinner of all sorts of fish prepared in different ways, and the usual abstinence from meat dishes was explained to me, which I took no offense in at all.”

1783 was as if a bad omen, where dry fog swept the entire country, and Haller once more danced with death. As he writes:

A strange year in more ways than one. Because of excessive mental exertion and all too sustained work, with my copying of historical and philosophical lectures and other private studies as well as the first half of the systematic religious instruction, combined with the extraordinarily rapid development of my body... I was at the end of spring suddenly seized with a violent nerve fever that brought me to the edge of the grave. For the first and last time in my life a vein was opened. Three experienced doctors consulted in the room where I lay in bed. My own father, whose pride and hope I was, and who suffered more than I myself on this occasion, tried to prepare me for death. Providence alone had determined me to live and work longer... A juice of cherries, which I often eagerly asked for, which the doctors urgently recommended for this reason, was perhaps the real cure. After three weeks, out of danger, I was still weak, the slow convalescence required a great deal of rest, and it was impossible to make up for what had been neglected by rewriting the lectures. Since then, I have often disregarded attempts, especially in winter never being able to get up so early and go to work again. From a physical perspective, this year 1783 was characterized by a smoke that persisted for three summer months in the most beautiful, warmest and best weather and was widespread throughout Europe, i.e. by a mist-like haze, because of which the objects could only be seen at a very short distance. The sun was blood-like to look at and seemed no bigger than the moon, so that one could look into it with the naked eye without being dazzled. Although everyone tried not to show any fear outwardly, most of them felt a certain inner anxiety, and even the so-called strong spirits were not at ease with the matter. The newspapers screamed about practically nothing else, and prophecies began to appear about the impending end of the world. At last the strange phenomenon stopped with frequent and terrible thunderstorms, that is, that it hit seven different places in a single evening and only in the city of Bern. Through these thunderstorms the air was cleared again, and Providence consoled us for the horror we had had with a rich harvest and a blessed vintage of excellent quantity and quality.

Towards the end of the year Haller finishes his confessional education, and recounts some doubts about the Protestant creed, but nonetheless enthusiastically reads Christian literature: “For example, the alleged descent of the Protestants from the Waldensians and Albigensians, the abolition of five sacraments, the rejection of all tradition except that which the Reformation retained from it, was the least satisfying [part of the instruction]. In the meantime, after the admonition of the teacher myself, I captured my reason under faith, submitted to the authority of the teacher, was deeply touched at the admission to the holy communion, and was confirmed on holy Christmas feasts in the great church of Bern, with the best resolutions for all good things, in order to secure myself even more in the religion, for which the Sunday sermons, which are usually not always diligently attended, and reading

the Bible without an authentic interpretation, I still read several theological and moral works, such as Puzker's reflection, Kramer's handbook of religion, Gellert's moral lectures, but especially Christian dogmatics from the Göttingen professor Loss. Even these books did not quite satisfy me, presumably because they did not agree on major points either among themselves or with the oral instruction received, or because they lacked warmth of feeling and consistent order. Nevertheless, the good contained in them and my naturally religious disposition did at least so much that I never fell into complete disbelief, and as a result, despite the impetuous irreligious doctrines, the myriad of bad books that fell into my hands arising doubt in myself, yet the impressions of my youth were not erased and my respect for positive, historically traditional Christianity was never entirely erased."

In 1784, Haller is enrolled as a volunteer in the Bernese state chancellery, who "as aspirants for future employment, had to procure the expedition (rewriting) of the usual orders and instructions to chambers, commissions and individual officials, as well as the letters to provincial bailiffs." His astute memory greatly helps him. Once again he is afflicted by disease, this time boils, but is cured by pine nut milk. Meeting his grandfather in Zurich in September rejuvenated him further. His family moves to Nyon due to his father's new job as Landvogt. Haller spent his time riding horses and "[reading] from my father's library, the larger half of which was in my room, or from my own supply of small books a great deal various books, some serious, some mere fiction or otherwise directed at the time, especially Roman classics, the whole of Ovid with an excellent commentary, Horace and several works by Cicero, the German poets Hagedorn, Wieland and Kleist, the plays and tragedies by Voltaire, but not his non-religious writings, but also Gellert's moral lectures and Garve's translation of Cicero's work on duties; Batteux on the fine sciences, Chesterfield's letters to his son on the rules of the good way of life and other writings which were more or less mentioned in the then rampant Enlightenment epoch."

He also regularly met with an older widowed woman and her two daughters, but kept the relationship within bounds:

The morning hours were devoted to self-chosen studies. In the meantime I rode diligently on horseback either to the neighboring country estates and or to circles that I had previously selected or marked on the beautiful Malletschen map of the Vaud region. In particular, I made pretty good acquaintance with a woman from Geneva, the widow of a Zurich tradesman, who lived with her mother and two daughters around ten to twelve years old on an estate called Calève, about three quarters of an hour from Nyon, where I went almost every day also very often dined with her for lunch. This lady might appear to be at least twelve to thirteen years older than I, so she had a friendly superiority over me, the seventeen-year-old youth, and seemed to enjoy giving advice and instruction about the usual rules of good life. By the way, she probably liked me, we often rode on horseback with each other, and there were indeed many caresses and small expressions of favor between us, of which I might have been allowed several, but because of my shyness, my innocence at the time and also because of my fear of the possible detrimental consequences always remained within certain limits.

In a letter dated to August 9th, 1785, Haller writes to his grandfather about a trip to Aix-les-Bains and Chambéry, in Savoy. At one point, he notes: “A singular thing is the national hatred of the Savoyards against the Piedmontese, carried to a terrible point. The character of the latter, reputed to be bad, seems to me to be a cause. Moreover, the Savoyards say that Piedmont is visibly preferred and favored by the King and his ministers and that Savoy, the true homeland of the royal household, is neglected and put back.” How little did he know at the time that the Savoyards would eventually get sold off to the French in 1860 to make way for a “unified Italy” at bayonet point.

On December 31, 1785 he writes again to his grandfather about a motion in the Grand Council (a.k.a. Council of the Two Hundred, abbreviated simply as 200) limiting the use of judicial torture:

You will have known for a long time the death of Councilor Lerber and his replacement, but I do not know if the resolution concerning torture is known to you. – Last Tuesday in 200 it was a question of abolishing it, but after an 8-hour session and very good speeches on both sides, we saw the drawbacks of a complete abolition, especially in our situation – thus it was kept with 127 votes to 51, however with the following restrictions: 1. That the small council (which has this right) in the future use torture only in the greatest necessity and where no other means could take place and that each time to decide on torture the small council must be summoned by oath. 2. The municipalities which hitherto had the right to torture must each time bring the case to LLEE. [bailiff] and before these can finally decide, the procedure must be communicated and placed in the chancellery, where the senators can read it. In addition a commission was established to give instruction for the criminal judges, how and by what means one can discover the truth without torture, and where the cases will be fixed, in which torture cannot take place. (You see, my very dear grandfather, that by these means torture is extremely limited. We remedy all the evils that could arise from the abuse of torture and we prevent the inconveniences, no less great, of complete abolition.) If anything interesting happens here from now on, you can count, my dear grandfather, that you will be informed of it through me.

In 1786 Haller’s father dies. “The misfortune seemed to be great, for the good father left seven children, six of whom were still partly uneducated, partly unsupervised and an extremely small fortune, including an enormous amount of books, manuscripts and literary newspapers, monthly publications and collected pamphlets of all kind,” he writes.

Nonetheless, the family of seven perseveres, the daughters marrying off, and the sons finding jobs. The management of his father’s estate is nominally entrusted to a guardian, but in practice was done by the young Haller himself. Haller manages to pay off his father’s debts, donates part of his library to the Bernese state library, and auctions off others. “For all these guardianship efforts, which I voluntarily undertook out of sheer zeal for our family, and about which my siblings hardly knew anything, I received neither reward nor testimony of gratitude; Nevertheless, they brought me a blessing in that they accustomed me to order and economy, but especially saved me from that passionate and exaggerated book mania, to which I would otherwise have had a tendency, but which now through the bitter experience, I

know how detrimental it is,” he recalls. Haller gets by from his annuity as a chancellery volunteer, and from working odd jobs “for other already employed but less industrious chancellery officials, partly for the rather arduous tasks of a substitute chancellor, partly as secretary for the investigation of individual transactions or council commissions set up to report on criminal procedures, through which I became known to the members of the actual government council.” He attends lectures on Roman law.

He takes a trip to Fribourg, again impressed by the city’s Catholic piety, though he recognizes it as such only in retrospect: “In September Herr Schultheß, my maternal uncle, who was just coming through Bern on a trip, took me in his car to the town of Fribourg, which was barely five hours away [from Bern], but which was seldom visited by Bern at the time. It happened that the church consecration festival was being celebrated there, and there was the equally touching and friendly practice that the first magistrates from the so much slandered patrician families, as a sign of spiritual unity and common joy, danced under the open sky with the lower classes, or at least opened the ball, with the grass surrounded by shade trees. On this occasion, too, the blossoming, healthy, gentle and, as it were, restrained faces of the younger women attracted people, which indicate satisfaction, calm and a good conscience, all the more so as I had never met anything like it in the Canton of Bern. Nevertheless, at that time I was still a long way from ascribing this peculiar confidence-inspiring appearance, independent of sheer beauty, to the influence of the Catholic religion; of which I had no knowledge at all, **and thought even less of the possibility that one and thirty years later in the same city of Freiburg I would convert to the Catholic Church myself and establish so many friendly relationships there.**”

On January 31, 1787 he writes to his grandfather about a council meeting concerning mercenary costs in Geneva: “Monday we dealt in 200 with the important matter of war costs to be requested from the Republic of Geneva. The session lasted 8 hours and finally we decided with 114 votes against 57 that we wanted to reward them – saying in the letter addressed on this subject that we still believed to have acted according to the treaty and consequently to have right to ask for the costs, but considering the exhausted treasury of the Republic of Geneva etc., we wanted to sacrifice our claims... The printing of the new consistorial laws has already started – I trust that they will also have the approval of the enlightened people in Zurich.”

On April 19, 1787, Haller is elected substitute chancellor, opening himself up to a future post as Stadtschreiber and ultimately to a seat in the Grand Council. In 1788, he attends lectures from the Swiss theologian Johann Samuel Ith (1747-1813) on a variety of subjects as history, psychology, logic, moral philosophy, etc. He recalls that “they contained a lot of instructive information and were particularly distinguished by their clarity and methodical order; but it now seems to me that they would probably also have had the secondary purpose of idolizing man as it were and, without consideration, without reference to his creator, undetected as the highest of all beings. The best part of it, I felt, was that on logic, to which I naturally had a lot of disposition, and therefore found a special taste in its scientific theory.”

Again in 1788, Haller is promoted to Commissionsschreiber, a turning point in his life, the duties of which office he describes as follows. What is remarkable is how his practical experience presages his political theory, with its dislike of long and arduous penal and civil codes in favor of the circumstantial discretion of the magistrate on a case-by-case basis, as was the practice then:

In 1788 I was promoted to the position of commission clerk and was thus already three steps forward in the hierarchy of the chancellery applicants in a year and a half. These four commission clerks were actually secretaries of the various council commissions, partly of the Criminal Commission for the investigation of the criminal procedures arriving from the country, which commission always consisted of the three youngest council members... They also alternated with one another week after week, namely so that each of them attended the meetings of the almost daily council commissions in the afternoon of the one week and wrote their resolutions, the other three weeks, however, partly for the preparation of the corresponding reports and project decrees, partly for other secretarial work or for some recreation and private business.

It might seem remarkable that a twenty-year-old boy like me was called to such important work without previous exams, but business was neither as frequent nor as difficult as it is today, and my earlier high school studies and my love of justice served me well. During the investigation of the often very important criminal procedures, which were judged by the daily council at that time, when the separation of powers was not yet known, I soon came to the conclusion that, unless one wants to disregard hair-splitting legal subtleties, the truth is easy to find external and internal characteristics can be recognized such that it is therefore much easier to establish evidence with a honest will than is commonly believed, and that it is not so much about binding, so-called legal evidence, which, taken individually, is always deceptive, but rather about the agreement and weight of the circumstantial evidence, the undisputed facts raised elsewhere, and the confessions or witness statements. **As for the penalties; at that time there were of course no positive criminal laws, the forced application of which to similar but different cases often leads to absurdities: but rather the highest judge punished the criminals according to his own free will, but not for that reason irregularly, but according to the usages of the court or according to the circumstances of the deed and the perpetrator, the circumstances of the time and the place, sometimes in one way, sometimes differently, now more severely, now more gently, without any complaints about this being made, since at that time more consideration was given to the purpose of the punishment than to the material punitive means, more to the safety of the innocent than to the favor of all those guilty.** In difficult cases, criminalists with specialized knowledge, in particular the principles of law, were consulted and probably also mentioned in the reports not as an authoritative, but nevertheless as a trustworthy authority. In such circumstances no special pardon was necessary, the need of which proves the inadequacy and often even the inappropriateness of positive laws. For if one wanted to pardon someone, if the delinquent deserved such a pardon, he was either condemned not to death or to a more lenient punishment than the usual punishment.

And now we get to 1789. A fateful year, indeed, and so Haller records it: “A remarkable year, because in the same the French Revolution broke out, of the more distant cause, true nature and real purpose of which I had not the slightest idea at the time, but which touched also our fatherland, which adjoined France and was in various relationships with it just as it has produced so tremendous political changes and intellectual confusion all over Europe. Up until then I had never crossed the borders of Switzerland, had never been to a university, I was completely unaware as to the existence and the goings-on of the secret societies, about the so-called Enlightenment prevailing at the time, which was trumpeted in all books,” and that “as for the patriotic political principles: at that time I knew nothing other than that the city of Bern was a free city that had gradually acquired a not inconsiderable area under various conditions and legal relationships, and that it was also connected to other Swiss cities and countries. Out of duty as well as out of inclination and interest I honestly sought to devote myself to her service, for she had enough means to reward her servants and friends, and to lead them to honor, prestige, and fortune.”

Haller had been investing in a French annuity plan with the help of Genevan intermediaries, and this was his first personal casualty of the events in France. What would come afterward, and how much worse it would be, he did not know at the time, and neither did most of his peers. None of them had any inkling that their venerable free community would come to a violent end, and with it Europe plunged into cataclysm.

The aforementioned Johann Samuel Ith soothed him with reassuring platitudes that the revolution was an event of “a pleasant nature and an important epoch in the history of mankind, as if several men of the highest eminence stood at the tip of it, and that the beautiful theories of philosophy, which hitherto remained fruitlessly scattered in books now finally come into fruition, so that the abuses would be ended, superstition and despotism would be vigorously combated, and that there was nothing to fear from the financial disorder, because the wasteful expenses of the court would be cut.”

What is notable is at the time Haller was somewhat drawn to the writings of the abbé Sieyès, specifically his *Essai sur les privilèges* (1788), the (in)famous *Qu'est-ce que le Tiers-État?* (1789), and the *Vues sur les moyens d'exécution dont les représentants de la France pourront disposer en 1789*, which he attributed to their more restrained and liberal character compared to the radicalism of Rousseau. As he recalls:

Other revolutionary writings in German or French, or those written in the spirit of the new Enlightenment, had made little or no impression on me with their vague attacks against the nobility and clergy, against superstition and despotism; But in Sièyes' writings, where these regular declamations did not occur, I was blinded by the scientific seriousness that appealed to my character so much, the beautiful masculine prose, the richness of thought, the definiteness and eloquence of the expression, the logically correct consequences of one certainly erroneous, but at that time almost generally accepted as true principle, finally and especially the many side glances into the truth, the common sense and even the love of justice in all things that are in no contact with the false main principle, which distinguishes him from other revolutionary writers, but especially the feeling and respect for the greatest possible legitimate private freedom, which is otherwise completely sacrificed by all supporters of the revolutionary system to the goddess of a collective freedom of the people that crushes all private rights. So from that moment on I was a friend of the French Revolution, or, as they said at the time, a so-called democrat, not out of approval of the storms and acts of violence that were occurring in France, which rather often outraged me, but only because of the principles which I always hoped for a better application. But at that time any scholar or a thorough writer would have discovered the falsehood, the impossibility and the inappropriateness of the revolutionary principle, that is, a state power delegated by the people, if only they would have shown me the principles of the true system in a few words. But this wasn't to happen until I learned them seventeen years later, having discovered them myself and since then scientifically developed these principles, i.e. that principalities and republics were quite natural social relationships and nothing more than independent lordships and communities, that their powers were based not on transferred rights, but on their own, partly natural, partly acquired rights, and consequently also be limited by the same, etc. Had I known that then I would have developed the beautiful, calming and the legitimate consequences that guarded private freedom in this system, which is consistent with nature and experience, and from that moment on I would not have been just a resolute opponent of the Revolution, but also have become a scientific bulwark of the old order.

In the spring of 1789, Haller was engaged in secretarial work where he adjudicated disputes between Bern and Solothurn over the Bucheggberg district, a Protestant enclave in Solothurn. Similar negotiations were done between the bishopric of Basel and the Bernese Jura. Relations between canton representatives were amicable, and both sides hosted each other free of charge.

Naturally, men would discuss the Revolution, and the verdicts were generally marked by apathy, though with one tradesman in Zurich being very enthusiastic: "Incidentally, people dined together at the same table and in the conversations about the French Revolution, opinions opposed to them were expressed here too, albeit without bitterness. Some deputies were against it, others for it, still others indifferent or at least silent and reserved. During the autumn vacation I made a short trip on foot, mostly via Basel and Schaffhausen, to see my grandfather in Zurich. One night there, at my maternal uncle's home, a good-natured trader from Zurich, from a good family, spoke with such enthusiasm about the French Revolution, announcing that milk and honey would flow, even that we would return to the Golden Age.

The guests listened to the prophecy with amazement, but without lending it firm faith... **no one knew that instead of milk and honey, rivers of blood and tears would flow and almost all of Europe would be covered with burnt and slain corpses, only incurable discord would be introduced, and the whole of human society would be torn from its joints.**” Around the same time, Haller is elected to an honorary post in the Bernese tanners’ guild, largely involving the management of alms and poor relief. The same year the Grand Council also negotiates the King of Sardinia’s expenses over the Swiss infantry regiment of Tschiffeli.

In 1790 Haller takes over the secretariat of the Kornkammer, which involves managing the city’s granaries, giving him more funds, including payment in kind through bottles of fine Vaudois wine. In the same year France begins confiscating church estates as *biens nationaux*, and Haller shrewdly sells off his French annuity, correctly anticipating the impending mayhem: “Namely, the French National Assembly had just confiscated all church goods, that is, declared them national goods, and the gullible Parisian financiers believed that by means of this action order would be established in state finances and money would flow in abundance, hence the previously printed government papers [assignats] suddenly climbed above the par. I, on the other hand, did not like this spoliation and, although a Protestant, I could not expect anything good from the church robbery. I therefore use this moment to resell my French annuity payments, which I had bought two years earlier with borrowed money.”

At one point Haller visits Paris, and encounters Sieyes, but is unable to speak to him. He attends the *Fête de la Fédération* of July 14, 1790 at Champ de Mars, and noticed the discomforting coexistence between the principles of old and new, as Mass was being celebrated while the king swore an oath to the constitution. He even gets to have a look at the National Assembly, leaving unimpressed: “I also stayed at the National Assembly several times as a spectator. But although at that time it still consisted of well-educated men, and I myself adhered to the principles of the revolution for want of a better knowledge: the raging and noise, partly in the galleries, partly in the hall itself, annoyed me, but especially the passionate injustice which it caused to the speakers from the right-hand side, among whom were learned, talented and venerable men, but who the others did not want to listen, indeed hardly wanted to allow them to speak. Such behavior, which contradicted my love of justice and the decent forms still customary in our Swiss republics, did not seem to me to carry a good premonition.”

Upon returning to Bern, he is struck by the pithy words of a clerk from Strasbourg, and encounters the comte d’Artois, future Charles X of France:

But I will never forget that clerk at Strasburg, who with so much sound understanding said these memorable words to me: **“What are the poor people supposed to do when there are no more rich ones?” Words that could truly shame so many of today’s statesmen or supposed wise men, by teaching them where the leveling off leads to, and where all the poverty and lack of merit, which is now so terribly rampant and threatening the whole existence of human society, originates from.** In the summer of that year 1790, the Comte d’Artois, later King Charles X, and his entourage came to Bern and for a while set up his apartment in various neighboring, but rather modest, country houses. I met several people of this retinue, namely the gentlemen and ladies de Vaudreuil, de Polignac, and de Guiche, at a country ball in the beautiful walk called the Enge, in which they took a friendly part with us Bernese, but only took part a closed society existed and where, according to the practice at the time, one was only allowed to appear in very decent, mostly silk clothing. During the month of September, revolutionary pretensions were already being made and that rebellious movement in the canton of Valais, which, however, was appeased by the legal authorities of Upper Valais without the intervention of the Bernese.

In 1791, the Flight to Varennes sends international shockwaves. Anti-Bernese demonstrations start popping up in the Vaud. Bern is about to host its 600-year jubilee, when the daily council decides to suspend it on the pretext that the jubilee would “only provoke and exasperate the hostile passions.” Instead Haller and other citizens host a private banquet at an inn, with Haller as head of the table, where he gives toasts to “the freedom and property of the city of Bern; on the legal relations between it and the various parts of its territory; to the faithful fulfillment of all covenants, contracts and promises, etc., consequently nothing but toasts, which, although unconscious to me at the time, were already based on Bernese principles of general and truly natural constitutional law, which I fully and scientifically developed twenty years later.” Haller also writes on economic matters concerning the purchase and sale of butter in Bern, which would in fact be his first ever published writing.

For 1792, Haller writes: “In this ominous year, increasingly threatening to Switzerland, due to the dubious progress of the French Revolution and the outbreak of the war against Austria and the powers allied with it, I became secretary of the Economic Society in Bern and, incidentally, worked diligently on a well-established library catalog of my father, which enabled me to sell half of it for the benefit of our inheritance through a public auction... As a result of the terrible events in Paris on August 10th and September 2nd, when so many Swiss officers were killed or shamefully massacred, and the revolution turned increasingly threatening toward its foreign neighbors, a citizen’s guard was again erected in Bern in September, in which I took part as in the previous year.”

So end his youth diaries.

2.2. Diplomatic missions, the French invasion, and the making of a counterrevolutionary exile: 1792-1806

In 1792, Haller is sent to a diplomatic mission in Geneva. This is recorded in posthumous diary entries published by his son in the Berner Taschenbuch of 1868, [available here](#).

The cause was related to a French army led by General de Montesquiou invading Savoy on September 22, 1792. A sister republic was proclaimed, and two days later the city of Geneva asked for assistance from Bern and Zurich in the form of auxiliary troops to safeguard her neutrality. In the meantime, Bern deploys militias on the Vaudois border. The French naturally object to the Swiss auxiliaries, and the executive council in Geneva orders an advance to drive them out. On October 7, the French declared it to be a formal hostility, and began proscribing pro-Swiss Genevans. Bern tightens security in the Vaud even further, anticipating a probable French incursion.

Haller goes on to narrate his mission as a legation secretary tasked to negotiate troop withdrawals, only for the French National Assembly to preempt their work, with the entire episode ending in the Genevan revolution of October 1792, also recounted [by Sir Francois d'Ivernois](#):

At that critical point in time, when an extremely dangerous war between France and Switzerland threatened to break out at any moment, Mr. von Frisching, a member of the Great Council and old governor of Wangen, a 72-year-old old man, according to common practice, joined the representative appointed by the city of Geneva, and I joined him as legation secretary. We left on October 11th and arrived on March 13th. In the evening at Geneva, where we stayed in the beautiful hotel with Professors de Saussure, in which his goddaughter also lived, who had married a Mr. Necker, nephew of the famous French financier, and was therefore known under the name Madame Necker de Saussure. Zurich had also sent a representative to a contingent of troops in Geneva, in the person of a councilor Pestalozzi, a fearful, super-clever man who was suspicious of Bern and who, incidentally, belonged to the so-called democratic party. When we arrived the mood in Geneva was still so good and courageous that the day before (on October 12th) the bourgeoisie, assembled in their Conseil général, had approved all previous decrees of the Magistrate and had given them unrestricted power to defend the city. In normal times, I would have limited the mission of the two Swiss representatives only to looking after the interests of the troop contingent and, in agreement with the city of Geneva, to everything that could serve to observe and maintain neutrality, such as such on the northern side of Switzerland, in Basel, where there had been no misunderstandings with either the French or the Austrian army.

Here, however, because of the political tension with France, the situation was much more difficult, because both from the correspondence of some Geneva agents in Paris, the dispatches of the Ministry to the French envoys in Switzerland, and also from the decision of the French Conseil of the 28th of September. The latter evidently showed that the reason for the so improperly demanded withdrawal of the Bernese troops from Geneva lies solely in the mistrust which the new French government harbored against the hostile allegiances of the class of Bern and in their mistrust over the sincerity of neutrality, to which, of course, in addition to the opposing political principles, we have to add the events of August 10th and Switzerland's sense of honor, where upon the return of those Swiss regiments in French services, some special decrees of the government were proclaimed for the formation of a corps of troops on the unfortified frontier of France. It was concluded by the French from the preceding, connected with the move to Geneva, that there was even a secret agreement between Bern, Geneva and the court of Turin, in order that I should as someone in the know join the powers allied against the French republic.

Even General von Montesquiou, who, by the way, would have liked to have dealt with the matter in due course, more or less shared this concern by repeating a word against the presence of the Zurich troops, that the best way possible for Bern to prove its sincerity of neutrality would be by withdrawing or reducing the number of troops stationed in Vaud. – In order to raise that suspicion, the two presenters expressly declared to both General Montesquiou and the Magistrate of the City of Geneva that the Swiss troops had only been sent to Geneva upon their request, and that they would be withdrawn. This succeeded. The Genevan government on October 21st concluded a convention with General Montesquiou, by virtue of which the French

troops, which might be needed elsewhere, were supposed to be driven about ten hours from Geneva, incidentally the old treaties between the city and Zurich and Bern were reserved, and a four-week deadline was set for the withdrawal of the Swiss troops.

But there was one revolutionary faction located in the center of the city of Geneva, which under the name of “les patriotes genevois” already overthrew the Geneva constitution, and intended to thwart the ratification of this treaty as well as of a second one, in which not even the removal of the French troops was stipulated; through their influence, even General Montesquiou, who did not have their letters kind enough, was dismissed and an arrest warrant issued against the same, from which he could only save himself by fleeing quickly across the lake to Switzerland. Intimidated by these events and by the non-approval of the convention concluded with General Montesquiou, the envoys of Zurich and Bern as well as the city of Geneva wanted the withdrawal of the Swiss troops, and on November 27th a decree of the French national convention arrived demanding withdrawal on December 1st, but in such a case promised the city of Geneva independence and neutrality, so the Genevan government took advantage of this situation to dispose of the summoned Swiss troops on November 28th, which then began to retreat the following day together with the staff. So, out of all-round fear, I ended this matter in a not very honorable way, as I had to read in detail in the report to the Great Council of Bern that I wrote on behalf of Herr von Frischung. A few days later, namely on December 5th, the revolution, to which the finally free government was no longer able to put up any resistance, what followed was the introduction of a general but illegitimate equality, the establishment of a national convention along with a Comité de salut public, and the guillotine, with which several righteous former magistrates of the city of Geneva were executed.

I do not have exact details on the period from 1793 to 1796 from publicly available data. Certainly, biographers like Theodor Scherer-Boccard, a devoted Swiss acolyte of Haller, mention missions in Swabia, Lugano, Milan and Paris, “so he was in 1792 at the invasion of the French troops in Savoy under General Montesquiou as Legationssekretair to Geneva, in the year 1795 to Swabia, im 1797 to Lugano, Milan, Paris and then sent to the Kongreß in Rastatt.”

Albert Vogt writes: “From 1792, he was sent on a mission to Geneva; in 1795, he went as secretary of M. Tscharner to Ulm; in 1797, he was assistant to lieutenant-colonel Wurstemberger, charged by his country to go to Montebello to ask General Bonaparte to observe Swiss neutrality. Three times, at this time, Charles-Louis was in contact with the future Napoleon and his family: he dined at his side, he spoke with Joséphine, Murât, Augereau, Prince Eugène. These are memories that will never be erased from his memory. After 18 Fructidor, Haller was in Paris with Talleyrand, in constant contact with Mme de Staël, fighting until the last minute – until brutal dismissal – for the political maintenance of his small homeland. Finally, on December 9, 1797, he was sent as secretary of Mr. Tscharner to Rastadt. But this mission was unnecessary. By May 1798, the Republic of Bern had ceased to exist, and soon after, Charles-Louis de Haller, like many others, emigrated to Germany and Austria. He was to stay there until 1806.”

That said, one thing is certain: for Bernese statesmen, the entire 1790s was preoccupied with preventing being swallowed up in the French Revolutionary Wars. Some information can be gleaned from Haller's *Exposé historique des faits concernant la neutralité de la Suisse envers la France* (1797), a memorandum he wrote to placate increasingly belligerent French demands by reassuring them of confederal neutrality.

Haller writes: "They wanted to make believe, against the evidence of the facts and the judgment of the whole of Europe, that the Swiss governments, although announcing an exact and impartial neutrality, had constantly maintained a secret war against the French Republic. These calumnies invented and spread by intriguers foreign to France, too unfounded to find belief among educated people, have long seemed ridiculous and contemptible. But they take on a character of such relentless publicity that they are received so eagerly in the gazettes both French and foreign, and they are accompanied by threats and serious circumstances, so it is no longer possible to doubt their influence."

He notes that "in December [1793] the English Minister Fitzgerald drew a very strong and threatening note to demand the total interruption of all correspondence with the French Republic or its Ambassador. It was unanimously refused on December 26, and with dignity." On February 8, 1794, the same English minister gave a note to the State of Berne to prevent the recognition of the new Constitution of Geneva; his request was set aside and the Constitution recognized. Various infantry regiments in France and Holland were disbanded in 1796. On March 16, 1796, when the French Ambassador presented his new credentials from the Executive Directory, Berne was one of the first Cantons to respond with congratulations and in all diplomatic forms. On May 19, same year [1796], the King of Sardinia having requested the friendly intercession of the Helvetian Corps for the surrender of the Savoie, his request was dismissed with honesty. "On December 7, 1796 The French and Austrian generals reciprocally complained to the Swiss of the violation of a small strip of land belonging to the Canton of Basel, violation that occurred at night in the tumult of a very lively affair and almost impossible to prevent by the position of the territory. The Swiss troops had remained there at the greatest peril of their lives, in the midst of enemy batteries and shootings, and did everything to prevent this violation. Nonetheless, the Officers who had not done their duty with sufficient firmness were questioned and punished."

Earlier: "On 12. October 1793. We denounced an alleged delivery of arms, which was made in Valais for the Piedmontese. The government of Bern urged that of Valais to pay the most serious attention to it. Information was taken and the rumor was found to be without any foundation."

Haller also recounts the various measures employed against French emigres:

From the beginning of the revolution in France, the emigres, whose political opinions exasperated the minds and excited a disastrous division there, were subjected to a special police force.

In May 1792, the Diet resolved by decreeing its neutrality to no longer receive new emigres. In November 1792, a motion was already made in Berne to remove them all. In April 1793, it were decreed to obstruct all borders. In order to carry out this measure, it was necessary to establish an extraordinary regime of passport inspection, hitherto unknown in our free countries. Even private individuals no longer offer to lodge a foreigner for more than four days in their house, without having obtained permission from the police.

In September 1793, a special commission of surveillance for the migrants was established, which was frequently renewed. Every three months exact lists of foreigners residing there were brought in from all over the country, to ascertain the emigrants, and those who did not have the most pressing reasons, or who did not lead a quiet conduct, were obliged to leave.

In August 1794, a new decree of the Sovereign Council was passed, which orders not to receive any more new emigres and to keep only old men, the infirm, women or children. Each municipality was given the right to remove those who displeased them. To obtain tolerance, you needed the consent of the commune, baillif and the Berne Commission, to get them to leave, you needed only approval from one.

Either way, 1797 is when things start rapidly intensifying, and we do have records of his missions in Milan, Lugano and Paris, again from the same Berner Taschenbuch of 1868. He writes: "It was a remarkable and instructive year for me, in which I was able to see and observe a lot, partly in Milan, partly in Paris and Ratatt, personally got to know some of the leading figures of the time, but also had to foresee the imminent demise of my fatherland. In the middle of the month of May I was appointed legation secretary in order to accompany Lieutenant Wurstemberger, a member of the Bernese Great Council, to Lugano, where he was the Swiss representative during the presence of a French army in Italy, tasked with observing Swiss neutrality and to remedy possible inconveniences..."

In preparation, Haller learns some spoken Italian from an Italian cleric stationed in Bern, in about a span of 8 days. He comments on the mild nature of the provosts in Lugano once arriving: "But these provosts, besides providing the extremely small, superlative income, were limited to a very moderate civil and criminal police, and they were truly lacking in terms of real bridging of the people or arbitrary governance... They had not a single soldier at their disposal, apart from the land clerk, there were almost no civil servants, who were only taken from the land. On the other hand, all estates, parishes, and entire districts enjoyed extensive freedoms; they managed their own affairs, paid no taxes or obligations, and precisely because they were under twelve gentlemen, they were not plagued with so many unpleasant laws and regulations. Incidentally, in Lugano I had little else to do, apart from the few dispatches to

the government of Bern, other than preparing a countless number of passes every day for country folk, who I sent as muratori, pittori and other seasonal laborers to Lombardy and the rest of Italy, in order to return home the following winter with the money they had earned.”

It is meeting up with Napoleon in Milan that was their main goal, however, and they do just that: “Soon after our arrival, however, my friend Wurstemberger and I were invited to General Buonaparte to inform him of the change of sworn representatives and their purpose, namely the observation of Swiss neutrality. At that time his headquarters were in Montebello, a beautiful castle on the right side of the road between Como and Milan on a hill. He received us in a small cabinet, where he was busy with dictations, read the letter I had written with a note of applause, and invited us to lunch, meanwhile had us served a breakfast alongside his adjutant, who would later become General Murat. They were very pleasantly entertained with us, though not without some French talk of glory. Lunch took place between 5 and 6 o’clock on the ground floor next to the terrace. At the same time I saw General Buonaparte passing through the large gallery of the castle, which was occupied on both sides with well-dressed persons of both sexes, most of whom wanted to hand over petitions, without stopping at a single one of them... At the table I felt as if I were an ambassador, sitting to the right of the general. Among the guests there were several persons who subsequently became very important, notably in addition to the wife of General Buonaparte, a brother Joseph, a sister, who would later become Madame Murat, Generals Berthier, Augereau, Clarke, and the Neapolitan envoy, Marquis de Gallo. Everything was very respectful. The table was pretty spotty and arranged in barely half an hour; little was said. Buonaparte ate very little.”

Upon returning to Lugano with a sealed letter from Napoleon, they found out that he rejected Bern’s affirmation of neutrality, instead deciding to rebuke several unnamed members of the Bernese government.

The contents of said letter would be published in vol. 8 of *Die Eidgenössischen Abschiede*, and it went:

I have received, Gentlemen, your letter of 3rd June which was brought to me by Messrs Haller and Wurstemberger. I have no doubt that the Canton of Bern, which appointed you, was keen to choose people, who by their wisdom and their good intentions maintain a good understanding and retain the consideration due to the Great Republic. In the critical circumstances in which the French Republic found itself, several individuals in the Government of Berne did not conceal their deep aversion for it [France]. It would be as inconsistent as it would be contrary to the rules of reason and good policy if henceforth the Helvetic Corps and especially the Canton of Berne did not seize every opportunity to show it to the Great Republic the consideration they owe it; they should not doubt their side of the esteem and benevolence of the French Government.

On July 3, 1797, Haller traveled to Milan again, stayed there for about 14 days, and was again introduced to General Buonaparte, who lived in the Serbelloni palace and invited him to lunch.

Napoleon asks Haller how large the patrician families in Bern were. Haller responds by saying that there was no strict patriciate at all, but that out of 236 regimentable bourgeois families, all were equally eligible for government, sans natural inequalities in fortunes and talents. Napoleon is perplexed at this.

Haller continues: “I perceived that Buonaparte had really genuinely wanted peace; for without our knowing the cause, he shook hands with us and said in a moving voice: “The Swiss are good people, peace is good for all people.” (La paix fait du bien à tout le monde.) That is of course true, each part wants peace if it can have it on cheap terms and live quietly with secured rights. The French army in Italy was not very numerous at the time, the outcome of the war was always uncertain, and, as I soon found out, General Buonaparte liked the situation in France at that time, because they were approaching a strife that he judged to be easy.”

Upon returning to Bern, they hear of the coup of 18th Fructidor in France, putting this around September 1797. It is immediately after this event that tensions with France start reaching a breaking point, with rising Vaudois intransigence in Romandy, and so Haller is sent to another mission in Paris, where in the meantime the Treaty of Campo Formio imposed on the Habsburgs after France’s Italian campaign was imperilling the Swiss Confederacy:

The eviction of the English envoy, and other impositions contrary to neutrality, accompanied by threats, increased every day. The semi-official Parisian journals, supported by the Directory, partly written by revolutionary Vaudois, were daily filled with declamations against so-called Swiss oligarchs and oligarchies, but especially with slander against the government of Bern, and were literally rioting against the same. As well as against those of Freiburg and Solothurn. In this pernicious situation it was believed that I could again be helped by a mission to Paris in order to dispel prejudices by means of oral presentations and, where possible, to weigh down the thunderstorm.

Members of the Great Council appointed me again as legation secretary. Both deputies, one Mr. Tillier, although liberal, but still completely unknown to the history of the revolution, physically sluggish, almost not involved in government business, and a Mr. Mutach, a little more active, but only versed in ordinary business, had neither the knowledge nor dexterity nor enough sophistication to successfully carry out a difficult negotiation. Alone, if you had the greatest talents, the program would still be fruitless. **For, as has already been noted above, the revolutionization of Switzerland was authorized. In the treaty of Campo Formio, which was not yet known or at least not published, I found a secret clause. The conquest of Belgium and the left bank of the Rhine was not enough for the French Directory to serve as compensation for the cession of Venice to Germany. For this, Switzerland still had to be transformed into a revolutionary subsidiary republic, therefore dependent on France, in order to be able to invade Italy more easily to the south and to Germany to the north. It really happened later. In addition, it was hoped to be able to obtain large sums of money in Switzerland to be subjugated, because according to French opinion Switzerland had enriched itself very much during the six years of neutrality through the residence of the emigrants and other advantages. In some parts of the country this might be partly true, but the governments were greatly burdened on one hand by the almost constant callable troops to maintain the borders or to dampen internal unrest, on the other by the immense sacrifices which they had twice made to alleviate the grain taxation, so that ordinary revenues no longer sufficed to cover the annual expenses; and the members of the patrician families, who, in addition to the government, were supposed to bear all the burdens alone, also suffered from the bankruptcy of the French republic, which only paid its debts in worthless assignats, and from the removal of the Swiss regiments from Holland and France there were tremendous losses...** At last we were abandoned because of the tiresome, albeit sorrowful, neutrality of all external friends... As soon as we arrived in Paris, I encountered in the semi-official daily papers, one of which opened fine columns for the well-known Vaudois lawyer La Harpe, denouncing the government of Bern and its deputies. In order to announce the purpose of our mission, at which Minister Talleyrand would be introduced, we could never reach an audience with the board of directors or with any of the members. We found little sincere sympathy among the many Swiss who stayed in Paris, while others evidently worked in a hostile manner against us. **Only General Montesquiou and Mme. de Staël, both of whom I had met in Switzerland, were still interested in us to some extent and at least gave us any news about the unfortunate state of affairs.**

On November 22, Haller and his two principals are treated to an audience with Talleyrand, who did not receive them favorably. Talleyrand suggested that it is best they return to Bern, amid all the slander in the press and the negative disposition of the Directory. Getting the hint, Haller and his delegation asked for their passports, and arrived back in Bern on November 30, 1797. From there Haller makes his way to the Congress of Rastatt, where the mediatization of the Holy Roman Empire was put forth. His verdict: "And just as one looks everywhere for a glimmer of salvation in desperate circumstances, one also believed in Bern that through an attendance to the congress at least one would receive friendly mediation, advice and help from the attorneys of Germany and Prussia. Basically, however, there was nothing left to hope for. Germany was exhausted by the long war, had already ceded Belgium along with the left bank of the Rhine against the acquisition of Venice, allowing for the possession and revolutionization of Switzerland, Prussia, through a previous neutrality and and the hope of acquiring strategically useful countries by means of secularizations, to a greater extent dependent on France, could not help either. The other German states were barely powerful enough to maintain their own existence, and at that time could not even keep domestic peace."

"Regardless of all this," Haller continues, "Mr. Karl Ludwig Tscharner, member of the Grand Council and Professor of Law... was elected as an ambassador to Rastatt and I was joined to him as legation secretary. On December 9th, we traveled via Solothurn and Zurich, where we stayed for a few days, had a confidential conversation with the senior magistrates... then via Schaffhausen, Tübingen and Stuttgart, from where we finally got to Rastatt via Pforzheim after a stay of two days. Naturally, we also took letters of recommendation with us, especially in Zurich, but they came from liberals (called democrats at the time), i.e. by those who feared only the invasion of French troops but not the revolution, and who, as I later remarked, were only addressed to people of the same conviction, or at least to those who could not help us at all. During the first days of our stay in Rastatt, I wrote several messages to the secret council [geheimen Rath] in Bern and to the Bernese envoy at the federal conference in Aarau, where there were still a number of private letters to various magistrates and other influential men in Bern, as well as detailed, mostly easy-to-use proposals about establishing friendly relationships with other cantons, about the procurement of the necessary military funds at that time when there was absolutely no shortage of the means for the concentration of governmental power, which seemed indispensable to me, with a few dictatorial committees, the measures to inflame the minds and to bring about goodwill on the part of the people, finally to write a treatise on the legal relations between Basel and Switzerland."

Haller would later write about the dread of the small German states in Rastatt, uncertain of whether they would be swallowed up into Austria, Prussia, Bavaria, etc.: "The dread which so many inhabitants of the Empire felt about the possibility of the Polish fate becoming their own was well-expressed by Karl Ludwig von Haller. He wrote that: 'At first most believed that Austria and Prussia were in agreement with each other in order so that each would attain a considerable, well-situated part of Germany, and afterwards the rest of Germany [would be divided] by secularizing the spiritual founders, subjugating the Imperial Cities, and

devouring the smaller imperial territories. Each of the major powers would give their clients excellent consideration; and France would help and support this plan, as one would expect, in that it would be rewarded the whole of the left bank of the Rhine for its endeavors and efforts to, in artistic language, “liberate Germany.””

Nothing advantageous came out of any of this for Switzerland.

Haller had returned to Bern by February 1798, where he starts writing the *Projekt einer Constitution für die Schweizerische Republik Bern*. This is a controversial work, for though it is widely accepted that it was intended as a compromise solution for the French authorities, there has been much dispute as to whether it reflected genuinely liberal principles on Haller’s part at the time that he would go on to abandon, or if it was entirely opportunistic. The constitution has quite the mixed character to it from my reading, since on hand it affirms liberty and equality in the modern sense, yet goes on to retain things like strict matrimonial requirements for executive council members, and in p.88 neither does it outright abolish Bern’s feudal possessions. Haller himself wrote about his youthful flirtation with the constitutional liberalism of Sieyes, which likely did still survive in part, but by 1798 the years of long and arduous dealings with the French revolutionary authorities had no doubt already worn out many of his liberal commitments, but as of yet with no systematically opposed theory in his mind, hence we see a broadly “liberal-conservative” mishmash.

In a last ditch attempt to save the Confederacy, Haller and several colleagues appear before General Guillaume Brune on March 1, 1798 (*Die Eidgenössischen Abschiede*, vol. 8, p. 714), where they issue an ultimatum that effectively conceded most of the revolutionary demands. Brune took the opportunity to make it clear that Switzerland would have to accept the revolutionary settlement in its entirety:

We immediately made an appointment with General Brune and were received by him immediately in the most polite manner. The general, his secretary, and the two of us deputies, along with our secretary; Mr. von Haller, gathered in a small cabinet around the fireplace, otherwise no one was present at the meeting. The whole time a couple of Hussars stood in front of the door with their sabers bared, pretending to be in order to keep those who might be intruding.

We had reservations about submitting the following ultimatum to Brune in writing and in its entirety:

1. The government now irrevocably accepts the basic principle of freedom and equality of rights as the basis of its constitution, which is to be drawn up with all speed and sanctioned by the primary assemblies;
2. The current government declares itself provisional from now on and will provisionally establish itself within one month with the cooperation of towns and countryside, following Lucerne's example, until the new representative government is elected by the general assemblies across the country.
3. These general meetings should be held within a month from the point in time when the troops both sides will have withdrawn;
4. The government takes the basic responsibility for the unification of the whole of Switzerland with the guarantee that how the cantons will agree with each other about the resulting form, should happen without foreign interference;
5. The persons arrested for political offenses are to be released on the recommendation of the French directorate.

We began bargaining and finally, until one o'clock, after many other, far more unfavorable proposals had been on the agenda, but had been withdrawn or modified in response to our urgent counter-remarks, the following ultimatum was achieved:

1. Recall the troops that were sent by the canton of Bern to the other cantons, and dismiss the militias, which form the Bernese Army;
2. Immediately create a provisional government which is different in form and composition than the current government;
3. Convene the primary assemblies for a term of one month from the date of the provisional establishment;
4. Adopt the principle of political freedom and equal rights as the basis for the constitution to be established;

5. Adopt the principle of unity for the Helvetic Republic according to the mode and the forms, on which the cantons and allied states will agree freely among themselves;
6. Release citizens detained for political opinions;
7. Resign the powers into the hands of the provisional government;
8. As soon as the State of Berne has given notice of the retreat of its troops, the French troops will stop advancing, they will only keep in the countries where observation posts are located; they will withdraw entirely from the Swiss territory, as soon as the new constitution becomes active. This code is applicable to the cantons of Fribourg and Solothurn.

On March 5, 1798, at the Battle of Grauholz, the Bernese regime falls definitively, ending over 600 years of independent Bernese statehood.

On March 31, 1798, Haller crosses the Rubicon, commits himself to opposing all liberal and revolutionary principles, and starts the *Helvetische Annalen*, which quickly becomes the leading newspaper of the counterrevolution, and a persistent thorn on the side of the authorities. From April to November 1798 he would publish 64 issues. One biting satire in particular, the “Contributions to a revolutionary code of law” [Beiträge zum einem revolutionären Gesetzbuch], published in the 28th issue, and discussed by K.G. König in his obituary for Haller, featured such lines as “All old laws, injunctions, decisions, etc. are wrong, or even if they were just, they are incompetent, even if both parties recognized it, and so can be revised again,” “Calling foreign troops into the Vaud is a virtuous deed, but to be loyal to one’s authority as long as it is there, and defend one’s land is a crime,” “To slander or overturn any authority means patriotism, and for the patriots one should be partisan, but an “oligarch,” or a citizen from a former capital, or an honest magistrate who has done his duty, is not a man, but a wild animal with which one can do what he wants.”

He was tried and acquitted by the District Court of Bern, but later the Helvetic directorate banned the newspaper on November 10, 1798. The funny thing is what ultimately got him in hot water was publishing the news in the 61st issue of an order from the French Directory to the Helvetian Republic to deploy 20,000 men to support the French army. This had to be retracted as “fake news,” but turned out to be true.

Either way, the ban carried a 6-month prison sentence along with it. Haller fled to Rastatt to escape it.

The period from 1798 to 1799 encompassing Haller’s editorship of the *Helvetische Annalen* and his beginnings as a counterrevolutionary publicist is well documented through Haller’s correspondence with Johann Kaspar Lavater (1741-1801), a Swiss physiognomist and family friend. Lavater was the man who stuck up for Haller most visibly during that turbulent time, and after learning of his death Haller would publish the eulogy *Denkmal der Wahrheit auf Johann Caspar Lavater* (1801) in his honor.

The Haller-Lavater correspondence would be published as “Briefwechsel zwischen Johann Kaspar Lavater und K. L. von Haller aus den Jahren 1798 und 1799” by Adolphine Haasbauer in 1952.

“My intentions are to be at least as pure as you attribute to my writings, and I will obey the rules of prudence which come from such a noble and powerful man. Praise will not inflate me; but because I think I know the ideal, which one should strive for, I know only too well how far I am still from it and that it is inaccessible to human powers. But insults and threats do not knock me down either – I am never more cheerful and calm than in persecution and danger; et si caelum ruat impavidum ferient ruinae. I came from a house that worships religion and virtue, and I want to remain faithful to them until my death,” wrote Haller to Lavater on November 8, 1798.

“Let us not despair, venerable Lavater, there are still many of the righteous in the world, and yet the truth penetrates like heavenly light, even if all the gates of hell revolt against it. Why shouldn't we do something good, and in order to help people's hearts, who need the same skills that others have so often and so long misused to do evil? **Why not oppose the poison with the true antidote:** Oh, this power has not yet been used, it would have had an infinite effect, because sheer reason without appropriate dress can do nothing against madness or passion. **I see the revolution as a great and God-sent chastisement and instruction to return to what is right, it can and will take this direction if we all work towards that of serving the kingdom of God, promoting his intentions on earth,**” he continues.

The antidote would eventually be the *Restauration der Staatswissenschaft* itself.

Lavater responds on November 28, where he pleads that Haller moderate his message: “Not so much your fate as the manner in which you are judged and treated, and your loss to our fatherland – pains me – and that really does not hurt a little. I have little to promise you. I certainly do not want to prevent you from defending your just cause clearly, unsurpassable in its clearness and courage – only I ask you not to ignore three things – to show clearly that you are not a bad citizen, not an indignant against the new order of the things. To show clearly that you have not attacked the Constitution – that you are only illuminating the falseness of certain principles – that it would be terrible if the given freedom of the press did not allow it. Make a strong, eloquent confession of your loyalty to the fatherland and your love of peace. In addition, do not shy away from demonstrating quite plausibly the wretched unworthiness, with the name liar, slanderer, bad citizen being tossed around without clear evidence. You are doing a good job for our fatherland when you expose the absurd, the unmagistral, the oligarch, the tyrannical, the terroristic in this manner...”

Haller's response on December 9 is striking: “It is not fear of judicial investigation compelled me to leave my country, but just self-defense against ignorance and anger. The duty to evade violence and to proliferate with the talents that God has given me. If a citizen has to complain about injustice in a human society, he has two options: either to make representations or to

submit his case to the court. If, however, as happened against me, he is not allowed either to do one thing or the other, he resigns to his natural level of defense; society has violated all duties towards him, so he is also outside of society and no longer a member of it.”

On December 25, 1798, Haller makes his counterrevolutionary commitment unambiguous: “It is precisely because of your pure soul, your healthy look, that you are also wrong, admirable Lavater, if in my annals you find nothing anti-revolutionary, nothing dangerous. It is true that they contain nothing rebellious, nothing against the constitution, which in itself is an innocent thing, nothing that would be dangerous for law and order, but their whole spirit was against the revolutionary spirit of injustice, madness and destruction – therefore definitely anti-revolutionary. If I had been able to write a few more sheets, I would have said this clearly and developed it. Everything that leads back to sobriety and prudence, which does not protect the old things but the old intellect, the old equity and strive to keep it, is in its essence counter-revolutionary. If this is undertaken with some talent, it is very dangerous for the revolutionary fanatics precisely because it deprives them of all their support, strips them bare, and leads them back to their wretched nothingness. The revolutionaries are therefore very right, in their own sense, to call this spirit dangerous, and even more right than they themselves know.”

On February 28, 1799, Haller is now prepared for an Allied war against France:

In November of last year they did not want to judge me, but rather put me in jail for six months without a judgment, now that they fear I would like to accuse them in front of the public, they want to call me back, not to judge me fairly, but only to have me in their power. Besides, I don't know any enemies of Helvetia. **Everywhere I see enemies of the French and their treacherous accomplices, but not enemies of Switzerland.** It is true that I was not afraid to return and still believed that I could triumph over the accusation that was against me, although it was so Jesuitically worded. I do not want to return to this country alone because of the spirit that rules in it, until I can use it better and more freely. I've loved freedom from childhood and my character is incapable of enduring slavery, the suppression of all rights and thoughts, every day I would be guilty of a new crime in their eyes, and my sensual nature would also be torn by the sight of the manifold misery that before my eyes cannot be helped. Light and courageous truth certainly have great power – but not with revolutionaries. That is why the revolution is their god. Everything that happens ad majorem gloriam of the revolution, makes its rule felt with thunder and lightning, seems to them to be just and wise...

There is and will always be a world of difference between the French and the Swiss. None of the latter has incited any power to war against his fatherland, as La Harpe, [Peter] Ochs, and others did in Paris. They would not even have been heard of this if they had already wanted to. But if the war breaks out anyway, which the Swiss cannot prevent, one should thank God in our fatherland that there are Swiss citizens who have the confidence of the powers that be, can be consulted and can spare hostile treatment. **Who is to blame for the war but the French?...** **But this much is certain that, in the event of a war, Austria, Russia and England have no other intention with regard to Switzerland than to liberate it from the French, to give it back its freedom, independence and integrity and not to admit the new constitution into the mix.**

Around April or May 1799, Haller follows the anti-revolutionary Austrian army led by Archduke Charles, Duke of Teschen, as they entered through Schaffhausen to fight the French army led by Andre Massena in the First Battle of Zurich. He becomes a servant in the Austrian war council (KK Reichskriegscantzley). It is at this time that Haller becomes acquainted with Johannes von Mueller (1752-1809), a Swiss historian in Austrian service since 1793, as well as his younger brother Johann Georg Mueller (1759–1819). Haller would remain in Austrian service himself until 1806.

The Haller-Mueller correspondence is extensive, covering a period between 1800 and 1818, and is quite important for tracing Haller's intellectual development. It has been published as "Carl Ludwigs von Haller Briefwechsel mit Joh. v. Müller und Joh. Georg Müller."

It is in 1799 that we start reading the first foreshadowings of what would be the restoration of political science. In an August 1799 essay on the Swiss constitution by Haller, published in vols. 17-18 of the *Deutsche Magazin*, we read (as quoted by Bela Kapossy): "We no longer spoke of the city and its advantages, as our fathers had done, but of the state which was to mean both the city and the countryside [Stadt und Land]. Often the term "republic" was used to define the state, while the city of Bern was completely forgotten. Bern was no longer

considered as its head, but simply as constitutive of a part of it. The domain of the city of Bern which it held *titulo privato*, like all the other cities, was included in the domain of Bernese state itself, which the city simply had to administer, but did not own.” This is an early whisper of his theory of republics in the *Handbuch* of 1808 and ultimately the Restoration itself.

There are two letters that Haller sent to Karl Rudolf Kirchberger von Rolle (1766–1819), a Bernese patrician later elevated to Prussian nobility, on April 21 and April 23, 1799, which are quite interesting. Here Haller demonstrates his familiarity with Austrian war plans, and the fact that he had been waging a persistent propaganda campaign against the French, as well as working out a proposal for an Austrian-led Swiss restoration:

April 21, 1799:

I have sent you 18 copies of our Declaration. The others are already distributed in large numbers in Switzerland. General Hotze has 800, Nauendorf 600, Rovéréa and Diessbach several hundred too. In addition, I sent some to Vienna, Wurzburg, Stuttgart, where it will soon appear in the gazettes. As for political operations, no doubt everything is not prepared as it should be. However, the detailed briefs have been submitted and we quite agree on the following points. 1 ° to re-establish, wherever we enter, the inferior authorities and, at the Sovereign's [i.e. Kaiser's] plan, a provisional government composed of former magistrates. 2 ° re-establish democratic cantons in *statum ab ante*. 3 ° the same for the aristocratic cantons, and leave to each the responsibility of modifying its constitution according to current needs without changing its nature, except however the basis of determining a possible mode to acquire citizenship. 4 ° to give the mediate [dependent] bailiwicks a [central?] Government with privileges for the judiciary, etc., however still under the sovereignty of Switzerland and without setting them up as cantons. 5 ° establish a central committee for all of Switzerland declared by the victorious powers to direct the execution of these various measures, to maintain links with the powers, and to prepare the cooperation of Switzerland in the war against the French. 6 ° then to convene a general diet with authority and full power to determine the bases on which the union of the Swiss Corps must rest in the future and which would probably establish a kind of more or less permanent congress whose functions would be well defined and limited. This institution or some other analogous one is absolutely necessary, at least during the war... It is not necessary in the beginning to take care of too many details and to leave something to the passage of time and to the restored [retablis] governments.

The proposal is not a return to the pure *ancien regime* *status quo ante bellum*, since it does envision a stronger federal diet for purposes of defense, but at the same time it does want to return those subject territories that became cantons after 1798 to their prior state.

Returning to the Mueller correspondence: on March 10, 1800, Haller writes to Johannes von Mueller and displays views that by this point are unambiguously restorationist: “The nature of things requires that Switzerland be an alliance of different estates; everything, even the rest of the followers of the Revolution, longs for it now; it is at the same time the system of

the most touching, most undemanding justice. Moreover, if you come to Switzerland with weapons in hand and destroy the French workmanship, nobody has the right or authority to produce anything other than what came before. Furthermore, the main purpose of war is to have the rights of sovereignty in hand, and if one does not want to recognize those of our Swiss cities... I do not know what reasons can be used to justify those of the imperial cities and all princes. **In the urban cantons there is certainly nothing else possible than for the capital to regain sovereignty according to the old treaties, for if one only wanted to return to these cities their peculiar goods and dominions, together with their internal constitution *titulo privato*, then absolutely no other government could arise... In addition, the independence of those cities (not to be under any master) also belongs to their private rights, which cannot be denied to them. With this and their possession of dominions their sovereignty follows of itself.**"

Here is the patrimonial and private law theory of the state in embryonic form — not yet systematic, only as an aside, but succinct nonetheless.

I do not have much on Haller's doings from 1801 to 1806. The Act of Mediation passed in 1803 restored some semblance of cantonal government in Switzerland again away from the Jacobinical unitarianism of the Helvetic Republic, but still only a partial compromise under French domination. Haller publishes various writings in support of the Austrian war effort as a state official in the war council, including *Was ist besser, Krieg oder Frieden mit den Franzosen?* (1800), *Geist und Gang der letzten Pariser Revolution oder: Was ist von derselben für den Frieden zu hoffen oder zu fürchten?* (1800), and *Geschichte der Wirkungen und Folgen des Österreichischen Feldzugs in der Schweiz* (1801).

In 1806, he leaves Vienna and returns to Bern where he is employed as a professor of constitutional law at the Bernese academy (what would eventually become the University of Bern in 1834). Having had years to carefully study and think on these matters, he was ready to make his triumphant entry. Upon returning, Haller marries Fraulein Catharina von Wattenwyl from a prominent patrician family in 1806, and had three children with her, namely Carl Ludwig born April 28, 1807, Albrecht born July 18, 1808, and Margarita Elisabetha Cecilie born July 25th, 1809.

Now it was time to restore political science.

2.3. The restorer on the intellectual offensive: 1807-1815

As Haller starts writing up his doctrines, he writes to Johann Georg Mueller consistently both to ask for his opinion, and to chart out his ideas.

On February 27, 1807 Haller asks Mueller and his older brother for a favor that they give their word for his recent *Inaugurationsrede* : "The friendship that you have always shown me and the deep respect I have for your merits made me send the same two copies of my

speech on another supreme reason for general constitutional law, of which the Allgemeine Zeitung has recently made a report. I ask you to keep one of them for the same, but to send the other to your brother in Berlin when the opportunity arises. Men like you and your brother are in a position to judge them, and I wish to be judged by you. If the gentleman of the daily council, to whom I would especially like to recommend myself, could, with his well-deserved credit, make a favorable mention of this speech in a well-read German paper, then that would be very good for me.”

On March 23, 1807 he mentions the poor state of theological education: “But how can one find perfect, zealous theologians when for 40 years religion has only been overthrown with ridicule and contempt, the worthy clergyman only waiting for defamation and misery? Nevertheless, we now have again 36 theology students in the upper academy, all of whom are dedicated to the local preaching office...”

On December 10, 1807 Haller announces the imminent appearance of his *Handbuch der allgemeinen Staatenkunde* and asks J.G. Mueller for the address of his brother so that he can ask him for a review of the work in the Jenaer Literatur Zeitung.

On January 30, 1808 Haller mentions a conversation with a certain Prof. Reinhard, and comments on his personal mission: “Do you own the new Heidelberger Litteratur Zeitung? I am curious to know the spirit in which it is written, and I very much wish that Prof. Reinhard, for example, could review my work, which will soon be completed. He seemed to me to be extremely attentive to the main ideas of the same, which I communicated to him in conversation, **and although we were still in friendly disputes the evening before whether the palace garden of the King of Bavaria was his property or that of the people, he wrote me that my Anticritik gave him one of the most pleasant hours of his life.** It is a heavenly pleasure in it to bring back sensible men from important main mistakes and with God’s help this happiness has often come back to me. Your well-being will perhaps interpret it to me as vanity or enthusiasm, from which my character is very far removed; but I say it with a truly religious feeling. **It seems to me as if the voice of the Almighty was calling out to me to be the true reformer of political science and to make people happy again with their circumstances.**”

By May 12 the *Handbuch* was completed. He comments on the resistance encountered by his academic peers: “Incidentally, you would hardly imagine, dear Professor, with how many obstacles I have to struggle with here in Bern, which is considered so politically orthodox. Few of them quietly approve of me and love me heartily. **The great Bernese, my friends in general, are, as always, scattered, ignorant and fearful in this regard. They love the old, hate the new, declaim against the principles of the revolution and yet they are suspicious or indifferent to the science which justifies that, which shatters this.** On the other hand, the party of my opponents is utterly bitter, precisely because they feel that it is at the root of their doctrine and reputation. All injuries would much sooner forgive me than my thoroughness. **One of my colleagues who teaches civil law tries publicly to keep all young people from my lectures on the pretext that I**

am presenting a system which is not accepted at other universities and that they would already hear the essentials of constitutional law in the natural law. They enforced this so-called natural law, precisely in order to be able to present the revolutionary constitutional law, and for this they took a manual which contains the most abominable principles in every respect; I have complained in vain and referred to the superordinate regulations.”

On June 30 Haller comments on some of the technical details of the doctrine in the *Handbuch*, and mentions how he has also rescued the true natural principles of republics, as opposed to “the sophists [who] either want to turn everything into monarchies or everything into republics”:

I am most eager to hear your judgment on my manual. Don't ever forget that it is a mere handbook in which it is impossible to prove everything to the point of evidence and illustrate it for everyone... That Satan always transforms a useful, higher faculty into a force against the weaker, as if it always had to be against him. Just as one wants to investigate the first ground of all domination/dominium, about which nothing else can be thought, so it is nothing other than one's own natural superiority and a corresponding need, e.g. the father about the children, the doctor about the sick. If the pedants absolutely want the word contract, then I say on almost every page that a formal or tacit service contract is formed through such circumstances and that this contract, that is, the consent, makes it binding; that is the historically untimely emergence of the relationship. Only afterwards comes the question of what is right in this relationship! How far can the strong use their power without offending? And have these limits ever been more strictly determined by anyone than by me. **I regret not having indicated and developed three things, at least in notes. 1. the sentence p. 61 that all so-called public officials are only private servants of the prince and only there for his own business, which is why he appoints them. This genesis and filiation of the innumerable services and places would make the subject of an extremely interesting treatise. 2. The proof carried out that every person in his circle possesses and exercises the same rights as the prince. There is no one who, like the former, does not give laws about his own affairs, wage war, make peace and alliances, exercise jurisdiction, grant punishments, privileges and favors etc., etc., only that the prince exercises them over several and larger objects and possesses more, but the weak cannot always exercise these rights due to lack of property, e.g. the poor cannot keep many servants. So it is true even according to my system and in reality that prince and beggar have the same rights and the same duties over their own, that all difference consists only in the difference in fortune and that a master who becomes sovereign, through this perfect freedom gaining something for himself, but not receiving the slightest new right against his former subordinates. 3. The merits of the new "chancellery style" [i.e. Roman law terminology] and its opposition to the old one, which so precisely indicated the nature of the thing and the basis of the legal relationship. But maybe I'm already talking too much. As a Swiss, finally, I believe that I have done my subject a great service by recently thoroughly rescuing the republics and putting them on an equal footing with monarchies, while the sophists otherwise either want to turn everything into monarchies or everything into republics.**

By September 4, Mueller had given a positive review. Haller notes: "My boldest thought that a prince only has his own private rights, de jure only rules his own affairs, is there confirmed on every page in all its consequences down to the smallest detail... It is true that the whole of world history is evidence of my natural constitutional right, but nowhere has it remained so pure, unadulterated and undamaged as in our fatherland."

Interestingly enough, Haller is already thinking about a French translation at this point, and even takes a jab at Louis de Bonald, of whom he must not have had a good impression then, but which would change after his conversion to Catholicism: "You have so many friends even in Paris. You don't know any thorough scholar there who understands German and to whom

I could send the work. May I dare to take the step to Fontaner himself? Shouldn't a bookseller be found who would take over the publication of a translation?... Times and people are such that it seems to me that literary fame can now only come from where there is still authority. There is apparently no good handbook of *droit public* in France. Some still proceed from the principles of the Revolution, albeit with ridiculously forced accommodations such as Perrault; but their opponents have no principle at all and are even worse, like Bonald and Rayneval. My volume should be all the less displeasing to the French because it is thorough, but not as dry as the Germans and at the same time practical."

On March 25, 1810 Haller sends a draft of his *Politische Religion oder biblische Lehre über die Staaten*, a fairly brief work consisting of a general statement of political principles followed by supporting scriptural verses, influenced by Bossuet's own magisterial book on *Politics Drawn from the Very Words of Holy Scripture*. A letter from May 19 shows that Mueller had recommended Dietrich Reinkingk's *Biblische Policey* (1563) to him, a book that he would later cite also in the Restoration.

On January 13, 1811 Haller finishes the draft of the *Politische Religion* and asks for comments: "Most learned man and dearest to me, receive the most famous sayings of the Holy Scriptures about the origin of human society and the mutual duties of princes and subjects, sayings that I have arranged in a systematic way and explained with a few comments. If you agree with my interpretation, if you do not find the principles of wisdom neglected, you will not refuse the consolation of your consent, but otherwise I plead with you to inform me of your concerns before publication. Plato is dear to me, the praise of the best men is dear to me, but I prefer the truth. [According to Aristotle, *Nicomachean Ethics* I 4, 1096 a 16.] But the truth is in God, or if it is permitted to say so, God is in the truth. Make sure that this document is sent to our Steiner in Winterthur so that he can publish it before the next Leipzig trade fair. I would like to see the passages from the Holy Scriptures printed in large, protruding letters, the explanations in smaller, but not too small, letters. I will write my other wishes to Steiner myself."

"They call despotism that I derive the power of princes not from the people but from God or nature; and excessive enthusiasm for freedom that I limit them to their own, natural or acquired rights and let other people rule theirs too," Haller remarks on June 21, 1812. Moreover, he mentions in the same letter that he had recently finished chapters 14 and 15 of what would become vol. 1 of the *Restauration der Staatswissenschaft*. He adds that he has been reading devotional literature from Johann Michael Sailer, Jesuit theologian and bishop of Regensburg, an early sign of his eventual conversion. Also regarding Sismondi's history of the Italian republics: "Finally, I do not like the many declamations against so-called superstitions and against the Popes, even in a Catholic; they always seem somewhat ambiguous to me, especially since one does not see any true religiosity on the other side."

On February 24, 1813 Haller reiterates his intention: "That the emigrants had no political system or each his own (as you notice) is very true. But where did it come from other than the lack of a true and good doctrine about states? The revolutionaries had (for the most part) a

common doctrine, albeit a bad one, and their opponents none at all. It was not a common belief but a common hatred that united them against them. Hence, as soon as the opposition ceased, the opinions had to diverge into infinity. This need is to be remedied when, as I hope, one day, instead of human systems, the discovered truth, the knowledge of God's order, permeates. It should be an anchor, a covenant for all who at least want the good, and there are many of them."

His philo-Catholicism is again evident, as he notes the necessity of a sound ecclesiology: "The diligence of a single man inspired for his subject is more than all such societies put together. Works of industry are not created by corporations. On the other hand, they serve a great deal for circulation and authentication. The Christian Church has shown this in good doctrines, and the union of the newer sophists in bad doctrines. Even in the realm of the sciences (it should be a realm after all) one is nothing without the support of a society of like-minded men, through whose illustration one is promoted and again raised by them, so I would not be uncomfortable with connections for better principles and I, the descendant of reformers (not from Berchtold but from the one with secret predilection for Catholicism, Johannes) have a church constitution [and canon law]..."

Following the Battle of Leipzig in October 1813, the Swiss overthrew the French mediation government, heralding the start of the restoration period. Haller would step up as the most vocal and erudite champion of the old regime, and defended the return of the Aargau and Vaud to their former subject status under Bern. The restoration settlement brokered by the victorious Allies would not be a full-blown return to the pre-1798 order, however (*A Concise History of Switzerland*):

Nationally, the Diet reasserted its sovereignty dramatically by sending a delegation to Napoleon to inform him that Switzerland would henceforward be neutral, something he now welcomed as it offered a guarantee of his south-east flank. The Diet also raised 10,000 men to guard the Rhine . However, its attempt to reassert neutrality was resisted at home by reactionaries, who looked to Allied aid, and was ignored by Austrian General Bubna and his 13,000-strong army, which marched across Switzerland from Aargau to Geneva , which he liberated in December. Ironically, Bubna used his influence to prevent Berne from repossessing Aargau and Vaud , and Geneva from going back to the 1770s. He, more than the old oligarchs, was aware that such moves were a recipe for renewed civil war.

On 29 December 1813 the Diet declared the Mediation regime dead and set about trying to convene a new Diet. The conservative cantons , which wanted to reconvene the Ancien Régime Diet [Tagsatzung] in Lucerne at first opposed this move. Their resistance reflected the way the old patrician regimes had re-emerged from the shadows, seized power and reasserted their old privileges, beginning in Berne in December and continuing in Lucerne – where there was an armed coup in mid-February 1814 – Solothurn, Fribourg , Lucerne, Schaffhausen and Valais . These developments showed that, despite the gains it had brought to Switzerland, the Mediation had been accepted only on sufferance. The hearts of many Swiss remained with the old order. However, this revived counter-revolution provoked alarmed peasants in Thurgau to march on Frauenfeld to preserve their recently won rights. The country was, in fact, on the verge of civil war , and it was only with great difficulty, and owing to foreign pressure, that the conservatives were persuaded to go to Zurich in April and take part in what became known as the Long Diet.

The Great Powers, notably the Russian envoy Capodistrias, made the Diet work on a new constitution, for which traditionalists saw no need. The Allies, however, insisted on the preservation of the new cantons the French had created out of the former subject territories and allies and added Geneva, Neuchâtel and Valais to their number. A draft was approved in February, but was then pruned by the Allies meeting in the Congress of Vienna . In fact it took considerable Allied pressure to force a new compromise regime on the Swiss, many of whom sought to return to the Ancien Régime.

The Swiss delegates to the Allies were also involved in difficult negotiations over their borders. The military wanted considerable extensions so as to create defensible frontiers, but was largely unsuccessful, being blocked by the French . Equally, the Valtellina was not restored to the Grisons . Berne did receive compensation for its ‘colonial’ losses by the acquisition of the former Bishopric of Basle’s lands in the Jura . The final deal, which left the country slightly larger and stronger than before, was approved in March 1815. Meanwhile, the new Charter had been approved by the Allies on 7 September 1814, after the Diet formally voted to accept Geneva , Neuchâtel and Valais as cantons, showing that the Swiss were willing to accept the impact of the revolution and new national desires.

Various sources speak of a counterrevolutionary circle known as the “Waldshut Committee,” which Haller was central to. The documentation is quite murky, but ostensibly they were important to getting Bern’s declaration of restoring their old Schultheiss und Rath

government on December 22, 1813 recognized by the Allies.

An interesting anecdote concerns Haller being arrested for 19 days in Bern circa September 1814 due to his vociferous public criticisms of the negotiations in Zurich that would go on to produce the Federal Treaty of 1815, which he saw as illegitimate centralization of authority:

The well-known former professor of constitutional law, Kart Ludwig von Haller, had made a pleasure trip to the small cantons with like-minded Count Johann von Salis-Soglio, but where did he go? He arrived in Schwyz and Nidwalden in mid-September, after the [federal treaty] had already been rejected there. In private conversations concerning this treaty, which had been concluded in Zurich, he gave it little praise and even described it to a certain extent as contradicting the Catholic creed, and Haller should also have promised Bern's support in the event of its rejection. Similar and even more violent statements had then been uttered by Herr von Haller at an inn in Lucerne. All of this had gotten through, with complaints of Haller's conduct coming from Landammann Alois Reding in Schwyz and Landschreiber Lusser von Uri in Zurich. Concerned about getting into an uncomfortable diplomatic position, the small council now resorted to a rather violent means by having Herr von Haller put under house arrest and launching an investigation into this matter. When, however, with the exception of a lively expression of his opinion, nothing at all could be brought to fruition during this investigation, the small council released him, after a nineteen-day arrest by the board of the Privy Council.

Haller's two speeches in 1814, *Was sind Untertanenverhältnisse?* and *Was ist die alte Ordnung?*, which we cover in chapter 3, were above all contributions to the political debate of how the Swiss restoration should proceed. Besides that, a series of three lectures from 1806 to 1807: *Über die Nothwendigkeit einer andern obersten Begründung des allgemeinen Staatsrechtes*, *Über den wahren Sinn des Naturgesetzes: dass der Mächtigere herrsche*, and *Über die Domainen und Regalien* were the initial outlines of the patrimonial theory that would form the backbone of the *Handbuch* of 1808, and from there to the Restoration. Again, see chapter 3. Now we head to the publication of the *Restauration der Staatswissenschaft* and Haller's subsequent rise to prominence.

2.4. Restoration, conversion to Catholicism, exile from Bern, and service in Paris: 1816-1830

The *Restauration der Staatswissenschaft, oder Theorie des natürlich-geselligen Zustands der Chimäre des künstlich-bürgerlichen entgegengesetzt* [Restoration of Political Science, or a theory of natural sociability against the chimera of artificial civil society] was published in 6 volumes in Winterthur from 1816 to 1834. The first volume in 1816 was a critique of prior art in political science and jurisprudence, the second in 1817 covered patrimonial states, the third in 1818 covered the macrobiotics of patrimonial states and military states, the fourth in 1820 covered spiritual (ecclesiastical) states, the sixth in 1825 dealt with republics. The fifth volume, the macrobiotics of spiritual states, actually came out last, in 1834. The reason for

this had to do with the refinements Haller did following his conversion to Catholicism, as well as his publicist and diplomatic activity while in Paris taking up his time, that also involved a French translation of the Restauration.

The book gained a following primarily in Germany, Italy and France, and to a lesser extent in Spain, though not immediately. In a letter to Johann von Salis-Soglio dated to December 26, 1817, Haller wrote: “I am told that my work is causing a lot of sensation in Munich and Göttingen. You still have no notion of the effect it has produced in Germany. Not a gazette has mentioned it, and Germany even observed a profound silence. Yet our young people send word from Göttingen to their astonishment that the most famous teachers, Sartorius who has more than 250 students, Heeren who has more than 150, Bouterweck, Hugo and even Schulze openly declare themselves for my work, recommending it in their lessons by adopting the principles, etc.”

Among the men who gave their approval to the Restauration are included Gustav Hugo, Arnold Heeren, Georg Friedrich Sartorius, Friedrich Bouterwek, Gottlob Ernst Schulze, Franz von Egger, Georg Johann Lechleitner and Friedrich von Kerz.

Arnold Heeren wrote to Haller on January 20, 1817: “I have also received this and have read it; and only now that I have finished I am going to say my heartfelt thanks for it, which I was unable to say before. Quite apart from the truth of your theory, the tone in which it is written cannot fail to impress.”

The first volume of the Restauration would be one of the books burned in the liberal nationalist Wartburg Festival of 1817.

Joseph de Maistre would say of Haller on September 16, 1820 (from “Un groupe international d’ultras sous la Restauration et la Monarchie de Juillet d’après la correspondance de Charles-Louis de Haller”): “It is impossible to find a truer philosopher, a wiser, more educated man, animated by more certain and more general views ... Finally... I do not know of a more worthy accomplice of our great conspiracy.”

Louis de Bonald wrote to Haller on July 3, 1819: “Allow me that without having the honor of knowing you personally, I welcome the points of contact which I noticed between the doctrines which I professed ... and those which I find exposed in the simple analysis of your great work of the Restoration of Political Science. Your excellent compatriot, Count Jean de Salis ... had already spoken to me about you. Sir ... I am therefore united with you in spirit and in heart ... as I am already with the illustrious Count de Maistre, Regent of the Chancellery in Turin, as I wish to be to all good spirits with whom Europe is honored and among whom you hold, Sir, such a distinguished place.”

Lamennais, when he was still an ultramontanist, avidly promoted Haller in France, and wrote a very positive review of the Restauration in September 1825 for ‘Le mémorial catholique.’

Silvio Pellico, the Italian liberal political prisoner who became an international cause celebre with his prison memoirs, would convert to Catholicism and repudiate liberal principles after reading Haller's Restauration circa 1836.

In Italy, Haller had a devoted champion (possibly his greatest) in Msgr. Luigi Ugolini, bishop of Fossombrone. Besides translating the Restauration in Italian, he published a popularization of the Hallerian doctrine for laymen in the form of a 'Catechismo contro-rivoluzionario politico' in 1836, and even translated the first volume in Latin, as the *Institutiones juris socialis naturae* (1837). Besides that, the Modenese Catholic journal *La voce della verità. Gazzetta dell'Italia centrale* promoted his theories in the 1830s and 1840s. Scholars from the University of Pavia, particularly Pietro Baroli and his *Diritto naturale privato e pubblico* (1837) were strongly influenced by Haller, though not pure patrimonialists in outlook. Antonio Rosmini, of Catholic social justice fame, also owed much of his political education to Haller, even though he too would move away from strict patrimonial doctrine.

Luigi Taparelli SJ (1793-1862), the man who coined "social justice," and who laid the foundations for what would become formal Catholic social teaching, was greatly indebted to Haller, though with qualifications, and writes of Haller's system in vol. 2 of his 'Saggio teoretico di dritto naturale' that "its naturalness and simplicity seduced us for some time; but a more accurate analysis of the idea of sovereignty seemed to us to require notable modifications. This is not why we believe we disagree with him, well, we disagree with some of his expressions; **but on the contrary, we are convinced that in developing our doctrine we will only clarify his, from which we candidly acknowledge that we have benefited greatly from all his labors on social law.**"

The Dutch Calvinist counterrevolutionary Guillaume Groen van Prinsterer cited Haller in his *Unbelief and Revolution*.

Haller published three articles in Friedrich Schlegel's journal *Concordia* from 1820 to 1823. He also contributed to *La Drapeau Blanc*, *Der Staatsman* edited by Catholic conservative Johann Baptist von Pfeilschifter, *Berliner Politisches Wochenblatt* and *Historisch-politische Blätter für das katholische Deutschland*.

Haller exerted a strong influence on the pietist circle and camarilla around Friedrich Wilhelm IV of Prussia, as is well known from e.g. Friedrich Meinecke. Ernst Ludwig von Gerlach, Leopold von Gerlach, Heinrich Leo, Carl Wilhelm von Lancizolle and Adam Mueller are the big names here. Carl Ernst Jarcke, as well, but on the Catholic and more philo-Austrian side. As late as 1850, Ernst L. von Gerlach would recount his debt to Haller despite the various vicissitudes of his own thought, as cited by Ronald O. Roggen: "Gerlach still admired admired, as from his letter of August 29, 1850 he emerges, as his 'teacher and liberator from so many corrupt minds.' It seems a letter from Haller to Gerlach dated April 4, 1851 been received? Here Haller took up the expression "pseudo restoration", by which he meant the events in Bern from 1814 to the 1830s. The answer was a long time coming. It was not until

November 3, 1851 that Gerlach wrote back, and he spoke of his debt of gratitude: 'I am not thinking of the thanks that I have received in fellowship with so many politicians and, what is more, Christian friends. I am indebted to you having helped us more than 30 years ago to clear our eyes of the scales that prevented us from recognizing the true nature of the state, including the true nature of the state of all states, the glorious Kingdom of Jesus Christ.'

Haller would cause another sensation in 1820 with the publication of the *Über die Constitution der spanischen Cortes* in 1820, which we cover in chapter 6 (addendum I). This essay would prove to be one of his most widely disseminated works, being translated into French, Italian and Spanish (in fact two in Spanish, one published in Madrid, and the other in Girona). This was a devastating critique of the Cadiz Constitution of 1812 that had been reimposed in the Trienio Liberal from 1820 to 1823, but also of constitutionalism in general. In many ways, it was a Restoration in miniature, point by point.

The essay was read and appreciated by Klemens von Metternich and Friedrich von Gentz. In fact, Gentz wrote a letter to Haller on July 20, 1820 expressing his gratitude for it: "It would be superfluous to describe to you how deeply this work made an impression on me. For years I have been a silent but awe-inspiring witness of the noble struggle which you fought with so much acuteness and erudition, and at the same time with such heroism, against the sophists of our time. You have once again glorified the great name you bear... The madness of our contemporaries is indeed an unheard of phenomenon; and as much as one should finally be familiar with it, one is always amazed anew. This revolutionary and constitutional hoax has lasted for thirty years; A country is not yet to be named which would have won the least thing for its inner prosperity, not one where the people's tribunes themselves would not be shouted down every day, with lamentations and curses, that one pays more, starves more, suffers more, more abused, more trampled on, than ever before. And yet this clear result does not suppress the anger towards constitutions. For those who have taken a deep look into human nature, into the depths of human pride and vanity, the riddle is certainly solved... **The hatred of all existing authority, the arrogance of vain wisdom, and the addiction to co-rule are so prevalent that they would worship a senate of straws if they could only write their names on these straws and say to themselves that they are created by them.** You know better than I can tell you why the wise and powerful advice that you give at the end of your latest work cannot be carried out. However, this should not and will not prevent you from preaching the truth."

It was less appreciated, however, by the Prussian attache to Switzerland, Heinrich Alexander von Arnim (1798-1861), who on May 28, 1820 wrote the following memo, blasting Haller for supporting "Jesuit maxims" (Friedrich Piethe, *Zur Flüchtlingshette in der Restaurationszeit*, 1899): "But that as a Bernese, as a member of the Geheime Rat, this duty imposed upon himself had to be received with displeasure here, under the present circumstances, as it might be detrimental to the estate of Berne and increase its enemies. Without the greatest need and without specific support one no longer throws gauntlets down here, the times are long gone when something like this was dared here; one feels how weak one's feet are, and

carefully weighs up what advantage or disadvantage the friendship or enmity of one or the other brings. Since several cabinets have already wished the King of Spain good luck with his new constitution, and the Vororte [cantonal capitals] have done the same in the name of the Confederation, one sees violent reproaches from all sides and at the same time fears that the revolutionary party will do everything, the pronouncements and to shout out any inconsistencies of a local member of the government as the literal attitude of the entire government of Bern. – **Added to this is the fact that Haller, as a Protestant, publicly defends the Inquisition and the Jesuits in this book, and the suspicion that has long existed against him that he is an instrument of the Roman Curia and in particular of that order... “What is he getting involved in foreign deals, trying to ignite the civil war, calling on the King of Spain to perjure himself and allowing himself to act against the wishes and orders of his own government, etc.?,” asks the crowd with irrefutable certainty. These last points, feared as Jesuit maxims, are infinitely disadvantageous to him here and alienate the best part of those who still hold onto him.** Moreover, the way in which Herr von Haller reads the text into the public is particularly criticized, and he is downright accused of deliberately trying to deceive the government in the process.”

The greatest turning point in Haller’s life, however, was his conversion to Catholicism. This was a long time incoming, as evidenced by his aforementioned philo-Catholic statements. Besides that, he had struck friendships and acquaintances with the Catholic convert Friedrich Leopold Graf zu Stolberg, plus German and Swiss Catholic theologians such as Franz Geiger, Joseph Widmer and Joseph Heinrich Aloysius Gügler.

It was in a meeting in 1819 with the Genevan Catholic vicar general Jean-Francois Vuarin (Diocese of Chambéry and Geneva, suffragan of the archdiocese of Lyons) that Haller would be first exposed to the works of Bonald and Lamennais: “The conservatives, above all the Geneva city pastor Vuarin, provided their sympathetic friend with the spiritual weapons for his views on the mission of the Catholic Church and the papacy as the last, unconditionally binding authority. Vuarin attached great importance to having more contact with the “restorer”. After their first meeting in Geneva in the spring of 1819, he informed Haller regularly about the writing activities of the contemporary traditionalists, de Bonald, La Mennais and de Maistre. In this way Haller became aware of Bonald’s work, *Theory du pouvoir politique et religieux dans la société civile, démontre par le raisonnement et par l’histoire* (3 vol. Constance 1796), which was confiscated by the Directory because of its reactionary ideas.”

The man who would exert the greatest immediate influence on his final decision would be Pierre-Tobie Yenni, bishop of Lausanne. Haller began a correspondence with him on June 7, 1819, following the recommendation of Fribourg Catholic Jean-Francois d’Uffleger in April. The Haller-Yenni correspondence has been recorded in “Bischof Yenni und Karl Ludwig von Haller,” published in the *Freiburger Geschichtsblätter* in 1967.

Specifically, Haller was asking that Bishop Yenni give comments on vol. 4 of the Restauration, dealing with ecclesiastical states. The book was favorably disposed to Catholicism as an institutional structure, but Haller still held to many Zwinglian beliefs: “In this context, Yenni expressly approves the term ‘general Christian church’ instead of the ‘Catholic.’ It is mostly identical with the Roman church, because Haller usually refers to the various Protestant denominations as sects. The Bishop’s approval of this term may also have been borne by the world of thought of the Holy Alliance, which spoke of the “nation chretienne” and, in a somewhat leveling way, of the ‘unity of the great Christian Church in its three members.’ Problems of Haller’s understanding of the church come to light when he lets himself out on the theological level. Even an approximate acquaintance with this subject is missing and he still thinks in a thoroughly Protestant way. For the ‘restorer’ the Catholic Church is especially valuable as a support against the revolution, dogmatic reflection is still completely lacking. At this point, however, Yenni’s collaboration is of decisive importance, especially with regard to the theological-dogmatic guidance of the coming Converts. Coming from Zwinglian symbolism, Haller interprets the Eucharist as a commemoration and believes it also corresponds to the Catholic view. The bishop naturally sees himself challenged here.”

Here comes a detailed overview of the development of Haller’s theological and ecclesiological views:

Also of no small importance is Yenni's request that Haller would like to use the Bible edition authorized by Rome, the Vulgate, in the future... In this way, Haller outgrew Protestant terminology more and more. For example, on Yenni's advice, he replaced the Old Testament Lutheran term "presbyter" (elder) with "priest."

The fourth (70th in total) chapter, on the essential components of the external church, is informative for Haller's gradual dogmatic reflection. He describes in detail the clearly defined hierarchy as well as the cultivation of the religious sense by observing fasting, giving alms and pilgrimages. On the one hand, Yenni pays the author great praise for emphasizing the oral tradition as well as the written tradition – promoting "living speech" as the only means of spreading any doctrine in general; on the other hand, however, he advises Haller to give up the still completely Protestant ideas of the "blessing of marriage" and the "confirmation of adults" and to regard both "customs" as "sacraments."

Haller leaves the two terms unchanged. He puts the ethical content of marriage in the foreground, because it promotes good decisions and favors virtue. But he noticeably approaches the Catholic doctrine and sees the church for the first time in its actual supernatural being – as a mediator of grace. However, in the foreword he apologizes for this inadmissible mixing of sacraments and private exercises and believes that, for the sake of scientific order, a neat separation should actually be made. In the fifth volume of the *Restoration*, published in 1834, Haller then realized the requirement himself. But even now the understanding of Catholic teaching is unmistakable. Haller's statement about the sacrament of confession shows this very clearly. In his obituary for Johann-Kaspar Lavater from 1801, he viewed confession merely as "a periodic moral self-examination," but now it is the "periodic confession of sins", which must be preceded by a "sincere repentance" to regain the filiation of God.

The first utterance is strongly influenced by the Enlightenment, from which the awareness of sin and striving for eternal salvation was far removed; The second, however, is a clear sign of Haller's turning away from one-sided moralism and his gradual turn to Christianity. The problem of dogmatic inaccuracy in the "Catholic part of the *Restoration*" is fundamentally raised by Bishop Yenni. He fears that Haller could cause confusion as a result and therefore advises him to expressly point out in questions of faith that he does not always adhere to the precise interpretation of the Church.

The Roman monsignors were nevertheless amazed at the accuracy with which the Protestant jurist dealt with theological matters. For the constitutional lawyer Haller, the determination of the relationship between church and state is of particular importance, since the external legal status of the church is just as important to him as religious life itself. Haller sees various possibilities for mutual relations, but he consistently aims to uphold the ideal of ecclesiastical freedom and therefore rejects any omnipotence of the state. The church is supposed to be freed from any state tutelage, because as a spiritual power it stands independently above the secular one. With this Haller contradicted his great contemporary Hegel, for whom things are exactly the opposite. If the state is of divine origin for both, Hegel, unlike Haller, regards it as

omnipotent. Because religion has to serve the purpose of the state, the freedom of the church is made impossible, a view which Haller most sharply fought in the sixth to twelfth (73rd-78th in total) chapters.

Haller deals particularly well with the relationship between church and state. Proceeding from the higher quality of spiritual power, he takes the view that the “prince of faith” has no human authority to recognize over himself. If the general Christian Church is in a state whose ruler professes a different faith, worldly power is indeed higher than spiritual power, because the one who exercises rulership has the right. Nevertheless, the church remains independent in its spiritual rights vis-à-vis secular princes, and so the latter must never interfere in ecclesiastical affairs, because the internal administration of the priestly state is private law, which, insofar as it does not offend any foreign law, cannot be taken from it. In the event of a legal conflict, the spiritual power must always prevail. Haller therefore rejects the “*Placet regium*” and the principle “*cujus regio ejus religio*.” For this reason, the Protestant prince should finally get rid of the fixed idea of viewing the Catholic Church, like his national church, as a state institution by granting it the character of an autonomous religious society.

According to Haller, the patrimony of the church is inalienable, since the clerical dignitaries in their capacity as teachers and shepherds are only administrators and beneficiaries, but not owners of the patrimony entrusted to them. With this view, Haller provided the legal justification for the protests of the prince-bishops on the occasion of the massive secularization through the *Reichsdeputationshauptschluss* of 1803, which he presented as a legal usurpation.

Yenni was also extremely satisfied with Haller’s praise of the papacy. He particularly enjoyed the presentation of the ecumenical councils. As we have already indicated, Haller is one of the spiritual pioneers of the doctrine of infallibility; however, he did not formulate it as explicitly as his contemporary de Maistre. Haller places the main emphasis on the external appearance of the papal power as the “first, greatest, noblest and most powerful.” Haller became more ultramontanist than the church hierarchy, so that Yenni, who had been decried as a curialist, now raised his voice to correct him... In his intervention, the bishop tried to dissuade Haller from his extreme papalism. The letter reads:

“I entirely agree with you on the superiority proper of the Popes over the general councils, which you triumphantly establish. But it is advisable to do without taking away from the bishops a prerogative which is inherent to them, that of being true judges in matters of faith and morals, either in their dioceses or in the councils. Although their judgment can be reformed by the Head of the Church and needs his confirmation, it is still a judgment. Assembled in councils, the Bishops have not only a consultative voice, but a decision-making one; they do not only affect their opinion, as do their theologians and the abbés even mitres, they pronounce, they judge. You do not deny it formally; but you express yourself to be able to make it heard in certain passages; you also make use of certain comparisons which assume that such is your assent. I advise you therefore to omit these comparisons and to edit those passages which would appear to derogate from the prerogative.”

This request then prompted Haller to change the text in the final version of the second edition. And so he expressly approves of the bishops in “their function as judges in matters of faith and custom”, though only as a subordinate measure; their judgment can be reformed by the head of the church... The idealistic attitude of the “restorer” remains unchanged: the Pope continues to occupy a dominant position; the keys, the symbol of the supreme power, are given to Peter and his successors only.

And thus, we get to his conversion at Fribourg on October 17, 1820, and the international cause celebre in its wake:

On October 17, 1820, in the presence of Yenni, Haller converted to the Catholic faith in the Hubert de Boccard family home in Jetschwil. The next day he received the sacraments of Confirmation and Communion in the episcopal residence in Freiburg. This was not a sudden change of mind, not a Damascus moment, but the end of a long development. Haller himself confesses in his conversion pamphlet that he was “a Catholic in his soul” as early as 1808 and only remained a Protestant by name. In Peter Vogelsanger’s point of view, Haller embodies, like Hurter and Newman, “the type of clear, calm, gradual and deliberate approach to Catholicism. The conversion appears here as a consequence of the consequent development of inwardly Catholic souls. All struggles and conflicts, all doubts and disputes do not have the character of a break in the inner line of life, but only play the role of the catalyst.”

In view of the extraordinary circumstances, Bishop Yenni had allowed the famous writer to convert secretly. The commandment to publicly profess one’s faith is indeed compulsory, but not the public confession of beliefs. This dispensation came in very handy for Haller, because he wanted to avoid any fuss and not sadden his own people.

The Prince of Mecklenburg himself converted to the Catholic Church in Geneva in 1819 and now joyfully told his friends about the change of faith of the “restorer,” interpreting the event as “a triumph for a good cause.” Soon afterwards the unheard of news broke out Germany across the Rhine. Thereupon Haller decided, on the advice of La Mennais, to confess “the whole truth,” as it should be for an honest man and Christian. **Although the convert’s public confession was not yet available, the Bernese Small Council took special measures on April 25, 1821 to examine the “Fall-Haller” in detail. Foreshadowing things, Haller let his relatives know from Paris that that he wanted to resign from the Privy Council, but would like to retain the Grand Council mandate. But now the “deceived” state stepped harder. On May 7th, at the request of the government, the “crypto-Catholic” was provisionally suspended from his offices and on June 11th declared incapable of ever returning to the Grand Council.** Although there was no legal basis for this exclusion and there was no precedent, the overwhelming majority argued that the total dismissal of the Catholic from public office was necessary for reasons of state security and should not be regarded as a punishment; rather, the impeachment was, as Haller had imagined, a judicial decision.

The Bernese Small Council, which also acted as a higher spiritual authority due to the state church system, considered the attitude of Haller as hypocritical: the disguised Catholic’s lip service to the Reformed faith served the sole purpose of ensuring material livelihoods and personal gain. In such disingenuous behavior, Protestant Bern believed it had to “sense the secretly active Jesuit spirit.” What could be more natural than to ascribe the change of faith to the influence of “Freiburg Jesuitism”?

Bern’s actions aroused great sensation even abroad. Bonald accused the republic of “religious rigorism” and “narrow-minded confessionalism,” which in the age of tolerance was believed to have been overcome. Emmanuel-Friedrich von Fischer, who took over from Haller on the Grand Council, dismissed the claim that the Bernese authorities had acted illegally, on the grounds that the sovereign of a free state was above all laws... On May 12, 1821, Haller let his

conversion letter, *Lettre a sa famille, pour lui declarer son retour a l'Eglise catholique, apostolique et romaine*, go out. In this twenty-five page pamphlet, he vividly and openly describes the internal and external motives of his change of denomination. Since the important German converts, such as Count Stolberg, Friedrich Schlegel, and Zacharias Werner, did not write any public confessional letters, Haller's "Sendschreiben" is of particular importance. The letter had the effect of a "battle cry" and was perceived by the Protestants as a "cheeky challenge."

Translations: there are a total of eleven different French editions, twelve German, six Italian, several English in a London and Washington edition, plus one each in Flemish, Dutch, Spanish and Polish; the letter reached nearly fifty editions. [Ed's note: there was also a Hungarian translation.] In the beginning of June 1821 Haller returned from Paris, where he had found a new spiritual home. On the same day when he was expelled by the Grand Council – "without charge, without interrogation and without responsibility" – he was now ostracized in official circles in his native city. **Haller, however, surprisingly discovered that the hatred of "the common people" was directed against the "von Wattenwyl clique", for he himself was given a friendly wave from all sides when he walked through the streets.** His wife Catharina, née von Wattenwyl, also clung to her husband, although he had "forgotten" her for years. In their opinion, Karl Ludwig would never have converted to the Catholic Church had he suspected that this step would cost him his existence in Bern... Haller and his family spent the whole summer and autumn at Münsingen Castle, where he received numerous visits from friends of his views, including Olry and the Abbe Vuarin.

On Christmas he returned to Bern. But he was determined to turn his back on his hometown, which was alien and incomprehensible to his attitude of mind. Since the answer was a long time coming, he turned his gaze to Paris. On February 21, 1822 he went on a farewell visit to Freiburg, where Bishop Yenni, d'Uffleger and de Boccard gave him hospitality for several days. He then took up residence with his family in the city of Seine and in 1824 found a job in the French Foreign Ministry. But as early as 1830 the July Revolution swept away the "restorer." As his new and final home, Haller chose the ambassador town of Solothurn, to which he felt drawn because of its Catholic-aristocratic character.

The *Lettre de M. Charles-Louis de Haller: a sa famille, pour lui déclarer son retour a l'église catholique, apostolique et romaine*, as quoted above, became by far Haller's most translated and widely read work. So much so that a lot of contemporary accounts treat Haller solely as a famous Catholic convert, barely mentioning his restoration of political science. Excerpts from his conversion letter in English can be found [here](#).

With the social tension around his conversion in native Bern becoming increasingly untenable for him, Haller was motivated to emigrate. He did not initially consider Paris, but rather looked to Vienna first, recalling his years of service as an Austrian state official. A letter from Friedrich von Gentz dated to June 14, 1821 shows this. However, the negotiations stalled, and so in 1822, owing to his circle of French contacts, he moved to Paris. It was not

until June 1824 after Chateaubriand resigned his foreign service post that it would be filled in by Haller, at the recommendation of Clement-Edouard de Moustier. Among his supporters in France was church historian and abbot René François Rohrbacher.

Besides writing for royalist publications, notably *La Drapeau Blanc*, Haller's greatest accomplishment was to translate the first two German volumes of the Restoration in French, those dealing with patrimonial states. The translation was done with the assistance of Marie-Joseph Chevalier d'Horner (1775-1849), a French diplomat of Strasbourg patrician origins. It split the second German volume into two, thus making the first three French volumes the equivalent of the first two in German. The remaining parts on military states, ecclesiastical states and republics would only be published posthumously by Haller's eldest son, also named Carl Ludwig von Haller (1807-1893), in 1875, and with significant abridgements.

Haller attempted to obtain an Austrian baronial diploma in 1825 to honor his service, but without success. By 1827, Haller was already expressing an interest in returning to Switzerland, but this time as a citizen of Solothurn. He filed his application on April 25, 1829, and was quickly accepted the next month. He had already purchased an estate on July 15, 1828, and definitively settled in Solothurn on the September of 1830, where he would spend the rest of his life, the July Revolution having in any event cut further career prospects for him in France.

2.5. Final settlement in Solothurn, diplomatic and legitimist network, later writings, and death: 1830-1854

Settling in Solothurn, now in his 60s, Haller's last formal political activity would be when serving a term as representative in the Grand Council of Solothurn from 1833 to 1837. An amusing anecdote ("Karl Ludwig von Haller als solothurnischer Grossrat") involves his opposition to a council proposal in 1834 for a population census, where he boldly stated (or at least according to the author, who did not take a liking to Haller and may have been uncharitably paraphrasing him) that "the state has no right to know how many subjects it has," and proceeded to cite David's census from 1 Chronicles 21-22 in support. The reason for his opposition had to do with the fact that at the time the only available population statistics were tithing books and parish registers. The decennial census didn't begin until 1754, initially only in Bern, and took a century until all Swiss cantons adopted it. Civil registration started only in 1799. Thus, Haller's ultra-conservative views, looked at out of context over 180 years later, sound like the ramblings of a deranged anarcho-capitalist. An interesting implication.

At various points ("K. L. von Hallers Freunde in Luzern") Haller established counterrevolutionary networks across Switzerland, in places like Bern, Lucerne and Zurich, known as the "League(s) of the Faithful." The society was multi-confessional, where a "Bundesvater" would lead cells of "Bundesbrudern":

It was on the basis of such considerations that the indefatigable drafted a typeface in Solothurn, where he had retired after giving up his post in Paris in 1830, three years later, which was given the significant title: “Draft of a League of the Faithful for the Protection of Religion, Justice and True Freedom.” In 14 chapters we are informed about the aim and purpose of the intended organization. Primarily Catholics, but also “honest Protestants who are averse to the revolution” should unite in order to oppose the enemies of true freedom. The “obligations of the members” included the fight against the centralization of Switzerland, against compulsory schooling and excessive development of the school system. In addition, the education councils were to be abolished, but the reformer was particularly interested in the protection of the Catholic Church, in which he saw the strongest sanctuary against the revolution.

After a letter to his Schaffhausen friend Friedrich Hurter, the well-known historian and convert, the whole plan came to him through a request from some sympathetic friends of the First Chamber of Baden (March 7, 1833), and the scholar continued to mainly exchange his thoughts with Hurter on the League of the Faithful: “I want to be the Bundesvater and surround myself here with some very worthy ecclesiastical and secular federal councilors. You, I will appoint in advance as the first Bundesbruder in Schaffhausen and Colonel Nuescheler in Zurich. Each of them joins 4 or 5 allies among his acquaintances, whom he directs. These again have just as many Bundesfreude among themselves... In a similar way we are expanding the association further in other cantons, and you will soon see how strong we are.” (March 7, 1833).

At another point, Haller made a similar statement to his friend. “If you can find,” he says, “in your hometown, besides yourself, only 2 or 3 Friends of Justice, I would like to have you appointed Bundesstatthalter and your friends Bundesbrudern in the Canton of Schaffhausen. This would then be an opportunity to correspond with each other and exchange ideas. If you would dare, you could also submit such an application to H. Colonel Nüscher for C. Zurich. I am already looking to establish similar anti-revolutionary branch associations in Bern, Freyburg and Lucerne...”

Collections of Haller’s essays and editorial work over the years would be published in two volumes in French as the *Mélanges de droit public et de haute politique* (1839). (vol. 1, vol. 2).

Haller maintained regular correspondence with papal nuncios and other foreign diplomats in Switzerland (“Karl Ludwig von Haller im Verkehr mit ausländischen Diplomaten”): “Haller was naturally particularly fond of dealing with the diplomatic representatives of the Holy See in Switzerland. Even in Paris he was often at the table of the papal nuncio. Haller then exchanged verbally both in writing and with the various nuncios in Switzerland, Filippus de Angelis, Gizzi, Girolamo d’Andrea, Bovieri... The temporary employment of his son at the nunciature encouraged this intercourse... When the nuncios then moved to the more remote little Schwyz, one had to continue via Lucerne, or one came via Galgenen. The debate was particularly fruitful in October 1837, when Haller was allowed to be the nuncio’s guest on three consecutive evenings (October 7–9). The visit to Nuncio Gizzi took place on August 20, 1839. The more the ecclesiastical political situation in Lucerne then came to a head, the more

frequently the old pioneer of the Restoration appeared at the nuncio, first in April 1843, then in June 1844, and finally he met the papal nuncio Macioti at the episcopal ordination in Freiburg i. Ue. (March 14, 1846). In the meantime, letters established the connection between Haller and the nunciature. In Freiburg i. Ue. the scholar also made the acquaintance of the Sardinian statesman Crotti di Castiglione, with whom a brief exchange of letters arose, which would later be reported on. **From the overview, which can only appear as a framework for the time being, it follows that Haller had contact with the diplomatic representatives of the most varied of states in his long life, and that in any case some influences came from him. First and foremost he felt himself drawn to the ambassadors of the conservative governments of France, Austria and the Holy See, and, as shown above, information from Haller was also sought from this side; he also had relationships with other Swiss conservatives such as [Friedrich] Hurter and [David] Nüscher. In the period before the outbreak of the Sonderbund War, the discussions naturally extended, as we know from other sources, to the intervention of the states concerned in favor of the Swiss Conservatives. Certainly Karl Ludwig von Haller was only a private man, and there was no army behind him, but on the other hand his word was very important, because in him the spiritual principle of “restoration” was embodied, and if one considers his “restoration of political science” the Bible of the restoration period, he was logically their political messiah, as he was sometimes called by admirers.”**

In addition to Austrian representatives: “It was above all the ambassadors and chargé d’affaires of certain countries to whom Haller felt drawn, whom he repeatedly visited and gave with orders, advice and requests. The same social position, the same way of thinking and the same fate in life meant that some of the foreign diplomats became dearest friends to him, such as the Saxon Count von Senfft-Pilsach or the Alsatian Chevalier d’Olry. Out of old attachment to the House of Habsburg, which once hosted the Swiss refugee, Karl Ludwig von Haller initially maintained friendly relations with the Austrian diplomats in Switzerland. Representatives of Austria in the period in question were initially Frz. Albert von Schraut (1806-1825), a diplomat of the old school who was very anxious to strengthen conservative influence in the neighboring state, after him Frz. Freiherr Binder von Kriegelstein (1826-1832), then Ludwig Graf von Bombelies (1837-1843), Eugen von Philippsberg (1843-1846) and Max Freiherr von Kaisersfeld (1846-1849). Haller was naturally already known to Schraut through his varied political activities in the age of the restoration of the “old order”; when he mentions it, as in the letter to Count Johann von Salis-Soglio of December 31, 1820, it is always done in such a way that one feels that the two personalities agree on political principles. In the years when the “restorer” was in France, relations with the Austrian ambassadors in Bern were understandably less cultivated. On the other hand, after his return home, Haller had all the more friendly relations with Count von Bornbeiles, whom he also mentions among the correspondents in his resume in the diary entries from 1842, and with whom he occasionally called when his journey led him to Bern.”

We also have yearly diary entries of Haller covering 1833 to 1851, published as “Die Résumés der Tagebücher des ‘Restaurators’ Karl Ludwig von Haller.” In 1833, he states to having written 255 letters and lists what he read that year for fifth volume of the Restauration, coming out the next year. “I myself composed 1. a long article on the causes of the revolution in Switzerland, printed in the Berliner Politische Wochenblatt; 2. the project of the League of the Faithful, summarized according to the true social principles to be opposed to revolutionary principles, printed at my expense, finally almost the entire 5th volume of my great work, entitled Restoration of Political Science,” he writes. In 1835, “at the grand council of Solothurn I attended 33 sessions, where I fought to the best of my strength for the triumph of religion and justice without having voted for any bad measure.” His son Albert was appointed Vicar of Lausanne that year.

In 1837: “My history of the Protestant Reformation of the Canton of Berne [referring to a French translation of the *Geschichte der kirchlichen Revolution oder protestantischen Reform des Kantons Bern und umliegender Gegende*, 1836] was printed in Paris, the proofs of which I corrected and a large edition of which was promptly sold. Several newspapers have given favorable accounts of it and the Bishop of Lausanne, the Apostolic Nuncio in Schwyz, Cardinal Lambruschini and the Holy Father himself have shown me their satisfaction with the most flattering letters. We are currently publishing a second edition, revised and augmented by myself. Less than eight months ago I translated the entire German 4th volume of my work on the Restoration of Political Science in its entirety.”

In 1838, his health is getting weaker, but he’s still as productive as ever: “Although my strength is diminishing and, above all, my eyes are weakening, my time has not been unnecessarily used. We published in Paris the 3rd Edition of my history of the Protestant Reformation of Berne corrected and augmented by myself. I have likewise reviewed and edited my *Mélanges de droit public* which are currently being printed in Paris. In addition I have provided the Berliner Politisches Wochenblatt with two large articles, one on the war against tithes, the other on the quarrel over the difference between the property of the city and the property of the state of Bern. Finally, at the request of a Spanish priest, I composed a little biography of myself for him. My correspondence is still quite extensive. During the year I received 185 letters and wrote about as many.”

In 1840, he publishes a book on Freemasonry and its influence in Switzerland, *Die Freimaurerei und ihr Einfluß in der Schweiz*.

In 1842, he recounts his difficulties with the French translation of vols. 5 and 6 of the Restauration: “What, moreover, was unnecessarily the most precious to me in my time is the French translation of the 5th and 6th volume of my restoration of political science, a translation that with considerable sacrifices I paid to its author Mr. d’Horrer in Paris, but the correction of which cost me almost as much trouble as its composition itself and for which finally I could not find any publisher in Paris. But I hope that the Sovereign Lord who asks

only for the efforts that we must put, and not for the success that we may not have, will nevertheless deign to appreciate a work that without personal interest I only undertook for His glory, that is to say for the triumph of truth and justice in social relations and duties.”

Funnily enough, he also mentions the Italian professor Pietro Baroli’s book on public law that was influenced by him, but which he blasts: “In addition, I have read the *Diritto naturale privato et pubblico* by Prof. Baroli in Pavia, a work in 6 volumes, the author of which, as a plagiarist, takes the fundamental principles from my Restoration of Political Science, but bypasses them and distorts them into a system of remarkable monstrosity under the pretext that they are not sufficient to found a true civil society, or to achieve what he calls the end, i.e. the omnipotence of the state.”

In 1843, again difficulties with the French translation: “The need to shorten the original 6th volume of the Restauration for the French translation that I wanted to publish, that of writing an introduction to several chapters and finally to correct the faulty translation of the 5th and 6th volume that I had done in Paris, have taken away all my leisure, the most precious time of this year, and finally this enormous work remained useless for lack of being able to find a publisher.”

In 1844, Pope Gregory XVI awards him a knight’s cross of the Pontifical Order of Pope Saint Sylvester. This is most likely the cross he wears in his portrait.

In 1846, he writes, shortly before the Sonderbund War: “This turbulent year and full of a calamitous future was marked by the worrying successes of the so-called radical or completely subversive faction which wanted to repair the failure experienced in 1845 in front of Lucerne by means of unheard of efforts to overthrow the government. Governments of the Cantons of Bern, Geneva, Zurich, Basel and St Gall still more or less moderate or rather hesitant and irresolute to replace them by the leaders of the sect and thus prepare the catastrophe which occurred in 1847. For me and my family this same year, however, thank God, passed without unfortunate accidents, without deterioration of my health and without setbacks of fortune...”

Additionally, a critique of the civil code of Lucerne that was sadly lost: “Despite all these occupations that the weakness of my eyes and my advanced age make more painful for me than before, I still found the time to compose several articles for journals, in particular the one on the new effects of Freemasonry in Switzerland, taken of a report by the central lodge of Bern which was communicated to me by a friend. In addition I continued a few pages of a German summary of the Restoration, but finally wrote 70 pages in an important work on the civil laws or rather a criticism of the new project of a civil code of Lucerne still marred by principles hostile to the church, overloaded with unnecessary formalities and tending to regulate by arbitrary laws all relations between individuals. Unfortunately this work became useless for me and for others because I sent the manuscript without keeping a copy, to Mr Siegwart-Muller in Lucerne where it will have been destroyed or lost in the disaster of 1847.”

For 1847: “Disastrous year by the complete triumph of the anti-Christian and subversive league of the so-called young Swiss, part of the same conspiracy as under the name of young Europe, fatal for Switzerland and fatal in its results for the social order and all of Europe. I will not speak of its deplorable successes, of the impious war against the Catholic religion, of the complete enslavement of the Cantons of Lucerne and Fribourg, of the robberies and assassinations carried out in two cantons, of the brutal expulsion of the order of the Jesuits in Lucerne and Fribourg, the plunder and abolition of monasteries, so necessary for education and even public prosperity, acts of violence, proscriptions and arbitrary actions committed and pronounced against virtuous men, finally of the complete destruction of all that still remained of the old social order in Switzerland.”

Also in 1847, he publishes an essay giving advice to the King of Prussia during the convocation of the Prussian United Diet, warning against those factions who wanted to turn it into a permanent parliamentary-democratic assembly, entitled *Staatsrechtliche Prüfung des vereinigten Preußischen Landtages*. He writes, concerning finance, that “domains and regalia of all kinds, entry, exit and transit duties are not included in taxes, because they are in fact not taxes, but the rightful possessions of the royal house.” He advocates cutting funding to the arts and sciences to balance the budget: “The king, confined to his private income, need not favor a multitude of artists and writers with pensions, which true talent does not need, and who only find mediocrity conducive to it; not to found and reward academies of the sciences, which are only sinecures and vain ornaments, but usually offer little or nothing to advancing science. Just as little is he guilty of not having all the children of his subjects brought up and instructed in all kinds of knowledge; he does not need to have the insatiable country school teachers, who always cry out for a higher income, but who care little about ability and morality; nor to establish a multitude of universities and to follow a myriad of professors, many of whom admittedly are not friends of his house.” General civil codes are also criticized: “It is therefore impossible to sufficiently expose the unfaithful intention of those who impetuously bring about the preparation of general and uniform civil code books. Their spirit and purpose is none other than to introduce the system of revolution or equalization into all private relationships, to scatter people, to isolate them, and therefore to fragment their desires more and more, along with all social bonds, whereby they help to weaken or dissolve. Titles of property, contracts and customs, are the signs and proofs of natural legal relationships and mutual obligations, which are to be thrown overboard, even as they have already been declared null and void in the relationship with the sovereign, or to be tolerated only to the extent that they are provisionally with the Zeitgeist of the egalitarian system. All these ‘benefactors of the people,’ who feel it to weaken, rob or even destroy families or spiritual and worldly foundations; a measure of which pauperism and communism are an inevitable consequence.”

1848 is a bad year for Haller, both due to the revolutionary wave and the death of his wife just shortly before the New Year of 1849: “A year even more deplorable than the preceding one by the sudden extension and the almost general triumph of the vast impious and antisocial conspiracy which had recently succeeded in Switzerland, a triumph which is

manifested in the hideous revolutions which broke out in quick succession and almost without resistance in France, Austria, Prussia, Bavaria, Naples, in almost all the small states of Germany and finally even in Rome, from where the Holy Father was obliged to flee. So that we thought we saw the fall of both all the thrones of Europe and the Catholic Church itself, if the latter did not have promises of eternal duration. In my interior I also experienced pain and suffering of various kinds. Several times I was struck by... stomach fever followed by frequent vomiting... In addition, out of prudence and fearing to lose everything as a result of the horrible revolution in France, I experienced, by selling part of my income, quite considerable setbacks in my fortune, which, however, diminished a little the following year. Finally, I saw the death of my excellent and faithful wife approaching day by day, who finally expired on December 31 as a good Christian and provided with all the sacraments of the Church. Nevertheless, in the midst of all misfortunes, Providence has still singularly spared me and offered me many consolations. Towards the end of the year it stopped the torrent of social revolution in Austria, in Prussia, even in France, and an order at least tolerable though incomplete was reestablished there. The fugitive Holy Father found an asylum and effective protection in the kingdom of Naples. My health miraculously recovered beyond all expectation. My readings have in fact been reduced to very little because the weakness of my eyes, the political preoccupation and the need to read at least a few gazettes to know the real state of things prevent me from engaging in them.”

By 1849, he knows his time is coming: “In addition, the significant progress of the infirmities of my age and the weakening of my physical and intellectual faculties warn me that the end of my life is approaching and that I must prepare to leave this lower world which no longer has any attraction for me and where I can no longer be of use to my fellows. The upheavals of the social order which last year had taken place in France, Austria, Italy and Switzerland itself and which as a result had shaken all private fortunes as well as mine forced me to change my will, and to reduce the prerogation which I intended for my eldest son to a proportion in accordance with my real fortune.”

In 1850, Haller would publish his last work: Die wahren Ursachen und die einzig wirksamen Abhilfsmittel der allgemeinen Verarmung und Verdienstlosigkeit [The real causes and the only effective remedies to general impoverishment and destitution]. A sample of his advice:

In the meantime we only want to briefly indicate how many burdens, costs and complaints the princes and peoples could be spared if one gradually returned to the natural order and did not want to rule or regulate everything that either does not need to be governed at all, or what can be governed much better by private persons and communities in their circle, or what can be combined with other functions without disadvantage. A king or prince is no farmer, no merchant and no shopkeeper, therefore he does not need a minister of construction or trade and industry, since these types of occupation flourish much better if they are left to those who do them; but those princes, or their ministers and offices who nonetheless intermingled in such private affairs by means of laws and arbitrary ordinances, they only commit mistakes, cannot please anyone, and are led to various unjust, even pernicious measures.

The princes are neither general schoolmasters, nor learned professors, and much less priests, bishops, or Protestant superintendents... furthermore, no prince, no state is obliged of having all the children of their subjects educated free of charge, and to have them instructed in almost all possible knowledge. So he has neither to pay the insatiable schoolmasters, nor the teachers at grammar schools, literary or so-called secondary schools, nor the countless university professors, many of whom with their false doctrines undermine religion and morality, and preach revolutions. The country or village schoolmasters (actually assistants of the pastor) should be paid for by the house fathers, who need them for the upbringing of their children, in the absence of community goods. The elementary instruction necessary in such schools is limited to very few subjects, it is not given the whole year round, does not take away the whole time of the teacher, and can therefore, as before, be given for very moderate compensation; consequently one does not need any half or wrongly educated, haughty and unbelieving schoolteachers who keep screaming for higher pay, but care little about ability and morality, as well as about the progress of their pupils; Incidentally, they live in palace-like buildings, while the pastors, the actual folk teachers, whose donated income can never be neglected enough, are often content with poor huts, or even have to pay house rent from the other parishes.

In 1851: “Finally in the course of this year I lost to death: the best and oldest of my friends in Bern, Mr de Buren from Worblauffen, 84 years old; my cousin Charles Zeerleder, ex-Senator in Bern; my other first cousin Mr Albert de Haller in Lausanne, aged 51 and three ladies from my usual company in Solothurn. **Everything tells me that I will follow soon. Already I am almost the sole survivor of my contemporaries.**”

And so, on May 20, 1854, Karl Ludwig von Haller was reunited with his Creator. A life well lived, and a formidable legacy of work.

It is time to move on to an overview of how Haller’s doctrines developed prior to his magnum opus.

3. The development of the Hallerian doctrine

As documented above, traces of Haller's patrimonial and private law understanding of the state were already forming from his correspondence in 1799 and 1800 once he permanently allied with the counterrevolution following the French invasion of Switzerland. In his service to the Austrian war council he worked primarily as a publicist, which gave him ample time to read and think on the true nature of political authority. By 1806, upon returning to Bern as a professor of constitutional law, his views are just about fully formed, as is evident from his inaugural lecture to the Bernese academy.

It is worth mentioning in brief some of Haller's sources that would ultimately be cited in the *Restauration*. The Italian academic Giovanni Bonacina wrote an essay in 2010 titled "Anticipazioni della teoria della Restaurazione secondo Carl Ludwig von Haller" that went through them, which in 2020 he would extend into a chapter of his book *Tradizione e Restaurazione. Haller, Eckstein, Giuliano, Stahl, Bauer*. The professor graciously sent me a copy of his entire book when I emailed him asking for the 2010 essay, for which I give him thanks.

Unsurprisingly, Haller was well read in *Reichspublizistik*, i.e. the jurisprudence of the Reich, and on constitutional law, public law and natural law generally. These included Justus Henning Boehmer (1674-1749), Hans Wandal (1624-1675), Dirk Granswinckel (1600-1666), Dietrich Reinkingk (1590-1664) and Johann Friedrich Horn (1629-1665). More modern lawyers like Johann Georg Schlosser (1739-1799) and Johann Stephan Pütter (1725-1807) were also influential on him, especially Pütter and his criticisms of the reception of Roman law in Germany, e.g. Bonacini writes that "In particular, according to Pütter, the Germanic notion of superioritas territorialis (Landeshoheit) would have been dilated in an abusive manner by jurists until it coincided with the Latin notion of imperium; likewise the comitia imperii would have been equated with the senatus populusque romanus and the imperial electors to the praetorian prefects."

Georg Friedrich von Martens (1756-1821), who systematically collected and organized treaties into a new science of international law, is also cited, as is Gottfried Achenwall (1719-1772) and his *Jus Naturae* (2 vols, 1755 & 1756), the latter's book on natural law also used by Kant in his lectures.

Christoph Martin Wieland (1733-1813) was also quoted owing to his essay *Ueber das göttliche Recht der Obrigkeit* (1777), where he stated that there is an innate instinct among men "to recognize our natural superiors, leaders and rulers and to let us willingly to be guided and mastered by them, whose supremacy we feel, and that this is the first source of authority among men."

Haller took a lot from the 18th century Goettingen school of history, which may be why he acquired a considerable and early following there.

The anti-Masonic writers around the 'Eudaimonia' journal, Johann August Starck (1741-1816) and Ludwig Adolf Christian von Grolman (1741-1809) were quoted in vol. 1 dealing with the genesis of the French Revolution. Haller was also familiar with many French preachers and ecclesiastics, such as Jean-Baptiste-Charles-Marie de Beauvais (1731-1790), who delivered a funeral oration for Louis XV; the Jesuit Jean Nicolas Beauregard (1733-1804); the ethnography of Jean-Baptiste Labat (1663-1738); the sermons and panegyrics of Charles Frey de Neuville (1693-1774).

3.1. Über die Nothwendigkeit einer andern obersten Begründung des allgemeinen Staatsrechtes. Eine Inaugurationsrede (1806)

Über die Nothwendigkeit einer andern obersten Begründung des allgemeinen Staatsrechtes [On the necessity of another supreme ground for general constitutional law], about 75 pages long, delivered on November 2, 1806, is where Haller's restoration properly begins.

In his own words, it was given "a few months after my return to my beloved fatherland, [where] I will take up an important chair at this flourishing academy and at the same time hold the office of prorektor."

False political doctrines had "shaken the foundations and defenses of all human worth and happiness, for countries and peoples to suffer the most appalling consequences." As such, Haller will propose his own "general theory about states, their nature and their diversity, their way of origin and the rights and relationships flowing from them" in agreement with divine law, and "thoroughly opposed to the hitherto prevailing doctrines of many famous men."

Observing that "as far as the history and knowledge of the earth extends, people are met everywhere and at all times in social relations by ruling subordinates. We may go through the documents, which cover a period of 4 to 5,000 years, or ask the travel writers, to whom we owe the news about the state of all parts of the world and the most distant islands," it is the task to explain how this subordination and dependency arises.

The explanations can generally be grouped into those that posit its origins from above, from divine law and the inherited right of the ruler, or from below, where people supposedly lived "absent-mindedly, individually, apart from all social conditions, lived in the most full of freedom and equality." But then the ensuing state of bellicosity would necessitate that to "prevent this evil for the future, the people thus stepped out of that state of nature, and by means of a social contract united one another and into one or more persons transferred sufficient power to handle peace for all civilians and freedom of each individual member of the state, to secure against the possible interference of the rest."

Complete confusion reigns from the bottom-up theory: "You [the people] the true sovereign, the summus imperans; but the princes become servants of their subjects. Even the most just form of rule, removed from all abuse of force, is no longer a right, but an office or a duty. The

law, that which is to apply in the common union, is not in the midst of the Lord, but the general will, that is, the will of the subordinates. The princes no longer have anything of their own; their estates likewise come from the people, they are a national property and are only entrusted to the head of the state for its salary or national duties. Servants become public officials, to servants of the state and remain responsible to the nation as its master... The whole concept and internal order of it is called the constitution of the state and this is itself nothing more than a political machine, a public institution founded by the nation to look after its interests and to guarantee the freedom of every citizen. If, finally, the power is only entrusted to the prince, then it can be withdrawn or transferred to other hands by the people, as his master, and the political machine, as soon as it seems inadequate or faulty, can be changed or rearranged... Declarations of war, peacetime agreements and alliances open the cause of the whole nation and therefore had to be sought and decided by the nation as well – Finally it is easy to judge that, according to these principles, the princes' inheritance is not justifiable, it was rejected by some as the most senseless of all phenomena.”

But this cannot be, since “if what is governed is really the matter of the nation or its subordinates, they would have always been of age to do so.” Instead, princes are not the delegates of subordinates, but independent men who basically only rule their own cause and that of others only insofar as they come into contact with theirs.

Roman law terminology is partially held responsible for said confusion, since “it has almost only republican designations, so one was accustomed to immediately mistake completely contrary terms or relationships, using the same words to designate principalities – *res publica* and *civitates*.” Some Protestant theologians are also charged guilty of contributing to this owing to their denigration of the ordained priesthood, another early philo-Catholic leaning on Haller's part.

The consequences of said philosophical system in the outbreak of the French Revolution are briefly recounted, notably that “the royal domains were declared or sold as national goods, and the rest of his income was viewed as unreasonably disbursed contributions from the citizens, in which case they were abolished or changed, but the king himself was only given a salary as the highest official. He, previously supreme lord, the richest and the only independent landlord in the whole country, should never own anything of his own and only let others enforce the laws. At this end he was given an immense number of newly established officials, administrators, and judges, but they were mostly not elected by him, not paid for by him, not pure servants but those of the people, and yet the king or his first minister were held responsible for everything.”

That is, until Bonaparte effectively ended said experiment: “Finally, sooner or later even the war which was supposed to fortify the new republic must necessarily complete its overthrow. Because here in this strictly regimented military association, completely opposite conditions formed, here the philosophical speculators found their grave. Hers again climbed a power, a true auctoritas, which did not come from the subordinates but from an individual. Only one person gave orders and had them carried out. Subordination and obedience were not the

prerogatives of the individual members, but rather the achievement of a common obedience. Superiority and fortune gave rule, the weaker had to serve, and yet there was far more security and prosperity in this close association than in the republic itself. The war finally created the mighty, who soon saw that they had no need to accept commands and needs from others, it taught the weak that in service, that is, in voluntary dependence, they could find a protector and a livelihood. So finally a general, famous for victories and made powerful by numerous followers, found the republican rulers themselves tired and distrustful of the continuation of their association, wishing for a change.”

It failed not because people were not yet ripe for such beautiful theories, but because they were wrong at their core. Formal equality gave rise to demands for material equality to make the system consistent, but of course “the equality of political rights cannot exist because too many people would become dependent on others for their livelihoods. If, therefore, a philosophical republic is to be introduced into a large empire, according to which finer one cannot become superior and rule over the other, the greatest possible equality of property would have to be established beforehand without which this problem cannot be solved. One should even be able to abolish the higher power of abilities and knowledge (the aristocracy of talents); because it again entails an acquisition that is not delegated or transferred by others. That is why you had 18 months in France, where everything came from professionalism, knowledge, reputation and confidence, heads being cut off.”

The philosophical system rests on four erroneous principles: a) people originally lived without sociable relationships in a state of perfect freedom and equality; b) their rights remained unsecured in this state; c) they required a common association to secure these rights, hence a state; d) the establishment of such a common association now ensures that these rights are more secure than in the absence of it.

The first premise is preposterous: “After all, how should people ever have been scattered and lived without social relations? The mild and friendly compulsion of nature created social relations of domination on the one hand and dependence on the other through the love of one sex for the other, through the conjugal bond, through the raising of children, and so on. In addition, it has endowed people with unequal powers and abilities, and this inequality leads to differences in income, wealth, and property; one nevertheless needs the other, and precisely because of this creates a multitude of new relationships; for here, as in the domestic union, superiority is the basis of all domination and greater need is the basis of all dependency or servitude. In this way, nature expands the bonds of human society and ties them together outside of the narrow crisis of a single family. It is physically impossible and contradicts itself that every person should be able to live a free householder far away and on his own land.”

As is the second premise, that the state of nature is anarchic and chaotic: “Why security should not be found in such an independent association as nature forms it, one cannot see either. Certainly every person, the child like the father, the servant like the master, the weak like the strong, regardless of the proportion of his dependency, still has his own rights, in

which he, as a person, is equal to everyone else and which one does not offend with impunity. But benevolent nature also provided this security through several means. For the time being she has stamped a divine law to each one, which calls out to him with a strong voice: “Honor your equals, do not offend anyone who has not offended you, demand nothing from him but what he owes you,” and people who are sociable live with each other, for this reason alone do not tend to be hostile to one another. Therefore, if a multitude of people emerge from the same race or if they only live with and next to one another through mutual necessities of life, then peace and quiet among them will become the usual state, crime and antisocial activity only an exception to the rule. Even today it is the basis of all mutual trust and, if all the other ties break, the first one will always remain, and it will be the foundation of all security. – But in order to also handle this law, nature has given every human being a weapon to defend himself if his most sacred rights should be attacked or insulted. The weak began to avenge themselves against the stronger by association with their equals or by cunning. The poor are often superior to the rich, and the inexperienced to the wiser, in physical strength. No matter how powerful a person may be, there is no one who does not have anything to fear and, in the event of abuse of his violence, does not have to obtain the right of retaliation sooner or later, which is also not established by agreement, but in the child as in the man, in the animal as in the human being. This reciprocal fear of a possible retaliation is the second reason for security and is even today more important than is believed, and more important than the power of the laws themselves to prevent injustice and violence. But if these means are inadequate, the weak must in the end still have to be helped by a higher power, which can and would take place in a natural, sociable association as well as in a dense citizens’ association.”

Other means for maintaining security are mutual leagues and alliances, and ultimately flight: “But the natural head of an independent social association has just as much interest and means to administer order and law among his own, to decide on disputes and to punish acts of violence against the offender. At last the earth is big and if man has no more security in a sociable association, there are other places to live where he can find peace again. In a nutshell – cleverness, legal and amicable behavior in order to incite no one to insult, trust in the cooperation of people, without which no one would dare to venture into foreign or unknown countries even today – resistance which is the basis of all external and internal wars, all emergency defenses, and right to self-help even inside a state where an independent lord may have proscribed it – and finally separation through migration or flight, these are the real and fast-acting means that nature has given man to secure his legal freedom. These means were also used by them at all times, and even in our states none can be thought otherwise. Submission, renunciation of enjoyed independence, is always what man is inclined to do and only when all other means are in vain; but even then this happens by submitting to an already existing mighty person, and not to an association of his own like that first had to create a new master.”

Precisely because natural sociable relations between free and servant predate any artificial civil society, the social contract also makes no sense for the reason that both a wealthy householder with subordinates would never give up his certain jurisdiction to the remoteness of a “civil society,” and neither would the servant necessarily be interested to give up a real guardian for an abstract one.

As to republics, “in this more lucid way different republics have certainly come into being, but... they were mostly donated by the earlier lords themselves, were therefore not originally independent and had completely different purposes than simply securing rights among the citizens.”

Nor could there be any realistic consensus in establishing a social contract. One person may never have been offended in his right and will not understand the need of such a cooperative. Another will answer that he is good enough at defending himself and does not need another protector. A third party will certainly be willing to join a temporary covenant, but will not want to be subjugated to a force that could just as well be used against him. A fourth would rather tolerate a temporary act of violence, or join a neighboring mighty man, than let a third person deprive him of his freedom. “From whichever side one looks at the matter – one may accept all people or only the subservient or only the free ones or both at the same time as elements of the so-called social contract – for its foundation there are numerous problems, impossibilities, contradictions without end.”

Further bickering about the means of election — majority, unanimity or direct appointment — would ensue. But then a bigger absurdity would arise from the fact that a group of independent property holders should consent to ceding portions of their income as taxes to a ruler who is ‘absolute’ and ‘above the law,’ which far from maintaining their security, seems rather to cripple it. “In the end everyone would want to have his previous independence again, because every constraint to which he has to submit takes away a right, and the new member would have no strength or means to protect the freedom of his own. **Or should one transfer all power to the delegated sovereign without restriction? Then the purpose would again not be achieved, the safety of the individual is without any guarantee, and basically all people would have been made slaves so that an individual could be free.** Who will finally pay the new man and all the servants and tools he needs? If you want him to pay these enormous costs on his own and to practice it, in accordance with the requirements of the system, but never to be an end in itself, never to consider pure interests, then, as a loyal official, do everything for others only: then he will do it for himself.”

“Strange freedom that civil society demands, to sacrifice your independence, take away your property, and let yourself be constantly picked in your pocket... a state would certainly never have been founded in this way,” says Haller.

Ergo, artificially creating a supreme power is a paradoxical task fraught with peril. Since “this power is really the highest against which resistance is possible, and then it can also abuse this power, and your freedom is not secured; or it is not the highest, it can be countered with a larger one, and then it cannot protect you and you have to take care of the abuse of the wicked again.”

Haller then asks: “But who is more likely to abuse his power, the owner or the tenant; the one who is already strong, or the one who first has to become powerful through delegated power? The one who basically only has his own rights and is naturally limited by them, or the one who carries out all acts of authority for the ostensible common good justified by the popular will?”

So Haller proposes the alternative: the state of nature has in fact never ended, and it “already contains manifold relations of domination through the inequality of forces and mutual needs.” Husband over wife, teacher over pupil, landlord over day laborer, housefather over servants — none of those rulers received his power from his subordinates. Natural superiority is the basis of all domination, and needs which one cannot remedy oneself are the basis of all dependence, and ultimately “the possible abuse of the highest authority, that is, of those who have no higher authority, can never be completely hindered and can only be restrained by religiosity, but how much less it is to be worried about one’s own natural superiority than as the delegate of authority.”

Power and superiority are only relative concepts, and come in infinite gradations, such that “the father commands his children, the master commands his servants, but the present may serve a higher master again; the commander rules over his brigade, but he is himself subject to the orders of someone else who has recruited and paid for the troops; the master of the house rules over his domestic servants, but the house stands on the ground of someone else in many ways; several people depend on the landowner, but perhaps he received the land from a third party only with certain obligations.”

Now he defines the state: “The state is not an association of legal insurance, or a society of free men for securing strict justice, but a natural, sociable relationship between the free and the servants, which distinguishes itself from other similar societies through the fact that its head is independent. In a word, it is an independent social association, and its purpose may now be whatever it may. So a prince is nothing but an independent, absolutely free person, or vice versa, every person who is completely free from exterior circumstances becomes a prince through this.”

This can be seen etymologically: “The names of the heads of state are never taken from any purpose or object, but are taken from the concept of strength, which in and of itself does not include anything unjust: e.g. in Greek *dunástēs* (a powerful man, root word *dúnamai*, ‘to be powerful’), autocrat (lit. ‘self-ruler’); in Latin *potentate*, from *potens*; *princeps*, as the German *Fürst*, meaning “first,” or *Macht* meaning force.”

For republics, the same law applies. Independent individuals do not group themselves into civil communities (leagues, alliances and confederations are a different matter, since there people retain their reserved rights), since they lack any reason for doing so. “Everyone forms a special state for himself, but weaker ones, who are relatively equal among themselves, can join a society, a cooperative, for whatever purpose, and subsequently through good fortune and circumstances, through donation or acquisition of land can ascend into collective independence: and so the republics are also only completely free communities, (*societates liberæ inter æquales*), which differ from every other corporation or community only in that they themselves are not subject to anyone else.”

Independence, or *maiestas* in a classical sense, cannot be a delegated right since cannot give what one doesn't possess. It is ultimately a gift from God, the highest fortune (*summa fortuna*), one that is continually acquired and lost.

There are two kinds of states: monarchies and republics. In turn, monarchies can be classified into three kinds on the basis of the means by which a man can acquire independence: 1) through the relationship of a wealthy landlord to his children, servants and other hands; 2) through the relationship of a military chief to his companions in arms or loyal followers who have been recruited by him. 3) through the relationship of a teacher or spiritual leader to his disciples and believers. “Here we have the many kinds of natural monarchies: *reges, imperatores, pontifices*. But the two more exalted ones usually melt together with the first: for in order for a chief or a teacher to be or remain independent, he must in the end have his own land.”

Property gives rise to the state, and not the other way around. Property arises from occupation (usucaption) and the show of a binding will to maintain one's exclusive occupation (fencing, cultivation, domicile, etc), ultimately through repelling invaders. The wealthy independent landlord thus acquires certain rights from his possession of property, i.e. “he can grant privileges and graces which aren't detrimental to anyone. The supreme jurisdiction is less a right than a favor by which it helps the weaker. Appointed judges are his servants and not independent of him, but he himself is not subject to any courts, unless it happens with his consent. He is his own master over his own fortune and his person. Domains are his own goods and not national goods, for he did not receive them from his subordinates. Regalia are nothing other than rents or industrial undertakings, which the independent exclusively reserves in his own country, but he may not force a previous legal owner out of it without compensation. Although he can legitimately increase his domain in many ways, he is not authorized to directly subjugate others, for the free man's own independence does not give rise to any right to the acquired property of his subordinates. Taxes and subsidies usually require approval, and so it was assumed everywhere in the past.”

It also follows that states can be alienated, sold, mortgaged, etc. unless there are house laws that restrain this, moreover this does no disservice to the subjects, whose own rights remain the same as before: “Finally we also find out how states and empires, independent goods, are as good as obligated, hereditary and can even be legitimately sold in some ways. One solicits,

one forgives, one only sells one's own and not free men, not people, because these are obviously not commodities, but only the free landownership and the power and independence that is naturally associated with it. Nobody is taken from anyone; the new acquirer only takes over the property of the previous buyer; the one who has served continues to serve as long as his need continues, as long as nature or the contract compels him to be equally dependent. The son, however, inherits the father's property because the father has decreed it, or because his will is presumed, even if he has not expressed it. The expressed will, however, can be different and that is why we also see various successive orders established by the princes or independent landowners, sometimes divisibility is permitted, sometimes indivisibility is introduced, sometimes female successors are permitted, sometimes completely excluded."

"Just as all sovereign rights are only an outcome of one's own rights, they are naturally limited by them. Divine laws and rights of others, whether natural or acquired by contract, form the prince's limits, as with any other person. The only difference is that, as independent, he cannot be compelled to do so," Haller states.

Princes do not necessarily rule with the same homogeneous power across all parts of their territories, whether due to purchases, exchanges, gifts, inheritance, disputes, struggles and contracts that come with their own stipulations when these are acquired from a previous owner.

The flipside of individual power and independence is the weakening and loss of it: "Just as the states are finally formed through the power and independence of an individual, so they also perish again through the weakening and servitude of the individual. Losses or too many divisions of the land, departure of male heirs, whereby the independent whole often only becomes a part of another, disputes, unfortunate wars and disadvantageous contracts, conditional or unconditional surrenders, acceptance of too many servitudes."

Military states differ from the pure patrimonial state (territorial lordship) in that a) the military chief will treat his retinue with special favor, granting them gifts and benefices and so elevating them into formal nobility; b) these nobles or tenants-in-chief will be consulted as estates of the realm, as an assembly of notables, or through a writ of summons to the curia regis; c) their privileges and franchises will eventually become those charters of liberties known as "national freedoms" or "national liberties," d) his rule is not originally a *patrimonium*, but rather a *Personenverband* founded on loyalty, at least until he founds a permanent settlement; e) the struggle between the chief/king/emperor and his magnates will lead to breakaway patrimonial states; f) sometimes an "elective monarchy" arises, but in Haller's view these are judicial acclamations and recognitions of a natural superior, or an arbitration to decide on a matter of succession, but not the investment of an original right.

For spiritual states or theocracies, "the primary purpose of these states is not individual freedom, nor the superior's own strength, but the preservation, dissemination and consolidation of the doctrine." There is also generally no patrimony to inherit, since church

benefices, sacramentals are *res extra nostrum patrimonium* by definition, belonging to God and the saints, not men.

“Every republic as a community needs a so-called constitution, but this constitution neither establishes society nor its independence, which must exist beforehand, rather they only aim at maintaining unity and order within the society itself. The will of a cooperative can only be expressed by the majority of the votes, but this majority does not apply before its foundation, but only after the same, and even then only among the members themselves; no one who is not subject to it by other circumstances can be compelled by such a majority.”

Republics, being collective lordships, can and do have subjects: “Finally, if the free communities also freely receive natural subordinates, it goes without saying that in this regard they become territorial lords or collective princes, and consequently the same sovereigns have rights and limitations. Their subjects can no more claim a right to co-rule than those of the sole proprietors, and it is nonsensical to call this rule a privilege, since the superior receive no privileges from the inferior, the free from the servant.”

The final part of political science is what Haller calls *macrobiotics*, and what some German writers before called “Staatsklugheit,” i.e. the art of prolonging the lifespan and vitality of states, but not in the sense of *raison d'état*, rather of preserving independence. This being only a preliminary outline, he does not go into detail; that would be reserved for the *Restauration*.

Haller concludes with an extended accolade about the great utility of a proper science of states, so as to promote peace, understanding and mutual concord between rulers and subjects.

All in all, the *Inaugurationsrede* shows that even as a preliminary sketch, Haller's core ideas were already just about ripe and ready for elaboration. Two shorter essays would follow in 1807 elaborating on the doctrine of natural superiority, and on the rights and obligations conferred by the possession of royal domains.

3.2. Über den wahren Sinn des Naturgesetzes: dass der Mächtigere herrsche. (1807)

Über den wahren Sinn des Naturgesetzes: dass der Mächtigere herrsche [About the true meaning of the law of nature: that the mightier rules] — with a title like that, a lot of people would be repelled.

What's important to point out is that traditionally the German terms “Macht” and “Gewalt,” literally power and violence, had fairly neutral legal meanings up to early modernity, often used to denote the supreme power of a prince in conjunction with “Obrigkeit” (authority). The *Deutsches Rechtswörterbuch* has numerous examples of such usages, including “furstlicher macht und oberkeit” (1478) and “hoher landes-furstlicher macht und obrigkeit”

(1577), a standard expression literally meaning “high territorial lordly power and authority.” In other contexts, there is e.g. “königlichen macht und gewalt” (1352). The power to tax is known as “Finanzgewalt,” and so on.

So it is in this sense that Haller speaks of “Macht” (might), effectively as the German rendering for *potestas*, which he makes clear. The proper meaning of the weak having a protector in the strong, is a relationship of guardianship and tutelage, which in no way requires the subject to renounce his possessions and become the lord’s chattel. A closely related concept in Germanic tribal law is *Mund*.

This is a shorter work of 30 pages, and expounds Haller’s theory of natural superiority as the basis of sociable relationships between free and servant that grow into states.

“We often hear the complaint: there is only violence in the world, and that wisdom and virtue would be valued for nothing. Are these charges fair? Do their authors also have a clear idea of what they mean by that? Have they ever thought about what is meant by the broad concept of force or might? Don’t they have the habit of doing injury to a divine law by confusing it with its abuse?” he asks. The natural interdependence between those with the good fortune to provide and those in need is reiterated as in the inaugural lecture.

“Everywhere the more rigid class rules over the weaker and among creatures of the same kind, the male sex over the female, the parents over the children, the courageous over the cowardly, the perfect about the imperfect.”

“The same law prevails among men, whose powers are higher and more manifold, only in different forms. Man... nevertheless rules over all animals because he is superior to them through his fine reason, that admirable tool which makes all the forces of nature subservient to him. He rules over his peers, especially when he surpasses them in any physical, intellectual, or moral qualities, and when others need this strength for their nourishment. The nature and degree of this dominion are even related to the nature and degree of that superiority or need, in appropriate measure. Often obedience and command are reciprocal, because one has a superiority in this regard and the other in that regard. There, where the forces are equal to each other, or are equally respected, there is also no domination, and from the child who outgrows the paternal domination through providing his own upkeep, from the pupil who becomes the master himself, up to the mighty vassals, who in the end along with being able to protect themselves, their need which was the cause of their dependency ceases.”

The tendency to admire and revere natural superiority is manifest everywhere by such phenomena as hero-worship, flocking to celebrities, and obedience to authority in general. Haller writes:

But how deeply is this law engraved in the mind of man? Have you ever noticed the general and captivating tendency that drives people to join the recognized powerful man freely and voluntarily and to submit to his rule? Go among the children, and see how everything is arranged according to degree of superiority in rank and order, how unconstrainedly the weaker gives preference to the recognized stronger, the younger to the older, the stupid to the talented, the fearful to the fierce. And are adults here differentiated from children? No! on the whole earth no one tolerates being ruled by his equal or even a lesser without reluctance. You only want someone higher above you, and from the poorest day laborer to the minister and general of the greatest monarchs, everyone likes to serve only those who are really superior to them. The son of the country farmer, who still gladly obeyed his father, leaves the home hearth not in order to become his brother's servant, but only a son. The municipal servant thinks he is greater and more distinguished, the more his authority distinguishes himself from others through rank and wealth. The great and famous master in any science or art, his students willingly run to and thousands imitate him in his ways, even in his mistakes. Soldiers and whole armies are proud of high birth, the empire... and generally the greater, the more powerful the master, the more noble his service is respected. After thousands of years, don't men boast of the most powerful of their princes and who stand out in history?... If so, in all ages we see for such fortunate mortals an enthusiasm that goes beyond intoxication and to which the world willingly bows its knees.

Haller cites sports and athletic games of how this natural superiority emerges in a non-bellikose manner, i.e. to refute the simplistic equation between superiority and violence.

Thus, Haller says that "the first and most general need of men is to live and to live well, the second to be protected, the third to be instructed. The poor serve the one who provides him bread, the weak one who guards him, and not the one who rushes to him with wise sayings. Above all, that power always rules whichever is most needed."

Strength does not mean arbitrariness, power means potency, the faculty that confers a disposition to act, not banditry: "So far have reported something of my established principles about general constitutional law, I notice that some of them intentionally, partly unintentionally, transform power (potentia) into violence (vis)."

"Is there a difference between being able and being able to do? Between fortune and its use? Far from the fact that everything belongs to the powerful, nothing belongs to him but what he owns as well as everyone else..."

It is equality of forces more often than not that are a tipping point of conflict than inequality, giving the example of private feuds compared to wars between states: "But one does not measure the forces where they are obviously unequal, but only where they are equal or are equally respected. That is why the peace within a state is broken less than between different states; although one finds various private feuds of all kinds between subordinates who are equal to one another, which the most powerful sovereign cannot always prevent, because he is usually only called on for protection when his own help is insufficient, or when the insult has already been accomplished."

“On the other hand, how completely different everything appears if one only accepts the diversity of good fortunes in addition to individual, definite, real service contracts in the same! How does this system not agree with justice as much as it does with the whole of history?”

Delegated power, in contrast, would promote class leveling and enmity: “The powerless ruler, captivated by fear and suspicion, must continually seek to suppress or destroy the mighty, but the latter, conscious of their superiority, would find an eternal enemy in the lowly ruler.”

Ultimately, Haller says, nature has arranged it with admirable wisdom that precisely the feeling of one’s own superiority irresistibly ennobles the character and favors the devotion of those virtues which are most necessary for the subordinates. “Do you doubt this truth, for example: why do you always ask the master to do more things than the servant and why you judge everything imperfect about the great so inexorably harshly?” “Are most of the crimes committed by the highest ranks of human society or the lowest?”

He thus exhorts the philosophers who claim the necessity of a civil society to supersede nature:

You who seem to blame the maker of this world for not consulting you, ask: what do you want that nature has not already done infinitely better than you? You want your self-created governments to be powerful, and behold, nature gives rule to the mighty without your help. You want them to think that they are exalted above everything that is common, and what then ennobles the spirit more than the feeling of one’s own superiority, the absence of fear and the freedom from need? You want them to protect others and not offend anyone, but who then has more strength for the former than the powerful who is satisfied with his own rights, does not fight with delegates, and does not desire anyone with whom he could excuse himself and whitewash violent acts? You want no one to be merely subjected to the will of the other, no one to be able to sell his right to freedom for ever, and behold, no one serves but to remedy his needs, and therefore to his own advantage, and with the loss of need comes loss of servitude. You finally want that talents and abilities be permitted an infinite scope, so that everyone can come far up through their own merits: but then where is the goal that would be set for human powers? The rights that belong to another, the fortunes that another possesses, can of course not be claimed by any talents... Do we not see in the whole world a constant change of all things, the rich become poor and the poor rich, the powerful become weak and the weak become powerful, the unknown rise to splendor and the famous sink into obscurity?

Haller ends by using one of his favorite analogies, that of a doctor and his patients. He would use it throughout his oeuvre, and in fact in 1808 he penned an entire political satire of the social contract revolving around the premise of a group of sick patients coming together to elect their doctor, delegating executive power to him, but reserving legislative power for themselves. “Your doctors, whose beautiful job entails listening to nature in its secrets more than others: how does it come about that the sick submit to your rule, obey your orders unconditionally, accept the bitterest sufferings and renounce the most beloved pleasures; the

feeling when man gives you his wife, the father his only son, the mother her suckling child, as your serfs, and makes you masters of the life and death of his loved ones? Is it not because of your superiority in knowledge of diseases or their remedies and because of their needs?”

3.3. Über die Domainen und Regalien. Ein Beitrag zur Reformation des allgemeinen Staatsrechts (1807)

Über die Domainen und Regalien. Ein Beitrag zur Reformation des allgemeinen Staatsrechts [On domains and regalia. A contribution to the reformation of general constitutional law] is a 25-page essay that deals with the *iura regalia*, i.e. those reserved rights of rulers that derive from their proprietary estate in land, which used to be considered the foundation of what today would be called “sovereignty,” but in an older sense would be called “territorial superiority” [Landeshoheit, *superioritas territorialis*]. The *iura regalia* were taken for granted and enumerated by jurists and constitutional lawyers for centuries, until the Bodinian shift in the meaning of sovereignty downplayed and ultimately erased the concept into an abstract supreme legislative power, eventually transforming into the theory of sovereignty as “decision” and he who decides the “exception,” a bland circular tautology with no basis in the actual life-blood of peoples and their princes.

As described by Rudolf Huebner in his *History of Germanic Private Law* (1918) (ignoring his contention that these rights were “usurped,” a stock trope of German liberal historiography that has been since refuted by scholars like Benjamin Arnold, and if anything it was their conversion into “public law” prerogatives of “state power” which was the true usurpation):

A series of important restrictions upon landed ownership resulted from the widespread medieval institute of the regality. By the expressions “regalia,” “iura regalia”, the earliest technical use of which is found in the Concordat of Worms of 1122, men designated from the 1100s onward all those profitable rights of sovereignty, originating in public or in private law, which inhered in the king as the holder of supreme power, and which permitted him either to monopolize the administration of the law within a definite territory (the fundamental meaning), or out of the plenitude of his power to permit such administration by others.

In consequence of the patrimonial conception of sovereignty the profitable character of these rights was chiefly emphasized ; that is, their availability within the rules of the law of property through sale, pledge, or lease. In this connection no distinction was made between rights of sovereignty proper, — for example executive power, military power, and judicature, rights to customs and of coinage, — and the mere property rights of the king in lordless land, in things belonging to the public, and even in the private property of the subjects, which he had possessed ever since he had come to represent the public interests in place of the organized folk. The possibility thus created of alienating these rights in exchange for political concessions or for financial considerations, was made use of in the most lavish manner by German rulers, especially from the Hohenstaufen onward, to the permanent damage of the crown’s power. Thenceforth the regalities, in so far as they were not included in the original powers of the dukes of the German racial-branches, — as was the case, for example, with the coinage regality, — passed in increasing measure into the hands of the Territorial rulers, the cities, and the manorial or feudal landlords. All this found recognition as regarded the electoral princes in the fundamental statutes of the Empire, namely in the Golden Bull of 1356 and, later, in the electoral capitulations and the Westphalian Peace. The movement was completed in many cases not by way of law but by way of usurpation. Objects of regalities were, above all, the mint, tolls and customs, markets and castles, safe conducts and protection (e.g. of merchants, Jews, and foreigners), goods of heirless decedents and confiscated goods, lordless estates, the sea-shore, rivers, roads, fishing, the chase, forests, mines, salterns, treasure trove, certain trades, the right of military ban, and rights of judicature.

In Germany no general definition of the objects and matters subject to regalities was ever made. This was done, however, for Italy by the motley catalogue of the Roncaglia “*constitutio pacis*” of the emperor Frederick I of 1158; and this, after being embodied in the “*libri feudorum*” (II, Feud. 56), became with the reception of the Lombard feudal law the common-law basis of the theory of regalities in Germany. From the 1700s onward jurists and cameralists made numerous attempts to develop a theory of the regalities.

Their chief endeavor in so doing was to extend these as far as they possibly could (they got as far as four hundred), seeking thereby to support the sovereignty of the Territorial princes, at once against the Emperor and the Empire and against the estates of their respective realms. A conceptional division of the regalia was also attempted between “*regalia maiora*”, that is rights of sovereignty proper, and *regalia minora*” which were certain incidental financial rights, profitable and alienable; a distinction which, though lacking to be sure in any distinct principle,

nevertheless became established doctrine, and as such passed over, for example, into the Prussian “Landrecht.” Only when a maturer insight had made clear the political character of sovereignty, and the dissimilarities between it and privileges of private law, did men attain to any adequate limitation of the regality concept. They then abandoned entirely its application to political rights of sovereignty, applying it thenceforth solely to the exclusive rights of the State in the exercise of certain economic activities, especially the exclusive occupancy of certain objects and the exclusive prosecution of certain trades; rights which persisted down into modern times only in scanty number. In this sense the regalities still belong to the existing law as “profitable rights which by force of a rule of public law inhere exclusively in the State, whereas their content is regarded, ‘in se’, as a privilege of private law.” Aside from the right of the fisc to ownerless goods which is recognized by the Civil Code (§ 928, 2), and which can be connected at least historically with the corresponding old regality (supra, p. 253), the regalities have been reserved to State law (EG, § 73).

Haller opens with a statement of the prince’s financial power as proprietor of what is his own:

The prince is just like every human being, except not dependent on any other person, and still in a higher degree unlimited master of his property, his income and his expenses, and for this reason all his rights flow over the so-called state finances, which are basically only his finances. In so far as he is not limited by his ancestors by house laws, wills, testaments and so on: he can hold his basic assets, they consist in underlying immovables, movable goods, hard money, invested capital, and so on along with the right to sell some or all of the various assets, to increase one’s income by many natural and lawful ways, to expand and limit his expenses, arrange the administration and accounting at will, hold debts in his own name and have no account of anything to his subjects.

The idea of “state property” is refuted, as is the contention that restraints on inalienability of the crown come from a popular mandate, as opposed to a prudential decision by the ruling family to preserve its territorial integrity:

The domains (house possessions), a word that is even used in the French language for private goods, are the prince's own property, they are the foundation on which his independence, hence his principality, is based. Therefore, even if most teachers of constitutional law claim that princely domains are national goods, i.e. they want to make them the property of the lower levels, this assertion is entirely historically wrong, is usually not supported by anyone with the slightest evidence, and flows only from the wrong idea of the nature of a state, according to which it is founded on unjust violence, and therefore want the wealth of the princes to come from their subordinates. **The patrimonial prince, the highest, independent landlord, does not have domains because he is prince or regent, but he is prince and regent precisely because he has the same domains or independent property.** He can use them as he sees fit, alienate them, transfer them by wills or leases... He is also authorized to sell these domains in the same way as any other property, insofar as wills or contracts do not stand in his way, i.e. insofar as he has not inherited or acquired them under different conditions. It is true that in various states it is stipulated that the crown may not be sold, but this law was not given by the people, but it is based on the will of a previous owner or on contracts among the members of the princely house themselves, so that not a single spendthrift could deprive his children or agnates of his entitlement and rob the whole house of its reputation and its independence. This is clearly shown by orders of succession. It is therefore necessary to observe that in the new Prussian civil code the domains are always named only as "state goods" which have been entrusted to the head of the state for perpetual use, and the king is forbidden to sell them. By carelessness, the royal house has stripped itself of all property... Taxes, which in such cases must be paid to the landlord as an annual replacement cost for the otherwise possible depreciation of the land value or for the part of the interest in kind that is lost, prove that he is the legal owner of the land on which these houses [built by subjects] stand.

The origins of regalian rights to forests, mining, hunting and logging come from the fact of either first occupancy or subsequent legal acquisition, and so any derogation thereof must come from relevant permits, purchases, feudal contracts, etc. Those regalia that deal with economic exploitation of natural resources are also not a state monopoly per se, but the product of a prince's own industrial or commercial undertaking, and may legitimately be made his exclusive franchise if, due to a scarcity of capital, no subject can profitably exploit, and if this does not conflict with previous contractual arrangements. Canals, sea ports and other works can have tariffs and customs duties levied on them as the price of admission for what is infrastructure that subjects benefit from by the prince's own grace.

So is the validity of the Postregal (postal monopoly) established, since the necessity of ensuring reliable communication routes is something that most of the time only the supreme landowner has the power to do: "It is just the same with the invention of postal services, which almost no one else than the landlord can successfully undertake, because mere private persons without a privilege and without his protection could not easily overcome the difficulty of keeping horses everywhere in a large country, to build houses and employ officials, at least the public could never count on the safe continuity of such an institution. Here the sovereign is, by virtue of the exclusively reserved right, empowered to employ

messengers, postmen and postal entrepreneurs.” The breaking open of letters and high postage fees are advised against as imprudent and detrimental to good service. Minting and coinage, due to risk of fraud and the labor intensity in procuring precious metals, are also a natural monopoly of the prince. Haller naturally advocates commodity money, gold and silver, as the monetary standard that has acclamation from its universal usage and so in a sense part of the *ius gentium*.

The *Bergregal* (mining rights), are justified similarly in that “since it is for the best that excavation of noble metals and other subterranean deposits be promoted, but mining requires large advances, its yield is both uncertain and irregular, so there is concern that it will soon be abandoned or neglected by individual private individuals or their descendants: so the *Bergregal* legal and for this reason because the prince, as the richest and most permanent in the country, pulls such mines under his own expenses.” Additionally, they are legitimate fruits of one’s landed estate, part of the usufruct. It is unlikely that the first occupier of the land would have ceded all proceeds from natural resource extraction entirely to his subordinates, anyway, as it would likely be what is called a *laesio enormis* for him in civil law terms, i.e. “injury that is suffered by a vendor who has sold something for less than half its value.” The landowner would also have the right of *lucrum cessans*, i.e. the interest or damages awarded for loss of reasonably expected profits or for loss of use of property.

In general, petty trades aren’t or shouldn’t be objects of the regalia. “The objects of the regalia must have something grand and noble about them, which can only be done by a few or not at all by private individuals. But without making the slightest contribution to the acquisition of the subjects, these princely undertakings could still be greatly expanded, and thereby the finances of the princes are raised better than by taxes and perishable financial operations,” says Haller. Breweries, mills, glass factories, etc. are such enterprises that the prince should compete in with his subjects. Either way, the king ought to live off his own domains to the best of his ability, and so proprietary and industrial enterprises that add value are far superior to taxation and debt financing. To deny him that would be “to make the master into a slave, and to set up the doctrine that the master of the house and of the land should have fewer rights than the lowest of his subjects.”

3.4. Handbuch der allgemeinen Staatenkunde (1808)

The *Handbuch der allgemeinen Staatenkunde* [Handbook of General Political Science], a 300-page work, was the first thematically complete statement of Haller’s doctrine. In effect, one can treat it retroactively as the abridged version of the *Restauration*, or the expanded version of the inaugural lecture of 1806. Its brevity and succinctness made some people prefer the *Handbuch* to the *Restauration* proper, including Robert von Mohl, who as one of the pioneers of the idea of the “Rechtsstaat” was otherwise not favorably disposed to Haller.

“The state of nature has never ceased, and people would strive in vain to ever get out of it,” and so “nature has given the weaker in the stronger a protector, a benefactor, and people therefore love it when this power is also confirmed and externally recognizable through its appearance.” Once more, Haller reiterates the same definition of the state, that it “is not an association of legal insurance, or a society of free men for securing strict justice, as most political thinkers seem to believe. Instead, it is nothing else but a natural, sociable relationship between free and servant, which distinguishes itself from other similar societies through the fact that its head is independent.”

The natural origin of all jurisdiction, lit. iuris dictio, “to speak law” (in medieval Scandinavia judges were literally called lawspeakers): “All jurisdiction in the world is nothing other than mutually entrusted right (arbitration). I called on the help of someone, who gave me a hearing and asked to be convinced of my right. Every person is entitled to provide utterances with professional knowledge and judgment, but not everyone has the ability to create a real effect for his utterance. That is why it is usually only the more powerful who are called upon, and their compulsion to judge goes just as far as their right.”

The absurdity of positing a man who is a self-sufficient judge unto himself, unless he has acquired independence, or “perfect liberty,” even though subject to divine and natural law: “It is a strange saying of some recent natural lawyers that there are naturally self-sufficient judges, since every boy or man in disputes with his siblings runs to his father or otherwise to a mighty man.”

“Thus the priest leads his flock and the master commands his servants, but both often serve a higher master again; the commander rules over his brigade, but he is himself again subordinated in command to the one who recruited and pays the troops; the householder rules over his servants, but the house may be on someone else’s property, and that landlord in turn could only have received the land from a third party under certain obligations. By virtue of the fact that service contracts are dependent on this subordination of human conditions they must, however, cease or become completely free with someone who serves no further superiors. Wherever you find this perfect liberty, the circle is closed, there is a ‘state.’”

Numerous variants of “lordship” (Herrschaft) are cited in etymological support: Hausherr, Grundherr, Landesherr, Oberherr, Feldherr, etc.

Since the essence of the state is independence, or “perfect freedom” as Haller likes to call it, which is acquired during the normal course of the development of social relations, it cannot be said the state has its end in justice, since the act of punishing the guilty and securing one’s right are already accomplished in any non-independent pre-state household or tribal society, whether true “self-help” (private feud) or communal arbitration. “Everything else, peace, improvement of enjoyment, development of all abilities, and so on, follows automatically through living together, through excited activity, and mutual needs,” he says.

“There can only be independent individuals or independent corporations, consequently all states are either principalities or republics.”

Property precedes sovereignty: “Real estate arises naturally without any positive law, originally through acquisition and cultivation of a land that does not belong to anyone, and the ensuing recognition of a small legal order, backed by the fierce defense of one’s own... Only then is it acquired by a previous owner through transfer. That is why all laws came into being only after property, but not before it, much less have they ever created property.”

A lot of the same analysis from the inaugural lecture we covered above is therefore here. What is quite fascinating are Haller’s comments on criminal law; he scarcely acknowledges penal codes as any form of unified legislation, and not even a positive obligation, rather a favor of the stronger party for those who lack the means of self-defense, and so “basically nothing more than an epitome of rules governing the form and matter of private conventions, which one could actually leave to the disputing parties. Also few feuds have ever given civil decrees; usually there is only an aggregate of ancient, collected habits, and often very different in the same country. Criminal investigations, actually speaking, do not concern the subjects either, for criminality/deviance is already forbidden in and of itself, and no positive law at all is necessary for this; that they should or can be punished is a dictamen rationis and goes without saying. How would one punish? Depends partly on the circumstances of the act, partly on the will of the one who is authorized to punish. Police regulations finally concern only the prevention of evils; every person, and therefore also the prince, is authorized to do so in the stretches of fine territory, but not necessarily obliged. They are more favors than obligations.”

Supreme jurisdiction, i.e. adjudicating the disputes of inferior and subordinate parties, is also a free gift from the prince, based not on ownership, but natural superiority: “The supreme jurisdiction (*jurisdictio suprema*) over all close relatives does not flow directly from independence or from the ownership of landed property: but it is a natural consequence of the power of guardianship [*tutelage*], and arises from the own needs of the subjects, who call the more powerful for protection against unreasonable claims or against violence suffered. It is therefore less a right of the prince than a favor which he shows his subordinates at their request. The officials and judges appointed by him for his relief are pure servants or deputies, they administer the authority in his name, according to his rules, and are therefore in no way independent of him.”

The three types of monarchy, as before, are patrimonial, military and spiritual. Noble tax exemption is typical of the military state, since “the conqueror’s comrades in arms are not conquered and can therefore neither be bothered with taxes nor with extraordinary duties.” The existence of tributary relationships and serfdom are another core differentiation from the pure patrimonial state, since as was known to the Roman jurists, slavery is a humane alternative to killing captives of war. Another modification is the convocation of the imperial estates: “In important imperial affairs, the prince will sometimes consult with powerful companions, and this gives rise to the so-called imperial estates, which do not exist

in pure patrimonial states, or were only imitated by ministerial/courtly analogies. This convocation does not happen out of obligation, as if those tenants-in-chief were the legislative power, but only out of love and trust, when the king either approaches their help or wants to assure himself more of their good will in voluntary aid. They are only an advisory assembly (*majus regis consilium*) and only have petitions, requests, and suggestions to give, but cannot promulgate laws.”

The Handbuch is notable for including the “macrobiotics,” i.e. sections giving advice on how to maintain the independence of a state appropriate to its form. Haller also calls it “state wisdom,” and in the French translation it is “haute politique.” The Restauration elaborates in much greater detail.

With regard to spiritual (ecclesiastical) states, a.k.a. theocracies (Haller’s words), they are founded on pastoral and teaching authority. Haller mocks those who would base the authority of religion on the flock to be instructed: “This idea of a civic contract was also carried over into the church, and presented as a moral republic founded upon from below, so that the students should choose their maturity and decide on the science, which they do not know and which they find necessary. **Why didn’t they also teach that all sick and infirm people concluded a medical contract with one another, electing a doctor from among themselves?**”

For Haller, spiritual states are the mildest in their subordination, since they essentially rest not on land ownership or military strength, but on dogmatic authority. He mostly speaks of the Christian church, particularly the Catholic, but occasionally does bring up e.g. Islamic caliphates. What’s fascinating is he treats Freemasonry and the Illuminati as perverse forms of (non-independent) spiritual states in their own right, “demonocracies” as he calls them. Either way, modifications to the spiritual state from the patrimonial are: “Since in a spiritual state the domains and other worldly goods are mostly given to the ruler only in the honorary capacity as teacher or to the whole ecclesiastical society, the spiritual lord cannot dispose of them as willingly as the pure patrimonial prince. Neither are the divine states hereditary in their nature, for the superiority in spirit is not inherited by physical offspring. A form of election must therefore necessarily be determined in order to determine the successor in the highest magisterial office. If, however, the marriage of the chief priest were permitted in such a state, heredity, by the urge of nature, must be almost unavoidable. But if this happens, the state gradually ceases to be spiritual, and becomes merely worldly or manorial; the spiritual power is devoured by the worldly, and the doctrine, which was originally the main subject now only appears as a minor subject. Thus, in a spiritual state in which the first basis of rule is based on iron doctrine and obedience rests on faith: the spiritual power is primary and the worldly has only subsequently been added.”

For republics, this is their origin:

Every cooperative, of whatever kind, seeks to obtain some common advantage through the association of its members, and this loan can be called the purpose of the republics. In general it cannot be determined by reason. For as many different advantages can be attained by the union of human powers, so many legitimate purposes of the republics can also be conceived. But one would be inane to believe that this purpose was ever the safeguarding of human rights, the assertion of individual freedom, the handling of civil justice, and that among members themselves. As little as this takes place in the patrimonial, military and ecclesiastical association, so neither is it the case with societies and republics... Hostilities and violence are not originally assumed among friends and allies, for otherwise they would be more likely to have remained separate than to have been united. Only afterwards, when a need arises, is this need also taken care of by judgments, punishments, and later by laws. Most of the freed cooperatives or communities originally did not even have the purpose of making themselves independent, i.e to become a state or a republic. The real and immediate cause of all such communities, such as the interests of better living, security (resistance to foreign pressure), freedom of trade and business ventures, etc. are numerous enough so that the republics could also be divided into patrimonial, military, spiritual, mercantile and so on... In any case the purpose (the common need) cannot be stated exactly, for which the society was originally founded, **yet the idea has sprung from the pot of fantastic jurists who believed that their law was the sole need of the world and that without them and their sayings there can be no righteousness on earth, and that one could only meet in company to manufacture a civil society.**

“Their own strength and fortunate circumstances alone make them independent or sovereign. The mere will of the people only creates the cooperative, but not yet a state, a republic,” he goes on.

How republican officials differ from servants to a prince: “The magistrates or rulers of a republic certainly find themselves, as it were, the servants or officials of the whole society, or should at least consider themselves as such in principle; but they cannot quite be compared with the servants of a duke. For, first of all, they themselves are open to joint rule or independence, which the official of a prince is not; In this capacity they have a say in all matters and have a voice in their decision, which the prince’s servant also does not have. In addition, in most cases of ordinary government they have no superior over them and rule in detail over those themselves who, taken collectively, are their masters. But the word servant is not used by the governors of a republic either.”

Haller draws a strict distinction between citizens and subjects in a republic, and bemoans how the term “populus” conflates them: “The imperfection of language alone is a source of most errors. This sophism arose only from the fact that the same word *volk* or *populus* was used for two completely opposed things, namely for a free cooperative, a collective prince, such as the citizenry of Rome; and again for the aggregate (the *multitudo soluta*) of all people who are subordinate to one or more of them. (*Sophisma ex ambiguitate vocis.*)” It is perfectly natural that republics have subjects and subordinate possessions: “The so-called democratic

countries in Switzerland had their free subjects, their indigenous, unequal allies in the current Swiss cantons, although the recent events in place of the former smaller ones they have created a larger cooperative, but this too is far from being able to include all residents in it. In the rest we find subservient, dependent, consequently just what I call underthan [subjects]. It is a fine provincial town, no village, no guild, which does not rule over other people, servants, and its citizens. According to the nature of things, this is not possible otherwise. Why would a society not have servants and subordinates, who are obliged to it in various ways, or who live on its land, whether or not they are members of that community? Or should the free societies alone not exercise that right?"

Since citizens in a republic possess civic equality, an interesting implication Haller draws is that wealth and income taxation is illegitimate:

Whoever wants to enjoy the advantages of equality must also put up with its consequences, or else have nothing to do with the republic. It is true that that the rich man can afford more; this objection alone is sophistic. There is no more effort to protect a person who has made a lot than one who makes little, and a trial costing over 100,000 guilders is decided as swiftly as one over 10 gulden. Not to mention that this service usually has to be paid separately. Nor is the objection any better, that the rich are more likely to pay than the poor. These are reasons of beggars and not of legal scholars. What matters is not what someone can give, but what he opted in to give. As soon as he is nothing more than a citizen, he does not pay more than other citizens. Wealth taxes are therefore absolutely inadmissible in true republics, without only considering all of its other innumerable disadvantages, the inquisition, the destruction of private credit, the inevitable fraudulent episodes, etc. **To make these wealth taxes progressive according to certain rules is a hideous invention, which was only foreshadowed in our time, in which industrious, economical and able people are all treated equally as criminals or enemies of humanity.** I understand well that under certain exigencies these contributions may not suffice, but there are other means for this, where one will gladly agree to greater sacrifices. So if a republic from its own common deposit of goods and revenues cannot live on the proceeds of its members, it should either reduce its needs, demand voluntary contributions, or prefer indirect taxation.

We can say that by 1808 the Hallerian system is in its maturity.

3.5. Was sind Untertanenverhältnisse? (1814)

"What are Subject Relations?": A speech that Haller gave in 1814 against universal suffrage, and in favor of maintaining the traditional subject relations between cities, cantons and their territorial possessions ruled by bailiffs:

What are your political rights? We do not know this expression in our laws and in all of our history; it is also an invention of the eighteenth century, by virtue of which one wanted so very quietly to turn the servants into masters or co-rulers, but the masters into servants. **In and of itself, political right means nothing more than a municipal or communal right, as those who understand Greek can tell you, therefore not a right that belongs to all people, but an acquired right that belongs only to those who live in this city or church, or to be received into it.**

So keep your special city and community rights; even call them political if you can enjoy the word, but let others dispose of what is theirs. Nobody is excluded from the possible acquisition of political rights, but they are not possessed by nature. But one continues to say: anyone should be able to get into government! But to which government? Not to the government of a private or trading house, or a factory establishment that has perhaps ten thousand workers, or any philanthropic educational institute: they, you say, belong only to their owners; also not to the government of all other cities and municipalities, which belongs exclusively to their citizens: but only to the largest and highest, which has no master over itself.

But do you want to be subjects, just not here? Well, now we have made up your mind! So your principle, corrected and reduced to its true limits, is actually like this: All people and all corporations of the earth should be allowed to have subjects, only the cities of Bern, Lucerne, Fribourg, Solothurn, as well as the Swiss regions of Uri, Schwyz, Unterwald, etc. should not.

If private persons and private companies still buy goods and dominions: they can more or less control the people who live there or are in their service, and thus have subjects; but as soon as a Swiss capital does the same, that is a terrible thing, and the subjects must at least send representatives to take orders on the cause of their master, or even to make him subject themselves.

In the formerly sovereign, i.e. free cities, every person should be allowed to become a councilor just because he is a person, but the citizens of these unfortunate cities cannot become councilors in any municipal city, not even the superiors of the smallest village, without being granted citizenship, which one still closes to them, all while they open theirs. Excellent! That is what I call equality: keeping one's fortune alone, but sharing the fortune of others, or letting it be carried away at will: **that means liberality, and reminds us of the declaration that Cato the Elder already made of liberality: it exists in stealing foreign goods and giving them away (bona aliena largiri liberalitas vocatur).** [Ed.'s note: may in fact be Sallust.]

[...]

Their peoples pretend to be just as free as the Swiss, because otherwise a free people is not called the one where there are no subjects, because such things are everywhere, even in democracies, but rather the one that is not subjugated by foreign army, but serves it natural and contractual master. On the other hand, a free city, a corporation that is collectively a common lordship, at least in the German language, is not called a people.

Since, however, the allied powers, even the French king who, to the chagrin of all Jacobins, was reinstated, also have their subjects, since even princes and counts, the greats and nobles of the empire, call themselves his most loyal subjects, without adversely affecting their freedom and honor keep; since Louis XVIII. even recently declared that he would have wished for nothing better than to be a loyal subject to his brother, the late king, all his life: in the end it will probably come up what kind of people they are, what name or what treatment they deserve, which alone in Europe do not tolerate any subjects, thus regardless of their protests, the order to abolish nature, in other words, to preach nothing more than general freedom and equality, to dissolve all human ties, and consequently to want to renew the principles of Hébert and Chaumette [i.e. the enrages in the French Revolution].

3.6. Was ist die alte Ordnung? (1814)

“What is the Old Order?”: this is a speech Haller gave against recognizing Vaud, a territory in the Romandy, as an independent canton, which it did not become until 1798 with the French invasion, done with the collaboration of radical democrats like Frédéric-César de La Harpe and Jean-Jacques Cart. Vaud had been conquered by Bern in 1536 from Savoy, who had in turn inherited it from the dukes of Zähringen, amid the power vacuum created by the Italian War of 1536–1538, and was administered as a bailiwick. In the 19th century, democratic propaganda started to emerge about the “Bernese yoke.”

This is a myth, as Tom Scott has written: “In its administration Bern showed itself to be broadly conservative. French remained the language of government, though Bern now subsumed all its acquisitions under the title of Pays de Vaud, whether they had been part of Savoyard Vaud or not. The conquered territory was initially divided into six bailiwicks; not until 1560 were ten new bailiwicks created. The bailiffs (or castellans, or governors) were all drawn from the Bernese elite (previously they had been Savoyard noblemen), who were obliged to reside in their bailiwicks, unlike some other Swiss city-states. Nevertheless, the Vaud remained a land of nobles, once described by Herbert Lüthy as a ‘sorte de parc nobiliaire’ in a Switzerland dominated by bourgeois oligarchs. For their part, the communes of the Vaud retained much of their autonomy (except in religion), though the bonnes villes of the Vaud, which had once numbered fourteen, were in Bern’s territory reduced to four (Morges, Moudon, Nyon, and Yverdon). Bern’s one radical act (though it merely aligned the Vaud to the rest of Bern’s territory) was to abolish the Estates of the Vaud. In 1570, when the city imposed a new excise to clear all outstanding debts from before 1536, it convoked an assembly dubbed the ‘Estates of our land of Savoy’, though in reality those summoned were chosen from the bailiwicks, rather than being members of Estates as social corporations. In the end, Bern’s aggression yielded to accommodation—with Fribourg, with the communes of the Vaud, and even, albeit through gritted teeth, with the pattern of Reformed Protestantism which Calvin introduced in Geneva.”

The seigneuries did not disappear with the Bernese regime. Morges, for example, had the Lordship of Aclens with the villages of Aclens, Romanel and Bremblens. Many villages did not depend directly on the Bernese bailiff, with their direct superior being the lord, often a member of a family of the old Vaud nobility, sometimes a bourgeois.

Another example is how the Vaudois rebel Abraham Davel, who attempted an uprising in 1723, was immediately turned over by the native Vaudois authorities who found no sympathy for his cause, his reputation as a patriot emerging only posthumously.

Either way, Haller goes into greater detail on the private law relations of the state in this one, indeed it is a brilliant summary of the patrimonial doctrine as a whole, a true gem:

What arbitrariness to wrest these properties from us because because their inhabitants speak French! As if Alsace and Lorraine were not German too, and the French Emperor had not wanted to bring Germans, Dutch, Italian, yes, soon Poles under his scepter. But we did not compel your language, all our ordinances were drawn up in French, and the lower offices were held by natives. We bought the mines of Röche, which originally belonged to private families; who had the right to wrest these from us? We owned Märten and Tscherliz jointly with Fribourg. Where was a freer, more affluent city than Lausanne, in which, as in the rest of Vaud, precisely because of this freedom, people from all nations sought their favorite place to stay. Which other city has one ever given greater rights or privileges? And have they have not increased? Many of the great owners or rulers were our fellow citizens, others our vassals; we ask them to say whether their rights have ever been violated; shouldn't they also be able to reconnect their old relationships with Bern? The immediate dominions or possessions of the city were ceded to it by the Counts of Savoy; if these do not address anything, do others "have a right to it," to whom they never belonged? Others came from deceased donors; we had others bought like the lordships of Aubonne, Oron and partly Bonmont. But people did not buy people, as revolutionary stupidity imagines, but goods, assets, income. People then find themselves who profit from their earnings, who enter the service of the owners or who therefore want to remain. Many of the mass of the people were our paid civil servants and workers, tenants, fief-holders, or they depended under similar circumstances on those who were again obliged to us. What reasonable person can find anything wrong with this?

Hear how friendly, how natural, how private law circumstances which linked the city of Bern to their territory and this to them. In most places she was the landlord, substantial owner of goods or lordships that she had bought or legally acquired. There she put bailiffs or Landvogtei, that is, administrators of their goods and income who at the same time exercised the judiciary power, which is nothing more than an aid to justice, a benefit of higher power.

But many will ask: what is this old order? What belongs to it / what doesn't? A sediment of errors has spoiled the minds of men in such a way that few still have clear ideas about it. Friends! the old order / the old constitution is nothing more than simple justice, which gives and leaves everyone his own, in the literal understanding of the unsophisticated natural order of things. It does not consist of individual laws or regulations which at all times depend on the will of their authors, that are only a means to higher, often temporary, ends; not in random persons who alternate between death and a thousand other circumstances; not in subordinate offices and services, which can be increased and decreased, retained or abolished, depending on the degree of needs or resources.

It consists in the independence of the city of Bern and in the legal relationships to the various parts of its territory, in other words in the establishment of the old sovereign and in the re-entry of the same into his freedom, his goods or benefits and the rights connected with it and the concomitant duties. The revolution had robbed the city of Bern, like other Swiss cities, of its independence and degraded it to a subservient community; it has deprived them of all their goods and income, under the proposition that they are national goods, even though "the nation"

had never given a penny to it. At the same time their rule ceased to exist and was given to others who had no desire to do so. Even their inner, modest constitution, which all other cities received again, was destroyed in forms and names; she, the mother and root of the whole country, was the only one offended; she no longer even had a town hall and lived as a tenant, while she saw strangers enter her own buildings. As a result of the mediation and alleged liquidation acts, she had to accept that part of her property as a so-called endowment, share her assets with former subjects and give up the savings of pious fathers to pay the debts of their bitterest enemies. What honesty did not have to be outraged by such injustice, what an unnatural constitution, where the children rule over the cause of their master and share in his property in order to be mighty in his place? Who could be present there with a clear conscience but in the hope of giving him back at the first opportunity? A feeling of the old legitimacy, which we know how to recognize, brought a significant number of our fellow citizens into the mediatized cantonal government, which is why it seemed to many to be almost as “clean as the old one.” We thank these men for their attitudes, their efforts, but they did not rule over the Bernese matter as Bernese, but as citizens of the canton of that time, not in our name but in someone else’s name; they were often placed in this ambiguous position against their inner feeling of having to vote and act against their own interests. And if the act of mediation had continued: we would soon have been ruled by strangers, and we would have been lost in the city and the area that we had founded and built.

Friends, you feel this foundation, but do you know that it is right? Hear and answer whether there is something that can offend the most irritable honor or sense of justice? The city of Bern was a corporation, a community of citizens; for this and not the domiciles, not the random residents, make up what is usually called the city in the political sense. The civil right is also not some insurance company, as our poor age imagines, but a friendly union for mutual protection, a fellowship in the common goods and their management. Like other cities and countries, it had received exemption from otherwise existing duties, rights and powers from its founders and original masters, such as emperors and lords, which at the beginning formed it into a free and respectable commune. Through centuries of dignity and honorable efforts, but especially through the blessing of heaven, it has gradually attained several powers, to extensive estates and lordships, for which it has such legal titles... She has subjugated no one, made no one subservient to anyone who was previously free; if she acquired goods or lordship through purchases or peace treaties and entered into the rights of the previous owners; so she demanded not more, but even less of the residents than they had previously owed, allowed everyone to stay with and assured them of a three-hundred-year-old peace. By joining the Swiss Confederation, by participating in so many meritorious deeds and negotiations, the city of Bern finally rose to complete independence and was counted among the ranks of independent states. Precisely for this reason it was also called a republic, because people tend to call sovereign, that is, free communities, republics.

The fact that citizens of Bern, and indeed the most respected ones, sit on the councils of the city of Bern is not a privilege, but a natural and acquired right. Within this citizenship there are no privileged families. The grand council is not a federation of families, but an assembly of

selected citizens who are eligible for membership. Whether many or a few of them happen to have the same name, whether they appear next to each other in the printed catalog or not, whether they are somewhat closer friends with each other: it doesn't matter at all, you sit there as a single head and not as a member of a family, voting is by head and not by order. Sometimes the same order had many, sometimes a few, members, sometimes none at all in the government; sometimes the little ones became big, sometimes the big ones small again, and there has never been a regiment where individual generations had not come out of the government, but other new ones would have come into it. Just as little did we know anything about a legal patriciate as it existed in some German imperial cities. Our patriciate, our so-called aristocracy (such Roman-Greek words were unknown to our chancellery style, and only penetrated the language from foreign countries) was nothing other than the natural reputation of the first, foremost, most famous among their equals, those who, through their leisure, their ability, their economic independence, their descent from deserving parents, are most suitable for the faithful and unselfish administration of the common patrimony.

If the offspring of such were distinguished by the same ancestors: then naturally they had the same reputation, hoping to receive the same consideration but never legally demanding the same. That is why the possibility of ascending was not closed to any citizen, all remained equally eligible, at any time some blossomed and others withered, depending on the increase or decrease in the strength of the spirit and the external circumstances of fortune. All this is nothing more than the unsophisticated natural order of things, as one finds it again on a smaller scale in all other cities and communities. Yes! the adherents of perverse principles, the false scholars will say: this representation is correct and irrefutable, as far as you only consider the interior of the city. But what then is their sovereignty and dominion over their territory? Her sovereignty is nothing more than her own perfect freedom; it is free because it does not serve anyone, and it does not serve anyone because it has been legally freed from all previous service relationships, because it enjoys nothing from anyone and is self-sufficient. Perhaps it would be able to own the same territory even if it were not sovereign. Incidentally, it is itself still dependent, partly on its treaties with the federal cities and states, with other states and also with the towns or regions of its territory, partly on higher power, if it comes into contact with theirs, partly on laws of nature and of the natural laws of duty. Because no human being and no human association on the ground is completely and absolutely independent.

But as far as the rule of the city of Bern is concerned, it is based partly on its property, partly on contracts concluded, and is therefore not the same everywhere. Shouldn't it have any territory, shouldn't it be allowed to exercise any rule? In this case there would be no village community, no day laborer in the world who had no more rights than them. Is there any city, a corporation, a somewhat well-to-do person on the earth who does not rule over goods, things, and by means of them also over people who either are voluntarily in their service, or live in their territory, or depend on them who are obliged to her? Were there not rural cities in our fatherland itself, which, just as their internal community was completely similar to ours, also possessed a territory and ruled not only over their citizens but over their officials, servants, residents, residents, etc., and so on? Didn't they appoint their magistrates and officials only from among

their citizens? Wouldn't they give themselves their own internal laws and statutes, previously without the government of the city of Bern interfering in the least? Did they not exercise the police and jurisdiction over their own people and in their districts – some even without an appeal? Did they not have domains of all kinds that remained theirs but were taken from the city of Bern; lords or court rulers wherever they put bailiffs, goods and income of all their servants/employees, mountains, forests, tithes, fiefdoms, even tariffs, fishing and hunting rights etc.?

Should this happiness be allowed for them alone but forbidden to others? Should justice apply to everyone else, just not for Bern? Should it own nothing except its walls, be allowed to control nothing, and even in the interior of the city to the laughter and pity of all those who understand have to share its buildings and institutions with a foreign so-called representative government? See, the only difference between the city of Bern and other cities or private owners of the country is that that it owned more, was bigger and more powerful than they, and that it is completely free itself, hence the friendly bond of diversely intertwined social relationships does not cease to exist. **Precisely for this reason she is called the sovereign, not because she is the only lord, the only ruler, but because she is the highest in the whole country.** Or did you want to be jealous that the city of Bern possesses more than others? So we too could be jealous that there are potentates and republics who are infinitely richer and more powerful than we are. Schaffhausen and Zug would also have to complain about insults that Zurich and Lucerne are much bigger than them, the pious Unterwalden attack their brothers from Uri, and Glarus about Graubünden, which is almost as big as Bern. So all private persons would have to pursue one another, because their happiness is different, and in the end everyone, like the French Emperor, wants to own half the world, so that he has no one who is equal or more powerful next to him. To rob yourself or to applaud the robber in the heart, is that “enlightenment”?

4. Historical antecedents of the patrimonial idea

Cicero likens kingship to independence or ‘perfect freedom’ gained by ownership of estates, in Book II, Ch XX of *De officiis*, though his republican prejudice likens to it to leisure bereft of public-mindedness:

Some, too, have taken up their abode in the country, engrossed in the care of their own property. Their design is the same as that of kings, to lack nothing, to obey no one, to enjoy liberty, the essence of which is to live as one pleases.

Seneca, in *De beneficiis*, states that Caesar “has no private property beyond his own privy purse”:

Everything belongs to Caesar; yet he has no private property beyond his own privy purse; as Emperor all things are his, but nothing is his own except what he inherits. It is possible, without treason, to discuss what is and what is not his; for even what the court may decide not to be his, from another point of view is his. In the same way the wise man in his mind possesses everything, in actual right and ownership he possesses only his own property.

Philo of Alexandria's *On Cultivation* analogizes God's covenant with Abraham in Genesis 15 to patrimonial kingship:

It is necessary that God should give inheritances, but that he should receive them might be unreasonable, since all things are his possession. But perhaps this is meant to apply to those who have him as their Master on account of a special affinity, as in the case of kings who rule over all their subjects but do this to a particular degree over the members of their household, whose services they are accustomed to using for the care of the body and the other practicalities of living. **These kings are masters over all the property in the land, even that which private citizens seem to control. But they are regarded as possessing only what they entrust to supervisors and managers. These are the properties from which they collect their yearly income and to which they often go for purposes of relaxation and enjoyment, when they set aside the weighty burden of the responsibilities they have for the state and their kingship. It is these properties in their possession that are called "royal."** Indeed, the silver and gold and all other valuable objects that are stored up as treasures by the subjects actually belong to the rulers rather than those who possess them. **Nevertheless, one speaks of the private treasuries of the kings**, in which those who have been appointed collectors of tribute deposit the revenues from the land. Do not be surprised, therefore, if the sacred band of wise souls is said to be the special allotment of God the sovereign ruler who has obtained power over all things, the band which has vision of the sharpest kind, utilizing the flawless and pure eye of the mind, which never closes but sees with an overt and penetrating gaze.

Pliny the Younger's *Panegyric upon Trajan* qualifies a prince as being "truly Lord of all Estates, he is owner of so much, as his Subjects possess":

The fondest Parents fear now no other dangers to ruine their hopes, than the bare casualties of humane frailty, nor among incurable mischiefs is the anger of the Prince any longer to be reckoned. **A main encouragement to educate Children arises from the hopes of a liberal maintenance, and the prospect of honorable employs, but 'tis much more encouraging to breed them to the enjoyment of a fix'd liberty, and a secure unaltered property.** Let a Prince take no care to enrich his subjects, so he attempts not to impoverish them, let him not maintain, so he does not destroy, and yet most persons, even under such an indifferent Government, would be desirous of Issue: But on the other hand, if he plunders more, than he bestows, if he ruine more Families, than he raises, it will unavoidably in a short while happen, that all will see reason to repent the birth of themselves and their Ancestours, as well as bewail that of their Children and posterity. But in the disposals of your bounty, as being entirely free from such extortion, I can commend nothing more justly, than that whatever you grant, was your own to bestow; not feeding your Subjects, as wild Beasts do their young, by the violent acquists of Murther and rapine: Your favours becoming alway the more acceptable, because those, who are oblig'd by them, know that no others were defrauded of them: And that for all the enrichments they receive no one is made poorer, but the Royal Donour onely and not properly he neither; for being truly Lord of all Estates, he is owner of so much, as his Subjects possess.

Symmachus' letter to Emperor Theodosius:

Far be it from good princes to suppose that what has been given to certain persons from the common property can be in the power of the treasury. For as the State consists of individuals, that which goes out from it becomes again the property of individuals. You rule over all; but you preserve his own for each individual; and justice has more weight with you than arbitrary will. Take counsel with your own liberality whether that which you have conferred on others ought to be considered public property. **Sums once given to the honour of the city cease to be the property of those who have given them, and that which at the commencement was a gift, by custom and time becomes a debt.**

Hugo Grotius, widely considered the founder of early modern international law with his *De jure belli ac pacis* (1625), used the term "patrimonial kingdom." Grotius, in order to describe the variety of political forms in his time, made a twofold distinction of sovereignty with regards to the "Thing itself, and the Manner of enjoying it." One might possess sovereignty, but not the fullness of right. Patrimonial kingdoms are those where the ruler in principle has unrestrained right of alienation and disposal to his territories and incorporeal rights, and usufructuary kingdoms are those where this is limited by various means, whether through familial trusts or 'fundamental public laws.' He writes:

“And that is as weak, which alledges, that because a King conquers other Nations by the Blood and Sweat of his Subjects, therefore what he so conquers, should rather belong to them than to the Prince. **For it is possible, that the King may maintain his Army out of his private Estate, or out of the Revenues of the Crown Lands. For, though a King has but an usufructuary Right to those Lands, as he has to the Sovereignty over the People who have chosen him, yet are those Revenues properly his own: Just as, by the civil Law, when one is obliged to restore an Inheritance, the Incomes are not restored, because they are accounted to arise from the Thing itself, and not to make Part of the Inheritance. Therefore it may happen that a King may so enjoy a Government over some People in his own proper Right, that it may be in his Power even to alienate it; and we find in History many Instances of Sovereignty accompanied by that Right“ ...**

“Now as it is in other Things, so it is also in Sovereignty, it may be alienated by him who has a just Title to it; that is, as we shewed above, by a King, if the Crown be patrimonial; otherwise by the People, but not without the King’s Consent; because he too has some Right here, like to that of an Usufructuary, which Right he ought not to be deprived of contrary to his Will. And this regards the whole Extent of Sovereignty.” ...

(The patrimonial/usufructuary kingdom distinction was retained by Samuel von Pufendorf, and therefore became an important but ultimately forgotten aspect of public law.)

For a long time, a traditional maxim of governance was that *le roi doit vivre du sien* (the king must live off his own [domains]). We can see this most notably in St. Thomas Aquinas’ letter to the Duchess of Burgundy c.1272:

Sixth, you asked if you are allowed to exact taxes or raise funds from your Christian subjects. In this you should consider that rulers of lands are established by God certainly not to seek their own profit, but so they might attend to the common usefulness of the people. For in censure of certain rulers it is stated in Ezekiel ‘Her princes in her midst are like wolves snatching prey to shed blood and to destroy souls, and chasing avaricious profit’ [Ezech.22:27]. And elsewhere it is said by the same Prophet ‘Woe to the shepherds of Israel that fed themselves. Should the flocks not be fed by the shepherds? You consumed the milk and you were clothed by the wool, you killed that which was fat; but you did not feed my flock’ [Ezech.34:2-3]. **And for that reason revenues were established for the rulers of the lands so that, living off these, they might refrain from the plundering of subjects; from which in the same Prophet with the Lord commanding it said that ‘the prince will have possession in Israel and no more will princes plunder my people’ [Ezech.45:8].**

However sometimes it happens that rulers do not have sufficient revenues for the guardianship of the land and the other things that must reasonably be paid for by rulers; and on such an occasion it is just that subjects contribute, from which their common usefulness can be obtained. And thus it is that in some lands from ancient custom the lords impose on their subjects taxes that, if they are not excessive, can be exacted without sin. According to the Apostle, no one serves as a soldier at his own expense [1Cor.9:7]; thence a ruler who serves for the common utility must also live from the common (goods) and attend to the business of the community, either through allotted revenues or, if things of that kind are lacking or will not be sufficient, through that which is collected from individuals. And the reason seems similar if any misfortune arises anew in which it is necessary to spend much for common utility or to conserve the honorable position of the ruler, for which his own revenues or customary exactions do not suffice: suppose if enemies attack the land or another similar emergency arises; then rulers of the lands may lawfully exact anything, even beyond the usual exactions, for the common good. But if they wish to exact beyond that which has been established by them for desire of possessing alone or on account of excessive and inordinate expenses, this is not allowed to them at all. **Thus John the Baptist said to the soldiers coming to him ‘Strike no one, nor carry out calumny, and be content with your pay’ [Luke 3:14]: for the revenues of the rulers are like stipends, with which they should be content so that they do not exact more unless according to the abovesaid reason, for the sake of the common good.**

This ideal was also seen in medieval French prose and poetry (*Counselling Charles VI of France: Christine de Pizan, Honorat Bovet, Philippe de Mézières, and Pierre Salmon*, 2014), e.g. Philippe de Mézières, who thought that “the king’s duty to protect his people from violence was inextricably linked with both his ability to raise revenue and his obligation to do so without fiscally exploiting his subjects. In the *Songe du vieil pelerin*, he notes that the king’s people should be able to expect protection in exchange for the taxes that they pay. Cities such as Paris and Rouen were disappointed in their hope that the death of Charles V might result in the abolishment of taxes implemented during his reign, and their inhabitants resisted the royal tax collectors. In Book 2 of the *Songedu vieil pelerin*, a representative of the fourth hierarchy (the bourgeois of Paris and other cities, merchants, artisans, and labourers)

complains that **it is not only the English who are turning the French from free men (“francs”) into serfs; it is their own lords, “par gabelles, par tailles, par impositions, par guetz et pilleries et servitudes,” who plague them with tax collectors who are like “loups ravissables.”** Here Philippe de Mézières uses the pun of “francs” for “free men” to demonstrate that the king is rendering his own people from being free men into being in servitude through heavy taxation.”

The distinction between ‘ordinary revenues’ deriving from rents and extraordinary revenues deriving from direct taxation is seen all throughout the medieval period, including in Sir John Fortescue’s *Governance of England* c.1471. Its roots go back to the distinction in Roman law between *vectigalia* and *tributum*, the former regular revenues of the Roman aerarium [treasury] and the latter being exactions levied specifically against plebeians, later any conquered province of servile status. This can also be seen in the name of the *actio tributoria*, which was a legal action introduced by praetorian edict that allowed for a creditor to sue if not given a proportional share to a slave’s *peculium* that was traded away: “If a slave or *filiusfamilias* traded with his *peculium* with the knowledge of the *dominus* or father, the *peculium* and all that was produced by it were divisible among the creditors and master or father in due proportions (*pro rata portione*), and if any of the creditors complained of getting less than his share, he had a *tributoria actio* against the master or father, to whom the law gave the power of distribution among the creditors (Gaius, IV.72, &c.). The master was not liable for anything beyond the amount of the *peculium*, and his own demand was payable first (Dig. 14 tit. 4 de *Tributoria Actione*).”

Indeed, from Cassius Dio’s *Roman History* we read of Caesar that “In short, he [sc. Caesar] showed himself a money-getter, declaring that there were two things which created, protected, and increased sovereignties,—soldiers and money,—and that these two were dependent upon each other. For it was by proper maintenance, he said, that armies were kept together, and this maintenance was secured by arms; and in case either one of them were lacking, the other also would be overthrown at the same time.”

The Roman *paterfamilias* was forbidden from interfering in the son’s use of his *peculium castrense*, i.e. spoils derived from war, despite the fact that these possessions were strictly under the housefather’s tutelage. Ultimately this would develop into the full emancipation of sons from paternal authority upon reaching the age of reason. This shows how paternal and lordly authority in no way entitles the housefather or lord to be arbitrary with the property of his subordinates:

The family's sons were granted, starting as far back as Octavius Augustus' rule, the right to a *peculium castrense*, which contained the goods earned as soldiers, such as their pay, their cut from the spoils of war or the liberalities received from third parties for their work in the army. As for these goods, they could act as their owners, being able to transfer them freely, with an onerous or gratuitous title. They could also exercise the actions inherent to the rights granted by the *peculium*. They could even pass the goods on through a will, acting, from this standpoint, as heads of family.

Pater familias could not interfere in the son's use of this *peculium*, either by forbidding their use, transferring them or in any way affect his ownership. The father's creditors could not pursue these goods. If the titular owner had brothers, they could not request a portion of the *peculium* when their *pater familias* passed on. If the son however died without leaving behind a will, the *peculium* would not be divided according to intestacy. Instead, it would be awarded to *pater familias* under the special title of *iure peculii*, and not as an inheritance, *iure hereditarii*. Under these conditions, we may consider that the *peculium castrense* was a fraction of the patrimony over which *pater familias* had suspended rights as long as his military son was alive. The Justinianic Code established that, in the case of the son's death and in the absence of a will, his inheritance should go first to his children, then his siblings and only thirdly, the father, who is not thus granted the *peculium iure peculii*, but in the same measure as the other heirs.

In old regime France, one of the major seigneurial rents was the so-called '*lods et ventes*,' a tax on the alienation and transfer of a 'censive' property (i.e. the use rights owned by a subject granted from the dominium of his lord). Here is an account of its origins, from the *Traité des droits appartenans aux seigneurs sur les biens possédés en roture* (1781), clearly showing how originally purely patrimonial gifts and benefices became hereditary fiefs as a lordly privilege that time and custom subsequently made into law:

One calls lods & vente, in pays coutumiere [provinces governed by customary law], the right that the censual lord can demand from those who acquire inheritances in common land located in his lordship. This right takes its source in the use in which the lords formerly forbade anybody of disposing, without their approval, of the buildings which they had given to cens. Over time, the lords relaxed this in favor of their vassals, to whom they allowed indiscriminately to dispose of their buildings, under the condition that they would be paid, by the new holders or possessors of inheritances, a certain sum, for the recognition of their seignury [lordship]. This is why the right of lods & vente is due to the lord only because of the approval which he gives to the new holder, as a consequence of the possession & of the seizure which he grants him; which can only take place for real buildings, into the possession of which one cannot enter without the consent of the lord, who represents those who originally gave them to cens; because with regard to the rights which are considered immovable by fiction, like the constituted rents, they do not come originally from the liberality of the layman, and one does not need their consent to enjoy them. **We should not regard the rights of lods & ventes as a servitude towards the lords, but as a mark of honor that we owe them, in recognition of their benefits, & in memory of the permission they gave formerly to all those whom they gratified, by the designs made in their favor, for annual royalties, such as the censive.**

From the *Observations sur les domaines du roi* of 1787, we read that “the word Domain is a generic term, which means property. Property is the perpetual power of one to dispose of any thing, to the exclusion of all others. This right is the sole basis on which any society rests; To violate it in any way is not only to commit an injustice to the owner; it is to surrender, to declare oneself an enemy of peace and public safety; it is to attack the whole nation; it is finally the greatest crime that force can commit.”

In turn, the Crown is a proprietor, and its properties consist of a) rights of sovereignty, b) funds from the royal domains. It is these rights that constitute the king’s power, “without which his sovereignty could not exist.”

These rights are specifically enumerable feudal rights, such as the droit d’amortissement, a transfer tax on corporate properties, the droit de franc-fief owed by non-noble commoners possessing fiefs, the droit d’aubaine (“windfall”) on foreign property, etc.

As to the domainal funds, they are “the lands & estates belonging to the Crown, & the rights dependent thereon: such as cens & rents, levies in kind, lods & sales, banality rights, & c.” Moreover, any “special features of the Royal Estate, are not held as privileges; they are a consequence of the nature of the Sovereign’s right. **Sovereignty is a fiefdom burdened with a perpetual and masculine substitution**; that is to say, that the Sovereign collects the usage; but he is not the free owner; for he has only the enjoyment of it. Indeed, he cannot dispose of it for a foreigner; he cannot, by his own act, or by his negligence, prejudice his successors, who do not receive from him the Crown, but from the Law and the State. All that belongs to this Crown, all the rights which constitute Sovereignty, are thus substituted, as well as it, in perpetuity; & any alienation which is made, would necessarily be null.”

The definition that Henry de Bracton gives of “civil law” in his 13th century *De Legibus Et Consuetudinibus Angliæ*, a masterpiece of English law, shows how murky the concept was even then despite England having an increasingly sophisticated judicial infrastructure through the development of the common law since Henry II:

Civil law, which may be called customary law, has several meanings. It may be taken to mean the statute law of a particular city. Or for that kind of law which is not praetorian; it sometimes detracts from or supplements natural law or the *jus gentium*, for law different from that outside sometimes prevails in cities by force of custom approved by those who use it, since such custom ought to be observed as law. Civil law may also be called all the law used in a state [or the like], whether it is natural law, civil law or the *jus gentium*.

Ergo civil law (the definition is taken from Azo) could mean the bylaw of a city or other corporation (then known as *universitas*), customary law, or a catch-all for the totality of laws in a realm. Bracton also defines private law as “that which pertains primarily to the welfare of individuals and secondarily to the *res publica*. Hence we say that it is in the public interest that no one misuse his own. And so conversely, that which is primarily public looks secondarily to the welfare of individuals,” which shows the uneasy coexistence of Roman and common law principles, since looking after the public interest can as much be an ethical commitment as a specific juridical distinction between a ‘public’ sovereign realm and rights of sovereignty under private princely house laws. The former is hardly necessary to exercise jurisdiction for the general instead of particular interest, since that is ultimately up to the virtues of a ruler. Although *ius civile* still remains a polysemous concept, since “[the] term derives its meaning from its context. By contrast with *ius gentium* in the ‘theoretical’ sense it is the law of a particular state and usually, unless otherwise qualified, the law of Rome. By contrast with *ius gentium* in the ‘practical’ sense it is that part of the law of Rome which is applicable only to Roman citizens. By contrast with the law deriving from the edicts of magistrates (*ius honorarium*) it is law deriving from statute and from the unwritten ‘common law’ as interpreted by the jurists.”

The idea of “public law” was no less ambiguous. David Johnston’s 1997 essay “The General Influence of Roman Institutions of State and Public Law” is a good treatment of the subject. The boundaries between public and private law were ambiguous even in a highly developed Roman state:

“Public law is concerned with the Roman state (*status rei Romanae*), while private law is concerned with the interests of individuals, for some matters are of public and others of private interest. Public law comprises religion, priesthoods, and magistracies”. This is Ulpian’s definition of *ius publicum*, and the only Roman one which survives. As noted at the outset, the divide which it postulated between public and private law was of the greatest significance, for it contained the germ of an idea that there was a sphere of law whose special concern was the state and its administration. When we come to the question of the content or distinguishing features of public law, however, it has to be admitted that the Roman sources were less far-reaching and less helpful. Ulpian lists three elements of public law: religion, priesthoods and magistracies, and the list seems to be intended to be exhaustive. Only the last of these elements looks much like public law to modern eyes, but this single word does not provide much guidance.

Moreover, the boundary between private and public law is scarcely explored in the Roman sources. To take an obvious difficulty, the Roman jurists were ambivalent on the question whether a town (*civitas*) was to be treated according to private or public law. The purist view appears in the Digest: according to Gaius, the term ‘public’ applied to the Roman people, while towns were in the same position as private individuals; similarly, Ulpian thought that the property of towns could be described as ‘public’ only by an abuse of language. But these clear statements neither accorded fully with views expressed in other contexts by the same jurists nor did they fully reflect Roman practice: for there were special legal rules and remedies which dealt with municipal property; they may not have been the same as those available to the Roman people, but neither were they the same as those open to private individuals.

Worse, the Roman jurists used the expression *ius publicum* in various senses: sometimes to denote the whole legal order of Rome, sometimes to refer to rules of law which were inderogable, and then sometimes in contexts clearly of private law: so, for example, institutions such as marriage, dowry, and tutors are said to belong to public law, but by this what appears to be meant is that they serve the public good: they are particularly important for the maintenance of civil society. Whatever else the Roman jurists suggested, it was rarely that *ius publicum* was conceived as a separate branch of the law concerned with the state or its constitution. A common theme which does, however, emerge in the jurists’ references to *ius publicum*, at least from the reign of Hadrian, is its connexion with the common good or public interest, *utilitas publica*. That association appears in Ulpian’s definition itself.

The concept of public law remained poorly specified well into the rediscovery of Roman law, until the 17th century: “On the secular side, the notion of *ius publicum* surfaces from time to time; Accursius grandly pronounces that it exists to preserve the state. There are reminiscences too of Ulpian’s remarks about public utility; Bartolus asserted that *merum imperium* was exercised essentially in the interests of public utility; *mixtum imperium* in those of private utility. But these remarks are made essentially in passing, and the recognition of public law as a special sphere of law was slow to come. Only from about 1600

did it begin to establish itself as an independent discipline in the universities in Germany. This in itself perhaps owed something to Roman law, namely to the aridity of Ulpian's definition."

Which ought to lead us to one of the primary traits of the Roman Emperor's independence: his ownership of imperial estates. These were known variously as *res privata principis*, *fiscus Caesaris*, *patrimonii Caesaris*, etc. They included forests, mines, villas, animals, pastures, etc. The various inscriptions that document their existence are catalogued by the Atlas patrimonii Caesaris project. The imperial estates were governed by *procuratores patrimonii*, and treated separately from the *ager publicus* (Roman "state-owned" land, which by then had long been alienated into privatized allotments either way). D.J. Crawford writes: "To consider imperial estates is to consider only one of the assets of the Roman emperors. They had of course many other possessions – palaces and gardens, villas and hippodromes, mines and quarries, salt pans and brick works – but their landed wealth was probably the most significant. And it was significant not only to the emperor, in the income which it produced, but also, through the emperor's use of his personal funds, to the empire as a whole. For estates paid not only taxes (at least outside Italy) to the central imperial authority, but also rents, and, even if in theory there were distinctions between the different treasuries to which all this income came, in practice it was usually available for imperial expenditure. His estates were also important to the emperor in that, as in the case of Pertinax, they could be used as instruments of imperial agricultural (or fiscal) policy. At one period or another there seem to have been estates in most provinces of the empire; the actual area of imperial land and its extent in relation to other forms of landholding can however rarely be known. In the northern provinces evidence is often confined to a record of imperial officials or else is archaeological, whereas in the Mediterranean provinces, and especially Asia, Africa and Egypt, there is more extensive documentation."

This was known to old regime French lawyers as well ("What is the boundary between public and private? Some reflections, based on the royal domain"), e.g. Louis Le Caron (1534-1613): "The Emperor had two patrimonies, or possessions in two ways, that is, *Patrimonium privatum*, sive *res privata* [...] and *Sacrum Patrimonium*, quod a *re privata* separari solet. And for these two Patrimonies or kinds of possessions various magistrates and officers were responsible [...]. But it should be observed that such a distinction of possessions would have been introduced, as they were variously destined for use by the Prince, that is, private Patrimony [...] for the private and personal use of the Prince, as of his house; [and] sacred Patrimony, which was destined for the Affairs of the Empire and of its State, as we say now." (Note how "state" and "sacred" are put together, almost certainly a vestige of Ulpian's definition of public law.)

Despite all the constraints on the Crown put by the fundamental laws of the French monarchy, most notably the doctrine of the inalienability of the Crown, the necessity for exemptions was recognized, and moreover many lawyers had the conception of a monarch having his primary loyalty to his own house:

When, at the peak of the Wars of Religion, **Bourdin hazarded that “it is certain that the state of the crown of France consists principally of the conservation of the domain of the King and of the crown destined for him, and dedicated to the maintenance of peace, sustainment of war, comfort of subjects, public rest and tranquility,”** he was declaring a precept that could only be contradicted by events of the time. These are the safeguards that join the commonly received idea “that it is more suitable and reasonable that his Majesty and his public thing prevail to the comfort of all of France.” They not only maintain the possibility of legal recourse to recover the alienated lands, but lend credibility to the existence of a common cause at a time of divisions. The community of subjects is a political lever offering the king a reason to act, even in ways that conform little to rules governing the domain. **For some, absorbing patrimonial possessions into the domain reduces the king’s ability to distribute rewards and impedes the smooth operation of the State by limiting its expenditures. The advantages subjects might have enjoyed then turn to their disadvantage, since “the King, falling in prison, of war or public necessity, desiring to reward an old and faithful servant, or dealing with a foreign prince, he cannot have more rapid aid than from his personal domain of which he has free disposal.”** For others, infringements on the fundamental law of inalienability are justified by a number of imperatives, all related to war. In addition to exceptional taxation, there was suspension of law. Examples gathered from the more or less recent past forced jurists to come over to this idea, but they always nuanced it, thus limiting its consequences. “Not only for the necessity of war but also in time of peace for the recompense of those who bore themselves valiantly at occasions, the domain may be alienated,” asserted Bizet, but relating to a case in the distant past. As to the “letters of François the first of the first of May 1519 [relative to the] sale of the domain for the necessity of war,” the court added several modifications and restrictions. In essence, one must not neglect situations of “peril in which case ad tempus alienations from the domain [might] be helpful even if the general rule resists it.”

Roman law did not know of “legislation” or “administration,” but only of *iurisdictio*. The traditional view of kingship is that a king is above all a judge, the supreme tribunal, the highest court of appeal. This is manifestly clear in French customary law books like the *Coutumes de Beauvaisis* and the *Etablissements de Saint-Louis*, and also in early English law texts like Glanvill, the Mirror of Justices, the Britton, etc. These were all focused primarily on common law procedures like writs and assizes, since justice from the king’s bench was seen as the primary duty and mark of kingship. Nowhere is this explicated more clearly than by Sir Thomas Craig, a Scots lawyer, and his *Jus Feudale* (1613):

Thus judges were established in every city for the purpose of dispensing justice, and they were called kings. From the start, reges (kings) were nothing but judges, so named from regendus (“being prevented from going astray”). Each presided over his own city, which is to say he expounded the law. So it is with the multitude of kings in Holy Scripture. Thus Homer calls kings shepherds of the people, because the governance and guardianship of the people were entrusted to them from the beginning. The Greek kings Minos and Rhadamanthus, because they had presided over their people with the utmost fairness, were rewarded with the eternal gift of judicial office in the afterlife by Jupiter. Furthermore, those who ruled the Athenians after the kings were called *dikastai*. It is clearly established that, from the beginning, the first kings were set in place in well-organised states for the purpose of dispensing justice; for, as Cicero says, “It seems that not only among the Medes (as Herodotus says) but also among our own ancestors, kings were chosen from men who had previously shown good character so that the people might enjoy justice”. Since the beginning, the majority has been oppressed by those who have greater wealth, so they appealed to one man who stood out for his integrity, who preserved the weaker from injury, who kept the highest on an equal footing to the lowest with established equality and an equal right.

At this point, someone will ask how these kings were able to expound the law when there was nothing, certainly no statutes, to which their own opinions could be directed as a yardstick? I reply that they were following some innate instinct for natural equity that resided, at that time, in the souls of humans; for, as Cicero rightly says, we are naturally inclined to justice and fairness, and law itself descends from the goodness of that very nature. So, they dispensed justice, because they had been chosen for that job, and drew either from that instinct of nature which has been implanted in the souls of men or from the contracts and agreements which had previously been concluded between the families. In those days, the law of nature thrived in the souls of all, and it was practically pure or as close as to purity as possible, because it emanated not from the opinions and errors of men but from the bright and immutable wisdom of that eternal mind. Wrongdoing was curbed neither by courts nor by chains (which did not exist at the time) but solely by honour and decency. Law was held in the same esteem by all as though it were a gift from the gods, while wrongdoing was hated everywhere as though it were a means of extinguishing those sparks left by nature. So, the judges followed the innate reason in the souls of men, and, in making judgment, practicality was joined to that reason. This was the time that Tacitus remembered thus: “The most ancient of mortal men acted with no evil desire, without disgrace or crime and therefore without penalty or punishments. There was no need for rewards, because they strove according to their own honest nature and they desired nothing that was contrary to morality and they were debarred from nothing through fear. But after the decline of fairness, ambition and violence took the place of modesty and honour while despoticisms emerged and became perpetual among many peoples.”

This could also be underlined by the fact that the *privilegio de non appellando* (privilege of non-appeal), a judicial exemption from appeals to the Reichskammergericht, was among the most coveted of privileges in the Reich. Veit Ludwig von Seckendorff, in his *Teutscher Fuerstenstaat* (1656) writes: “With respect to the third point, namely, jurisdiction, in many

lands of the Empire, those who are unwilling to content themselves with the declarations and judgments of the territorial lords and their chanceries and courts, but believe that they are unlawfully burdened by them, can and may appeal to the Imperial Chamber Court or the Imperial Court Council, and have the matter recognized there. However, several princes and estates are exempt – up to a certain sum involved in a matter or entirely – through imperial privilege and old custom, and no one is admitted to an appeal of their judgments and decisions. At the same time, however, they are all the more obligated to accord law and justice to those who appeal to them, and to adjudicate the disputed matters of their subjects, lest, in cases where they are too slow or even denied them law, the subjects must therefore submit the hearing and examination of such matters to higher places.”

Further, territorial lords are bound to uphold capitulations, pacts and privileges: “...if particular contracts and agreements are thus established between territorial lordships and their estates and subjects, and in them certain things are promised and granted to them, examples of which can be found now and then, and such promises are commonly repeated and affirmed to the subjects when homage is paid; and it therefore holds that the territorial lord cannot exercise his power over such agreements without the consent and indulgence of the territorial estates.”

5. Subsequent reception of the Hallerian doctrine. Conservative and liberal responses. Hegel’s indignation.

In covering the reception of Haller’s work, I will restrict myself to: contemporary conservative and counterrevolutionary adaptations and modifications of the patrimonial doctrine (Romeo Maurenbrecher, Karl Friedrich Vollgraff, Karl Ernst von Moy de Sons, Ferdinand Probst), moderate conservative criticisms, and reception by more modern historians and writers in public law (Johann Kaspar Bluntschli, Heinrich von Treitschke, Georg Jellinek, Otto Brunner).

But it befits us to begin with G.W.F. Hegel. It was his acerbic footnote in §258 of the Philosophy of Right that would prove to be one of the most enduring memorials of Haller’s name. It is also the subject of a 1995 journal article by Lionel Ponton titled “L’opposition de Hegel au conservatisme de Charles-Louis de Haller.”

Hegel accuses Haller of conflating the sphere of the contingent with the sphere of the essential vis-a-vis the meaning of the state: “The opposite to thinking of the state as something to be known and apprehended as explicitly rational is taking external appearances – i.e. contingencies such as distress, need for protection, force, riches, &c. – not as moments in the state’s historical development, but as its substance.”

Haller is charged with “ignoring the absolute infinity and rationality in the state and excluding thought from apprehension of its inward nature,” and moreover doing so in such an unadulterated way like no other man. Haller revolts against the form of thought itself, he says, “Herr von Haller, however, with his eyes open, has not merely renounced the rational

material of which the state consists, as well as the form of thought, but he has even gone on with passionate fervour to inveigh against the form and the material so set aside.” Such that “[Haller] takes as the essence of the state, not what is substantive but the sphere of accident, and consistency in dealing with a sphere of that kind amounts to the complete inconsistency of utter thoughtlessness which jogs along without looking behind...”

Although briefly mentioning that Haller’s intentions had a certain noble character to them insofar as he tried to dispense with the false theories of Rousseau, Hegel ultimately judges him to have “dispensed with thought altogether” and to carry a “hatred of law”: “Herr von Haller has gone to the other extreme by dispensing with thought altogether and consequently it cannot be said that there is anything of intrinsic value in his virulent hatred of all laws and legislation, of all expressly and legally determinate rights. The hatred of law, of right made determinate in law, is the shibboleth whereby fanaticism, flabby-mindedness, and the hypocrisy of good intentions are clearly and infallibly recognised for what they are, disguise themselves as they may.” Haller’s point about codifications and charters of rights as secondary to oral laws and folk-customs from which they emanate is taken as evidence of him being an enemy of all codes of law.

Hegel is also unsurprisingly dismayed at Haller’s verdict about the juridical concept of the “state” erasing the private law personality of the ruler: “To carry quotation further, Herr von Haller speaks particularly, ill of the Prussian General Legal Code, because of the ‘incredible’ influence on it of the errors of false philosophy (though in this instance at any rate the fault cannot be ascribed to Kant’s philosophy, a topic on which Herr von Haller is at his angriest), especially where it speaks of the state, the resources of the state, the end of the state, the head of the state, his duties, and those of civil servants, and so forth. Herr von Haller finds particularly mischievous ‘the right of defraying the expenses of the state by levying taxes on the private wealth of individuals, on their businesses, on goods produced or consumed. Under those circumstances, neither the king himself (since the resources of the state belong to the state and are not the private property of the king), nor the Prussian citizens can call anything their own, neither their person nor their property; and all subjects are bondslaves to the law, since they may not withdraw themselves from the service of the state.’”

That Hegel should have such acrimony for the patrimonial theory is not confusing in the least when we know the thrust of his political writings from early on in his career. In fact, one of Hegel’s first publications was a compilation of letters from the 1790s by the Vaudois democrat and collaborator in the French invasion of Switzerland, Jean-Jacques Cart (1748-1813). That is to say, from the beginning Hegel allied himself with the very forces that would dispossess Haller of his homeland and familial inheritance. Later, in Hegel’s essay on the German constitution (1802), this is how he describes the Reich:

From this self-centered activity, which alone was called freedom, spheres of power [over] others formed according to accident and force of character, without regard to any general interest and little restricted by what one calls political authority [Staatsgewalt]; such authority hardly existed as a check to the individual.

The parts of general political authority were attached to a manifold of mutually exclusive properties, real estates which were distributed without rhyme or reason and were independent of the state. This manifold property formed no system of rights, but a collection without principle...

Political power and privilege are not governmental offices which are calculated in relation to the organization of the whole, the contributions and duties of the individual are not determined in relation to the needs of the whole, but each member of the political hierarchy, each princely house, each estate, each town, each guild, etc., everyone who has right or duties in relation to the state, has himself acquired them. The state has in view of this reduction of its power nothing else to do but to confirm that its power has been torn away. If thus the state loses all authority and yet the possessions of the parts depend upon its power, these possessions necessarily must become very unstable, since they have no other support, which is equal to zero.

The principles of German public law can therefore not be deduced from the concept of the state or from that of a specific constitution, like that of a monarchy. German constitutional law is not a science according to principles, but a collection of the most diverse public rights acquired like private ones. Legislative, judicial, ecclesiastical, military powers are intermingled, divided and conjoined in the most irregular way and in the most varied amounts, just as if they were private property.

By resolutions of the diets, peace treaties, electoral agreements, family contracts, judicial decisions, etc., the political property of each member of the German body politic is most carefully determined. The most insignificant detail, such as titles, order of precedence in walking and sitting, color of furniture have consumed years of work... The German Reich is like the Reich of nature in its productions, unfathomable in big things, inexhaustible in small matters. It is this side of the situation which fills the insiders acquainted with these infinite details of right and privilege with that awe in face of the venerableness of the German body politic and with that admiration for such a system of the most elaborate justice.

This sort of justice maintains every part as separate from the state, and hence the necessary demands of the state upon its members are in complete conflict. A state demands a general center, a monarch and representatives [Stände] in which the several powers, such as foreign relations, war, finances, are united. Such a center must also possess the necessary power for directing [such matters], to enforce its decisions and to maintain the several parts in subjection... **The German political structure on the other hand is nothing but the sum of the rights and privileges which the several parts have taken from the whole.**

Hegel also commits himself to national representation: “The noise about freedom will no longer have effect, anarchy has been distinguished from freedom, and the deep conviction has become settled that a firm government is essential to freedom, equally deeply however, that the people must participate in legislation and in the most important affairs of state. The people have a guarantee for the fact that the government will act according to law, and that it will participate in the most important matters touching the general interest—this guarantee is the organization of a body which represents it.”

Later, in Hegel’s *Assessment of the Proceedings of Estates Assembly of the Duchy of Württemberg in 1815 and 1816*, he would write of constitutionalism’s necessity “[lying] in the nature of the concepts that have become common conviction, which attach to a monarchy the provision of a representative constitution, the rule of law and popular participation in legislation.” All arguments about historical right he dismisses with the banal liberal clichés of “human sacrifice, slavery and feudal despotism as instances of what used to be right at some point.”

Hegel’s entire line of analysis is to reduce the state entirely to abstract personality, with any kind of practical aspect of lordship being a mere accident. We read of the state being the “ethical mind,” the “substantial will,” the “actuality of concrete freedom.” Not only that, he even informs us that the “very substantiality of the state is mind knowing and willing itself after passing through the forming process of education. The state, therefore, knows what it wills and knows it in its universality, i.e. as something thought.” One could scarcely differentiate the state from a divine monad.

Therefore even a moderate conservative like Friedrich Julius Stahl, sympathetic to Hegelianism, could rightly rebuke him that:

For, according to Hegel’s basic view, the prince, precisely because he is the personality (not the substance) of the state, must be without influence on the content of the state; but rather, the latter is to arise out of the substantial impersonal aspect of the law, and the meaning of his personal strength is precisely not breakdown, composition, and penetration in unity, but simply the “formal points of decision,” “the final thing which the consideration of grounds and counter grounds, between which it ever swings back and forth, breaks off, and through the ‘I will’ decides.” While, according to Hegel, the impersonal world-Idea drops the aspect of personality in order to return to itself as substance, we by contrast recognize personality as the alpha and omega, as the primeval being which includes substance itself within it, and everything which it releases refers back to itself, the person, as that in which and through which is all content.

It is therefore quite the bitter historical irony that Hegel, the man who simultaneously exalted the state so highly and yet deprived it of any basis except the phantasm of “will” and “world-spirit” reconciling individuality and abstract universality into impersonal rule of law, i.e. making the state into a void of nothingness that engulfs all of its citizens on the premise of offering them their true freedom, to live under the abyss of the absolute idea; how this man became known as some kind of Prussian conservative theoretician of the state. His

theories were the greatest repudiation of Germanic and private liberties of each to rule over the sphere of what is his own, and no surprise that they clashed so acrimoniously with Herr von Haller, their greatest defender.

Heinrich Leo, a prominent Prussian conservative, in his *Studien und Skizzen zu einer Naturlehre des Staates* (1833) says of Haller that “in spite of [the] wrong pages in Herr von Haller’s writings, they are always in many respects the most peculiar thing that has recently been written about politics; and whoever knows how to allow himself to be led to the healthy mean by the fresh contrast against a pathological extreme, will obtain the most beneficial fruits from reading v. Haller’s works. In any case, the man builds from the ground up honestly and well, and does not even remotely deserve the hereticism that has been attributed to him almost everywhere.” He also endorses Haller’s typology of monarchy: “Three elements of the state are given by v. Haller quite rightly: the patrimonial [grundherrliche] power, the priestly and the military.” (See also my previous essay “Heinrich Leo’s natural theory of the state: an organic corporatist meditation.”)

Carl Ernst Jarcke, convert to Catholicism and one of the main counterrevolutionary German publicists in the first half of the 19th century, said that “Those who, on the other hand, took the trouble to even read Haller’s *Restoration of Political Science*, will know that it is precisely he who expresses the spirit and character of Germanic freedom most profoundly and consistently, perhaps among all writers who have ever lived,” and moreover that “everyone who has recognized the revolution in its highest form in the present day, everyone who loves [true] freedom, owes the happiness of this conviction directly or indirectly to the work of Haller.” (“Der Absolutismus,” *Vermischte Schriften*) In *Die staendische Verfassung und die deutschen Constitutionen* (1834), Jarcke says that “C.L. von Haller lit the torch of a more profound understanding of his ungrateful fellow world.” (See also: “Estate-based representation: Carl Ernst Jarcke.”)

Romeo Maurenbrecher (1803-1843), a German jurist and constitutional lawyer born at the University of Bonn, from an old family of postmasters, was one of the most prominent defenders of the patrimonial theory of sovereignty, though with various qualifications from the pure private law approach of Haller, acknowledging a sphere of public law. His book *Die deutschen regierenden Fürsten und die Souverainität* (1839) is a refutation of then rather novel in German jurisprudence theory of “state sovereignty,” notably promoted by Johann Ludwig Klüber.

Similar to Haller, Maurenbrecher criticizes Roman law terminology and points out the terminological novelty of using “state” to describe the legal whole separate from its subjects: “The word ‘state’ was not transferred from the law schools and official language of German governments until the middle of the last century [18th c.]. Until then, if you wanted to talk about the whole, in opposition to the individual, you helped yourself by paraphrasing the formula “Land and People,” [Land und Leute] “Fatherland,” [Vaterland] “public,” [Publikum] “Country,” [Land] “territory” [Territorium].”

“The personality of the state thus means that the state is a society or a community which has private rights towards the individual, like every individual himself, e.g. it can gain and lose property, contract debts, acquire claims, etc. But the moral personality of the state says nothing more. In particular, it does not say that the state, as a person, stands above the individual and everything else.”

“The patrimonial theory explains by having the monarch as the real subject of sovereignty in the state, his will (the monarchical will) for the living supreme and individual source of all law and freedom in the state.” Ideally for Maurenbrecher this would be a general moral will, which is a partial break from Haller. His criticism of Haller was that he treated sovereignty as a brute fact, and not a “necessity of reason” in the “self-confidence of the moral will.” This uneasy coexistence between Hegelian and patrimonial principles often detracts from his analysis, but on the whole it is a worthy contribution.

It is in Maurenbrecher’s *Grundsätze des heutigen deutschen Staatsrechts* (1843) where his ideas are more thoroughly developed. “Sovereignty is not just a legal concept; it is something objective that one can own, acquire and lose. In particular, German constitutional law regards it from ancient times as the private law of their owner, in accordance with the analogy of property, so that the German sovereigns are entitled to quasi-dominium and quasi-possessio, as well as private individuals to their rights and justice. In earlier times this improper property was now allodial, now feudal, but in today’s constitutional law it was against it, namely after the abolition of both the imperial and the territorial nexus between the sovereigns, it can only be regarded as an allodial property. But just as every right is extinguished when the object to which it relates is lost, so too does sovereignty when its owner loses the land to which it refers... Rather, it is and remains the purely personal right of the ruler (so-called *jus personalissimum*), which, as long as its object exists, cannot be separated from it even in principle.”

Of private princely law: “Ordinary succession under private princely law (state succession) is based on the community of blood with the first acquirer in descending order (“principle of legitimacy”). According to its legal nature, it is therefore a *successio ex paxto et providentia majorum* in the sense of common living law and German private law, by virtue of which each successor (heir to the throne) only enters the government as a singular successor of the previous owner and as a successor from his own right, based on the descent from the first purchaser and not derived from *ex persona defuncti*. This legal nature of the German succession to the throne is based on three reasons: 1) on the feudal quality of German sovereignty (p. 87 N. du p. 145), which has so deeply and firmly imprinted the original meaning of the German succession to the throne that by virtue of observance or family law, it still continues to exist today as *successio feudalis*, after the territories or the rights to which they are entitled have long since been all modified; 2) on the inalienability of the territories introduced by house laws or family observance, and finally 3) on the special order of succession introduced in all now or former ruling families by family laws or observance.”

Karl Ernst von Moy de Sons (1799-1867), a Bavarian jurist and canonist, and contributor to the 'Historisch-politische Blätter für das katholische Deutschland,' also owed a good deal to Haller, in his four-volume *Das Staatsrecht des Königreichs Bayern* (1840-1846) [vol. 1]. See also: "Bavarian state law and the traditional Germanic monarchy: Karl Ernst von Moy de Sons."

v. Moy de Sons defines the state as "the legal sphere of an independent physical or moral person," or "an association founded on the independent supreme material power of a physical or moral person for all times in a certain area to fulfill all the ends of human existence that can be achieved through the means of that power."

Akin to Haller, he does not speak of a singular end or goal common to every state association: "The state does not have an end to be understood and ascertained exhaustively by the members at any time; its determination, which embraces all aspects of earthly existence, at the same time rests above them and never shows itself exhausted in them. In no way does this allow the connection of the members of the state to be traced back to one of these ends, neither with regard to their origin nor with regard to the end. With regard to the origin, this is not because historically the union of subjects is never concluded for the interests of the state, but is always based on other reasons, and only from the already existing association is the duty of the subjects to cooperate for the purposes of the state derived. With regard to the end, not because the purpose of the state is never presented in a definite form, never fulfilled and achievable, so that the association could then be dissolved, or the entitlement of the individual in regard to it would cease; but the connection is persuaded beyond any obligation that can be reached in time. In the sense of German law, on the other hand, the state is to be recognized as a cooperative or a moral person, insofar as there is solidarity and community that encompasses all relations of the state between the regent and the subjects, as a result of which there is an interrelation that applies to all these relations of entitlement and obligation to each other and thus appear as a closed body to every third party."

The legal form according to which the state exists is its constitution, and this form is independent power held by right: "One's own power, not the way in which it is transferred to others, is the decisive factor in the constitution everywhere. The legal form of the state, like every positive law, is determined either by tradition, or by contract, or by law. But these legal relations are determined by the living, indirect force relation of all the members in relation to the power [Macht] through which the state is founded and asserts itself. The word "power" is therefore not to be taken as synonymous with "sovereign," but only in abstract, as synonymous with a term for living forces."

On monarchy: "The peculiar thing that distinguishes the monarchical constitution is that the supreme power through which the state exists is in the hands of a physical person as a separate right not derived from human bestowal but based on divine decree or ordinance. The monarchy is limited where, in addition to the monarch, other persons are authorized to act independently in public affairs on the basis of the freedom they are entitled to, by grant or otherwise. Thus their action emerges from their freedom, which establishes their public

(civic) status. It manifests itself in the independent handling of their affairs, partly on their own, partly in association with others, depending on whether they are special or exclusive rights of their own, or interests of these persons that they have in common with others. But since the state association rests on the external, material power of its head and its members, political freedom is therefore identical with the power by which it is founded or with the influence which its subjects have on it.”

v. Moy de Sons’ definition of sovereignty is virtually identical to Haller’s: “The word ‘sovereignty’ denotes the unconditional freedom of a person, because the same person does not have to recognize anyone on earth as their overlord.” Moreover, rights of sovereignty, “the assertion and exercise of which were only conditioned by the great ownership of property and the independent power of their owners based on them, came with them into the inheritance of the ruling family and gradually became inseparable belongings of their household goods.”

On the other hand, v. Moy de Sons sees the emergence of a state from a simultaneous codetermination of public, private and international law: “The legal reason for the government in Bavaria is the succession *ex pacto et providentia majorum*, which goes back to Otto I von Wittelsbach. This includes: 1) on the feuds previously granted to the House of Wittelsbach by the emperor and empire; 2) on the house laws and habits of the ruling family; 3) the constitutional law of the country; 4) to the international treaties that have come about over time.”

Hence, “sovereignty must therefore be viewed in two ways: a) in relation to the personal status of the sovereign as legally complete independence and freedom (nos. 2 and 3 above); b) in relation to the ground on which it rests, which forms the sphere of this freedom inwardly. In this lower respect, sovereignty is a right peculiar to the King of Bavaria to rule over Bavarian territory. Sovereignty is a) lawful property right of the king, according to the history of its acquisition just presented, according to which, from the first lending [by the Reich], all rights of the same have gradually been linked as hereditary powers to the possession of the ducal Wittelsbach household goods.”

The *Dublin Review*, a prominent Catholic periodical, cited Haller favorably but with some reservations owing to his Protestant past, in an 1850 review of Jarcke’s collected writings. He is said to have “treated the science of public law with more method and copiousness, than any other modern writer,” and to be “inferior to none in judgment and practical sagacity”:

Prior to the two illustrious Germans we have named [Jarcke and Schlegel], a distinguished Swiss writer rendered the greatest services to the cause of order and liberty. Endowed with a clear, sagacious intellect, invigorated by extensive learning, Lewis von Haller has devoted his exclusive energies to the science of public law; and his great work entitled, “Restoration of political science,” has formed an epoch in that department of learning. A grandson of the celebrated physiologist, Albert von Haller, our publicist, too, treated with the same originality, what may be called the physiology of the state. The rise, growth, and expansion of civil societies—the legitimacy of property—the evolution of royalty from domestic authority—the character of the various forms of government—the universality and the necessity of nobility—the limits and the conditions of personal freedom—are all set forth by him with remarkable clearness of reasoning and extent of learning.

The greater part of his important work – “the Restoration of Political Science” – Haller wrote, while he was still a Protestant, and consequently less competent to take an unbiassed, comprehensive view of all political and social questions. Hence the higher, more spiritual elements of politics – such as the influence of the Church on society, the mutual relations of Church and State, and the rest – were not so vividly present to the mind of our publicist as those inferior, more earthly conditions and relations, which attach to the state as a physical being. We say, not so vividly present ; for every page of Haller’s work reveals a religious-minded man; and it was, indeed, his Christian sincerity, that, under God, was the means of bringing him to the true Church.

Besides the defect we have mentioned, this publicist falls occasionally into other faults—the result of a too systematic theorizing and does not sufficiently appreciate the action of democracy in the monarchical system. On the whole, Haller has treated the science of public law with more method and copiousness, than any other modern writer; and if he did not equal some of his great Catholic contemporaries in profoundness and comprehensiveness of intellect, he is inferior to none in judgment and practical sagacity.

The Catholic Annual Register for the year ended June 30, 1850 similarly says of Haller: “This convert is one of the most eminent publicists that modern times have produced. His great work, “The Restoration of Political Science” (4 vols. 8vo.), forms an epoch in the history of theoretical, and we may add practical, politics. It is distinguished for its clearness of style, happy arrangement, force of reasoning, extensive learning, and originality of observation. The author examines the origin of political power—the rise, growth, and decay of states—the relations between the ruler and the subject—the different forms of government—and the international relations of different states. He refutes all the revolutionary theories of modern times, and among others the cardinal one—a pretended primitive delegation of political authority by the people. The Baron von Haller, as we have elsewhere observed, is a staunch stickler for personal liberty, domestic liberty, as well as the freedom of the Church...”

We should now get to Ferdinand Probst (1816-1899), a Wuerttemberg-born Catholic moral theologian and liturgical historian, theology student in Tübingen, ordained to the priesthood in 1840, later a professor of pastoral theology at the University of Breslau and eventually

rector. Among other things, he devoted many books to arguing that the *Constitutiones Apostolorum* was the original liturgy of the Christian church. He also wrote an influential 2-volume *Katholische Moraltheologie* (1850), and in vol. 2 dealing with marriage, inheritance, the state and political authority, Haller is cited highly extensively. So much so that Probst is practically a straight up Hallerian in political doctrine, making only slight reservations.

“In his Restoration of Political Science, Haller clearly demonstrated that the family is a small state,” he writes. Later, in a chapter discussing inheritance rights, he endorses Haller’s advocacy for the freedom to test (i.e. to have perpetually entailed familial trusts) with qualification: “If we use Haller’s cited words to advocate full freedom of testation and if we would declare any obstruction of the same by laws to be despotism: we nevertheless believe that the call of our time for reform of the law of inheritance is based on truth.” “But, we ask with Haller, if the succession and wills are supposed to be quite contrary to nature, where does this universality of the same in all times and in all countries come from?”

Hegel’s theory of the state is dismissed as a gross caricature of the Church. He bemoans the republicanization of all polities due to the idea of “civil society,” adding further that this isn’t a faithful vision of the republic either way, since “republics were only independent corporations and ruled over a people subordinate to them,” citing Haller. In a chapter on nobility, his typology of aristocracy is taken directly from the section on military states in the Restoration.

It is in the chapter on the rule of the law that the Hallerian patrimonial theory is recited to the detail:

In the first stage, as a natural state, civil society still differs little from the family. Only with Christianity did the right of subjectivity arise, and the moments bound up in the unity of the natural state assert their independence. Haller asked for the form that this state would give to society, which he portrayed most beautifully and faithfully in his patrimonial state. He vindicates the most extensive freedom of subjectivity, in such a way that constitutional law dissolves into private law, just as modern theories of private law dissolve into in constitutional law. He says: Everyone, and therefore also the prince, only exercises his own rights, which are based on his power; but his power is based mainly on possession of goods. The greater the prince’s possession of goods, the more independent he is. If he wages a war, he wages it for his own cause; if he wants soldiers, he has to pay his own troops. Conscription is an encroachment on the rights of others; if he needs money, he derives it from his goods and uses it to cover his expenses... Here, accordingly, the prince is a great estate owner who exercises the rights inherent in him: to give himself and his subordinates laws, to defend himself in the event of an attack, to punish the disregard of his orders: so that every other estate owner is a prince who has and exercises exactly the same rights, only to a lesser extent. They too give laws in their households and have the right to defend themselves.

Still, he is concerned with vindicating the idea of a common good: “Haller found himself with a multitude of independent gentlemen who had a smaller or larger group of subordinates around them, but he lacked the unifying center, the spikes on the pyramid. That is why he does not arrive at what modern times call the state, and yet there is also a truth at the bottom of this concept. “The common good” is a fine, empty name. Insofar as Haller fights against the idolatry of the *salus publica* and thus against despotism, we fully agree with him, but the father of the family began to speak of the welfare of the whole family, and if the individual members demand the same sacrifices, this also applies to the public interest. If one tries to promote this, of course, by allowing oneself to intervene in the private law of the members, it becomes an injustice.”

His critique of general civil and penal codes is also taken from Haller: “In the constitutional state it is much different, and we said above that Haller most faithfully showed how this applied to his conception of criminal law. Who, he says, can foresee all possible crimes and insults with their infinite types and varieties, causes, effects and gradations or all conceivable punishments, that is, all means of protection and restraint to pre-determine and both against each other weigh up? The idea of determining in advance all illnesses and infirmities that have hitherto plagued mankind or may continue to plague, all remedies already discovered or yet to be discovered, with their infinitely different forms and gradations, and to order doctors to remove them without considering circumstances and the different natures of the sick subjects...?”

Karl Friedrich Vollgraff (1794-1863), professor of political science and constitutional law at Marburg, and proto-Spenglerian political ethnologist, borrowed from Haller in his 4-volume *Die Systeme der practischen Politik im Abendlande* (1828), but combined it with a study of anthropological types and temperaments that conferred dispositions to particular polities. For instance, ancient Greeks were “Staatsvolker” and teleologically bound to the communal life, whereas Germans and Slavs are “Rechtsvolker” who are naturally drawn to private liberty outside the state unless concrete exigencies of war force them into a properly political existence. He classified states into two main types: patrimonial and free, following Haller. “In the etymological or general sense sovereignty means nothing more than the fact that a person or a house is in relation to others, be it because of birth, or wealth, or power, or title, which is the highest, for that word comes from Latin *supremus* (Italian *soprano*, *sovrano*, English *sovereign*) used for all relationships where one has a high or the highest degree,” Vollgraff writes. Indeed, he at one point says that the term “patrimonial state” is a *contradictio in adjecto*, since the state implies public law, for which there is practically none in the former. (See also: “Karl Friedrich Vollgraff on the illusions of the representative system.”)

From the side of Haller’s critics, the prominent Swiss constitutional-liberal jurist, important in the history of international law, Johann Kaspar Bluntschli (1808-1881), gave the following verdict on Haller in his *Theory of the State* (1875), portraying him as an advocate of power politics:

Haller founds the State upon 'the natural law that the stronger rules.' In the superiority of the one, and in the need of the other, he recognises the basis of all rule, and of all dependence. He calls it an external, unalterable ordinance of God, but this shows that by might he does not mean the same thing as force, and he carries out the opposition between them. 'Power is limited by duty, by the moral law which God has written on the hearts of men, which reveals itself in the conscience of children, and in all times among all peoples: 'Shun evil and do good,' and 'Injure no one and leave to every one his own.' The law of justice and the law of love guard against power (potentia) degenerating into violence (vis). These two laws are implanted by God in man, they are innate, they are universal and necessary, eternal and unalterable, they are intelligible to every one, and the highest and mightiest, to whom all other human laws must submit, cannot be dispensed from the observance of them by anyone. They are also the mildest and most loving, their yoke is easy and their burden is light. Not the will of the whole people, not the common good, not even the fear of man's violence, but the will of God alone is the basis of this law of duty. Thus it is valid even for the powerful, every transgression of it is a forbidden misuse of force, whether committed by the meanest head of a house or the greatest potentate—a want of justice or a want of love. Justice must be demanded from the strong as from the weak. Love and benevolence must be expected from the better part of the human heart. Against the possible misuse of the highest power there is no help to be found in human arrangements. There is no human judge over the sovereign. There is no help except in God. 'The belief in God,' as Plutarch says, 'is the bond and cement of all human society, and the support of justice.' Religion alone can keep power in its limits, and strengthen the weak.

We have reproduced the chief points in Haller's doctrines in his own words. It is obvious that he derives Right and the State, not from justice but from power, and regards the former only as a limit of the latter. Might and might alone produces right. The greater the might, the higher the right. Whereas, in truth, might alone is only *de facto* and not *de jure*. This train of thought pervades the whole system. Reverence for actual power often prevents him seeing the ideal moral character of Law; the desire to secure the highest power, and the right of the sovereign against every infringement sometimes becomes contempt and hatred towards every endeavour to secure the rights of subjects against misuse of supreme power, and to limit its exercise—as if it were a crime to protect the divine law of duty by human arrangements against human violation. He is therefore a declared opponent of the whole constitutional system, and he works out in an extreme manner the medieval idea that sovereignty is a property.

Heinrich von Treitschke, an actual advocate of power politics in the *kleindeutsch* national-liberal tradition, this time in his *Politics* (1899, English transl. 1916):

Any popular representation was then simply out of the question in those States of Germany where provincial diets existed. Even the prince was not superior to the Estates; he represented only himself, and the group of unconferréd prerogative~ known collectively as “jus territoriale” were an aggregate of rights gradually acquired by him, not as sovereign but as territorial overlord restricted within the limits of his feudal suzerainty. The theory that the sovereign represents the nation as a whole was totally obscured. If Ludwig von Haller intended to set up monarchy based on Estates as the ideal constitution, it must be admitted that this positive aspect of his doctrine is entirely erroneous. Haller’s great achievement was his attack on the doctrine of Natural Rights; in this direction he dealt mighty blows which even to-day command admiration. The moral courage required in his day for such a task can hardly be over-estimated by us. Haller’s idealism, however, completely disintegrates the conception of the State. According to him the prince is no more than a very powerful landlord who has divided the land amongst his faithful dependents and bound them to himself by a contractual tie. It is clear, then, that Haller also took refuge in the theory of a social contract although on different lines, which logically excluded both the notion of sovereignty and that of the general good.

Many of his critics, notably the moderate conservative Prussian councillor Johann Friedrich Ancillon, in his *Ueber die Staatswissenschaft* (1820), raised the charge against Haller that he hadn’t overcome the contractual theory at all, but merely partitioned the social contract into many private contracts. Except there is a crucial distinction between positing a contractual formation of the state, and a ruler who rests on his inherited and acquired rights binding himself to pacts with corporations, magnates and other institutions subsisting off their own power base. It is only natural that this how it should be when there is no uniform civil category of “citizenship” binding people to a state, but a variety of relationships founded on personal status, land tenure, etc.

Georg Jellinek, the Austrian public lawyer and legal positivist, lists Haller (*Allgemeine Staatslehre*, 1900) as representative of the “Machttheorie” (power theory) of the state though tempered by private law considerations, and reaches an unfavorable conclusion: “Haller does not tell us, however, where this “lordly service association”, but specifically the legal system that provides the owner’s own rights, comes from. Since it is not based on the state order, it can only be pre-state, and so the bitter opponent of natural law is entirely on the ground of this doctrine, which he otherwise so thoroughly opposes. But therein lies the sharpest criticism of the entire patrimonial theory. It stands and falls with the adoption of a pre-state property system. It clearly shows what arbitrariness one can arrive at from the standpoint of such an alleged legal system by treating the territorial element of the states as the main thing and the people as a minor matter without further justification. Since this pre-state law can nowhere be demonstrated in an undoubted form, it is easy to shape it according to one’s political inclinations by means of judgments of power and the empty space that science sees at this point with the structures, most reversed in people’s political imagination. In an age of the most extensive historical and legal research, the patrimonial theory as a state doctrine of justification is no longer in need of detailed refutation.”

He also cites the Bavarian constitution of 1818 as exhibiting outdated patrimonial relics: “For the persistence of old, overcome theories in the structure of modern ideas, the only example given here is a strange provision of the Bavarian constitution of 6 June 1818 Tit. III § 1: “The whole extent of the Kingdom of Bavaria forms a single indivisible, inalienable total mass of all parts of lands, people, lordships, goods, regalia and rents. [Landen, Leuten, Herrschaften, Gütern, Regalien und Renten mit allem Zugehör.]”

Jellinek’s positivism means he is quite incredulous of there being any law or property prior to the state, and so theories that do not posit the state as the subsistent basic norm of all law are incomprehensible and unjustifiable to him.

Italian liberal stalwart Benedetto Croce devotes a few pages to Haller in *Politics and Morals* (1946). He cites Haller’s notion of independence as perfect freedom, “But, on the other hand, when he undertakes to approach more closely this concept of independence, he can only say, vaguely, that ‘independence in itself often consists of a slightly higher degree of liberty, power, reputation and renown.’ And, going further, he makes a statement which is a criticism of his theory of sovereignty – that by this road men finally reach the ‘great truth that all those which we call States or civil societies are nothing more than an imperceptible and uninterrupted progression of unequal fortunes, an infinitely complicated number of reciprocal needs and particular conventions; that each man is naturally surrounded by inferiors, by superiors and by equals; that everyone rules over his inferiors, obeys the will of his superiors and shares a part of the rights with his equals; and, finally, that in the final analysis God alone is the master, and that we are all his people, since the strongest among us have received their sovereign power only from the supreme lord, from the Creator of nature who gives it and takes it away, who changes power and fortunes, and seats and unseats kingdoms.’ Just as Hegel’s individual States found their conclusion in the ‘history of the world,’ analogously, and not very differently, Haller’s States find their conclusion in God.”

Croce does reserve some praise for him, but keeping with his secular progressive stance he ultimately judges him along with all other “reactionary writers” in the “defect [that] lies in their lack of any dialectical comprehension of history, as well as in their transcendental religious concept. For this reason they attribute an eternal character to passing political forms and they fail to see that even the anti-historical and anti-philosophical theories of equality were of value as evidence of a new generation and a new spirit, and of approaching political developments, even if they had no value as theories. They do not fully understand past history, because they sin against the rights of the future.”

Otto Brunner, the maverick Austrian medieval historian, pioneer of *Begriffsgeschichte* (conceptual history) alongside Gerhard Oestreich and Reinhart Koselleck, noted the influence of Haller’s theories in the historical and juridical debate over the nature of the German state, in his landmark work *Land and Lordship* (1939), but he was not favorably disposed to the concept of a patrimonial state (though in any case Haller’s great contribution wasn’t so much to solve the public-private and state-society dichotomies by siding with the latter, but by obliterating them entirely):

Georg von Below's *The German State of the Middle Ages*, the most important treatment of the question, argued that there was indeed a German medieval state and not merely a sum of "private relations." For Below, then, identifying the state was a matter of distinguishing public from private law. Hence his critique of the literature begins with the original sin of Carl von Haller's theory of the patrimonial state, which was just such a sum of private relations—in modern terms it constituted a "society," not a "state."

Where did this idea come from? Haller did not invent it, and since it was foreign to both ancient and medieval thought, it must be of modern origin. It was not English, for the question of a medieval "state" has not concerned English constitutional historians: Great Britain never acquired the specific attributes of the modern continental state. Nor was it French, for French scholarship takes for granted the premise that Below had to argue for Germany: namely that the French medieval state differed from its modern counterpart only in degree, and that the idea of state power based on the ancient concept of *imperium* (the right to command) was always there — even if it was repressed and weakened during the centuries of feudalism. German historians, however, continue to contrast an older "patrimonial" constitution in which the ruler was the "proprietor" of the state (his "patrimony") with a later "public-legal" one in which he was merely the organ of the state. This contrast in fact carries a polemical thrust against "patrimonialism," a theory that can be understood as the counter-image to the idea of the state as a juridical person and of the ruler as the instrument of such a state...

In any case the basic issues were peculiar to the German context, where prior to unification the nation and civil society did not coincide as they did in the rest of Western Europe. Konrad Beyerle has in fact showed that the idea of the patrimonial state was developed by eighteenth-century German jurists who were seeking a juristic foundation for territorial particularism. In their case a derivation of the French sort from the *imperium* of Roman law was hardly possible, for according to Roman law, *imperium* belonged to the "Emperor of the Romans," the German Holy Roman Emperor, and this model of absolute imperial power clearly contradicted the political realities of eighteenth-century Germany. Moreover, this Roman model would have had to explain the power of the princes as a magistracy derived from the emperor. That is why German legal theorists had to resort to the concept of "patrimony," which in Roman law referred to the private property of the emperor as opposed to the public treasury and lands (*aerarium*, *fiscus*). Ever since the sixteenth century the legal theory of the territorial state had revolved around the idea of its juridical personality and its legal entitlement to what it claimed as *fiscus* or *aerarium*. But within the logic of Roman law, these concepts led back to the emperor and his *imperium*. Legal theorists therefore adopted the concept of patrimony, the private property of the prince, the private law rights vested in him and hence beyond the reach even of the emperor as a "ruler not bound by laws" (*princeps legibus solutus*). This concept thereby legitimated a princely power that was not derived from the emperor.

Haller's achievement was to transform this body of thought, which had lost its relevance after the dissolution of the Holy Roman Empire in 1806, into an alternative to modern theories of princely or popular sovereignty. Only in Germany, where political fragmentation meant that

state and society did not coincide as they did in Western Europe, was it possible to pose in such a radical way the question as to whether the medieval polity was a state or society. Here the contradiction between princely and popular sovereignty issued in a doctrine of sovereignty that defined the state as a juridical person and the ruler as its organ. Along with this doctrine went a sharp separation of public and private law that corresponded to the opposition of “state” and “civil society.” But Haller’s “restoration of political science,” an attempt to avoid the implications of the revolutionary principle of popular sovereignty, contradicted the political realities of his day and hence was doomed to fail. His patrimonial state could however serve as the counter-image to the modern “sovereign” state, covering all premodern constitutions in which such a sovereign state was obviously lacking. It is no accident that constitutional theorists and historical sociologists have continued to use the concept of the patrimonial state, while historians and legal historians have had to recognize that the sources give it no support whatever. In attempting to describe the medieval constitution, such historians either adhere to the idea of state sovereignty and the theory of the state as a juridical person or resort to the concept of princely sovereignty and describe the medieval constitution in terms of the distinction between public and private law.

Fundamentally, however, the issue is purely juristic and not whether Haller was right or wrong. In any case the original thrust of Haller’s ideas faded from view, and since there was no longer an emperor, even those who defended the legitimacy of the German principalities in the nineteenth century could derive princely power from the Roman imperium without having to draw the practical consequences. The point is that the entire debate over the medieval German state was conducted in terms of modern concepts, especially that of a collective body of subjects (*Untertanenverband*) in which every free member was dependent on a common political head. This tendency was further encouraged by the predominance of legal positivism after German unification.

6. Addendum I: Haller’s essay on the Spanish Cortes (1820)

As mentioned above, the *Über die Constitution der spanischen Cortes* (1820), or the French translation *De la constitution des Cortès d’Espagne* which I’m using here, was probably Haller’s most sensational and widely disseminated political work. A ruthless critique of the Cadiz Constitution of 1812, it is by extension one of the most crushing blows ever delivered to the ideas of constitutional liberalism in general, and is a practical application of the same principles he wrote in his magnum opus.

Here are excerpts I have selected:

The Spanish nation is free and independent, and can not be the heritage of any person or of any family (art. 1). It is perhaps understood that it could well have become the patrimony of a corporation of philosophers; but who has ever thought of saying that peoples are the heritage of kings? Their domains, their possessions, their income, all of their acquired rights: this is their heritage. When to the men who live on the royal estates and fiefdoms, or even on their own lands, there are many relationships of natural dependence or dependency between them and the king, of voluntary service and highly varied relationships: and of the same kind as those that take place between individuals. Would it not be rather by the principle of the delegation of powers, that the peoples really become the patrimony of kings, just as Bonaparte used to say that he had 80,000 men as his annual income...

Then the first right of all Spaniards, without exception, is the obligation to contribute according to their faculties to the expenses of the state (art. 8), and to take up arms for the defense of the homeland (of the Cortes) whenever they are called upon to do so by law, that is to say by the will of the Cortes (art. 9). So first of all there is conscription and arbitrary taxation, admirable and inevitable benefits of philosophical theory, formerly unknown to nations! Because it is obvious, if everything comes from the people, if everything is for the people, if it is itself sovereign, it must also provide men and money, whenever its so-called representatives find it necessary. Listen, nations of Europe, what you have to expect from this sect. Who is the true friend of the people and of freedom? Is it the king who abolishes conscription, because the army is his army, and that he wants us to enter by voluntary commitment to his military service as to his civil service? Or are they these philosophers who introduce this same conscription, on the pretext that the army is a national establishment?

...Here we make a long enumeration of all the provinces of Spain, including all the islands and all the overseas possessions. Undoubtedly we must suppose here that their inhabitants agreed among themselves to leave the state of nature, to make a social contract, and to choose as head of their executive power, sometimes a Visigothic general, and sometimes an Arab; sometimes a count of Aragon or of Castile, once again independent; sometimes an archduke of Austria, and sometimes a prince of the House of Bourbon; and that all this took place without these chiefs ever asking their consent, and even without the Cortes ever bothering to do so...

But according to the Constitution it would have been more accurate to say: the government of the Spanish nation is a coterie of philosophers invested with absolute power, and that has made the legitimate king their first servant. Then we make a parade of the distinction of legislative, executive and judicial powers, although it is easy to demonstrate that this distinction, or method of classification, is impracticable, that in reality it never took place; that these three so-called powers are but various emanations of the same faculty, and that they are essentially united by their nature, as will, action and judgment are in the same person, whatever the function to which it is called...

Among other specified cases, this quality of Spanish citizen must be lost by the acceptance of a job in another country, and even by an uninterrupted absence of five years outside Spanish territory without permission from the government. Spanish citizens are therefore real serfs; their

fortune belongs to the state, their persons are limited to involuntary and indeterminate services (see arts. 8 and 9.); they do not have the faculty to travel, and do not dare to serve any other master than the Cortes. Of course, these are liberal principles of a singular kind! The author of this work, although born a republican, does not care at all about such a philosophical right of citizenship...

It is said there that the Cortes are the assembly of the deputies who represent the nation. They are elected through the people, starting with the lower classes of society (art. 27). This representation is only based on population, although it is not exactly known. For 70,000 souls there must be a representative; and from that moment these 70,000 men, with their wives and children, lost all their rights; they gave themselves up, body and goods, to their own representative, or to representatives who are foreign or unknown to them, and who, in the final analysis, might very well prefer their own freedom and their own interests over the freedom and the interests of the people...

The deputies to the Cortes should, in truth, according to article 92, possess a sufficient annual income; but this condition is immediately suspended by the following article, until it pleases the Cortes' decision in future sessions, that the time has arrived to put it into execution, that is to say until the Jacobins get rich, and their enemies poor. According to articles 95-97, all ministers, councilors of state, and other employees appointed by the king, therefore precisely those who know best of political affairs, and could give the most reasonable advice, are excluded from eligibility for the Cortes. Thus no one can be called upon to take care of the king's business, or, as we say now, affairs of state, than those who have no knowledge of it. The powers that must be given to the Cortes are inconceivable and above all imaginary. No king ever had such unlimited power that these so-called national representatives, and it is in this that lies the true character of Jacobinism, that is to say of the most dreadful despotism which has ever tormented the earth. Let these Cortes be subject to any law, or even to natural law; that they have to respect conventions and private rights, that's not even a question...

The Cortes will have the right to propose all laws, to decree them, to interpret them, and if necessary, to exempt from them. But what is a law, if not the expression of a binding will? How is it distinguished from ordinances, decrees, orders, regulations, statutes, etc.? **Will the King be the only being, to whom it is not permitted to leave a will; cannot he alone impose obligations on anyone?** Have we, moreover, given enough thought to everything that can be stored in the category of daily interpretations and exceptions or exemptions from the law? Does all this not prove to us that these constitution makers do not have the slightest idea of a government? The Cortes must decide all the doubts of law or of fact which may arise on the succession to the throne. Assuming disputes or rivalries in the interior, as for example that which took place in 1412, after the extinction of the main line of the dynasty of Barcelona in Aragon, between five contenders for the crown, such a judgment would still be possible, not because the Cortes would be authorized, but because one would seek, by means of their sentence, to increase the number of his partisans, and to arrive all the more quickly to the possession of the throne; but in the case where foreign princes were the closest contenders, and

where (God forbid) a new war of succession would arise, like that which took place at the beginning of the eighteenth century, the belligerent powers would undoubtedly be little worried of the judgment of the Cortes.

The Cortes also appoint a regent and a regency; as well as the guardian of the minor king, in the cases provided for by the Constitution (that is to say by the will of the Cortes). This right, which all fathers have, must therefore be taken away from the king, or from his close relatives; the name of guardianship alone should have proved to the Cortes that the king is not an employee of the people, as Jacobinism claims, but that the royal dignity rests on his own power, on his own rights and his own possessions... these same Cortes still claim that it is for them to “approve all the alliances, all the treaties of commerce, before royal ratification”; they claim to grant or deny foreign troops entry into the kingdom; but such troops, when they come without being summoned, are not in the habit of asking permission, at least we have not heard that a decree of the Cortes has prevented the French invasion. **The Cortes will still have the right to decide alone on the creation and the abolition of all the public offices; the king will no longer dare to appoint a copyist, a bailiff or a valet, without asking the consent of the Cortes; because these constitution-makers did not bother with determining who are the so-called public officials, and who are, on the other hand, the servants or private employees of the king, the latter of whom he must have the right to choose, as any other individual has the right to name his own.**

In addition, the Cortes claim to determine annually the strength of the royal army and navy, either in time of war or in time of peace; to make all the ordinances and all the regulations on the administration of the various branches which depend on it; pay all expenses, incur debts, fix customs and tariffs, even to examine and approve all the accounts of public funds, to rule on all matters relating to the administration, cultivation and alienation of national domains; to determine the title and weight of coins; finally to protect and promote all kinds of industry (which usually does not succeed too well in such assemblies), and even to approve police and health regulations, etc... A special plan for the education of the Prince of Asturias must be made and approved by the Cortès, therefore they want to be universal teachers. **It will no longer be possible for anyone to raise their children themselves, or to have them educated in the sciences and the arts.”**

But if we leave these various powers to the king, it is not because they are a natural consequence of the inherent right of his person, because the employees are his own employees, and the troops are his own troops, but because that it pleases the Cortes to charge him with the nomination of some and the direction of others. And, as if we still feared here the increase of the king’s power, we hasten to limit it more and more. Formerly it was believed that the limits of royal power consisted in the observation of divine or natural law, in the general obligation to be satisfied with the rights which belong to it, not to infringe upon those of others, and on the contrary to be their protector; but the philosophy of the Cortes today invents quite different ones, and the freedom of the king will be limited only in relation to them and in their favor: thus the king will not be able to prevent the convocation of the Cortes under any pretext; he can

neither suspend nor dissolve their assemblies (art, 172); he does not dare to leave the kingdom without the permission of the Cortes, under penalty of having his absence considered as an abdication; he cannot transmit or delegate the royal power nor any of its subsidiary powers, much less alienate or exchange any province, city, town, village, or any part of the Spanish territory, as small as it may be. It goes without saying, and we have always known, that kings can neither sell nor alienate the private property of their subjects, because it does not belong to them; so they never did; but if they don't alienate anything but their own property and their own rights, or that they renounce them, as has always been the practice, we would like to know what the Cortes have to object to, or what right they have to interfere in this transaction. Should the king be the only man in the world who cannot dispose of his property? **The Cortes also forbid their king to conclude any alliance, any trade agreement without their consent; and the same consent is required for the alienation or exchange of any national domain. As to this last provision, it seems to us that the king could have accepted it without inconvenience; for, on examining the matter closely, it would have been found that in all Spain there are only royal domains, or domains belonging to individuals or corporations, but not a single national property, considering that the Cortes would be very embarrassed to show one, whose title of acquisition had been stipulated in favor of the Spanish nation of the two hemispheres...**

This pretended king decreed by the Cortes cannot grant exclusive privileges to any person or corporation; however the Cortes did not deign to determine what a privilege is, nor how it differs from a grace. The king does not have the right, by his own authority, to deprive a man of his liberty, even a criminal, nor to make him impose a penalty, so that his power will be less than the one of a corporal of his army, or of the last schoolteacher in his kingdom. **To fill the gap, the Cortes decided that the king will not even be married without their permission! He is therefore the only man who is not allowed to choose a mate according to the eyes of his court. Thus the Cortes of Spain want a king who, bound to the soil, cannot travel without their permission; who owns nothing or who cannot dispose of his property, and who is deprived of the freedom to contract, or even to marry if he wishes. We see no difference between a serf and such a philosophical or constitutional king."**

Formerly it was not known that kings had to be endowed by peoples. As rich, powerful and independent lords, they lived brilliantly off their own fortune, except in the case where, after long revolutions, they were offered aid or gifts as compensation for the rights which they had lost, or the regalia to which they had to renounce, a compensation which once again became their property, as was practiced in England, and even recently in France. It was left to their prudence to determine a fixed and annual sum for the maintenance of their court, in order to maintain order in the various branches of their expenditure. They themselves set the dowry of their widows, the prerogatives of their younger children, the dowry of their daughters, etc. All this had been provided for in the royal wills, in the laws of succession or in other family statutes; **but the Cortés of Spain, who consider the king only as their minister, want, by special grace, to assign him an annual pension taken from his patrimony (art. 213.). Their**

generosity even goes as far as to leave to him the use of his present palaces, and to determine the districts which they deem advisable to reserve for the recreation of his person (art. 214)...

Our forefathers, without being enlightened, and even less philosophers, believed that jurisdiction was nothing more than an impartial aid given to the parties, and that it was exercised on a small scale by each superior towards his inferiors; that consequently there existed a jurisdiction eternal, seigneurial, ecclesiastical, military, etc; but that a king, like the most powerful of all, had the most extensive jurisdiction, the supreme jurisdiction and of last resort, because he has the power to help everyone, and that he himself was subject only to God, that is to say, to the natural laws of justice and benevolence. Kings were allowed to exercise jurisdiction by themselves, as David and Solomon did, as has been practiced in all times and in all places, and as it is still done today under various forms and names: but as kings could not suffice for a large number of particular cases, they appointed officers to relieve them in this function, and they administered justice in the name of the king, or in other words, made the natural or positive law known to subjects, and lent them an effective aid to keep them within their rights. These officers, judiciaries, appointed and salaried by the kings, also received instructions and laws from them, and consequently were not exempt from any relationship of dependence. They were not given the strange privilege of compromising the honor and the name of the king, of pronouncing in his name iniquitous sentences, of refusing justice or of dragging it out, and even less of judging the king himself, since they would never have been able to do carry out their sentence without his consent... moreover, in establishing tribunals, kings had not renounced the right to judge themselves, just as they are permitted to write a letter with their own hand, although they have ministers and secretaries. It was not theirs to hear parties who speak to them directly, to discuss particular cases in extraordinary circumstances, to receive appeals, etc., etc. These are the old principles: we believe that they are still now in conformity with nature, and that if they were taken for guides, true justice would be better administered...

It seems like hell with its satellites was unleashed against Spain ; to spread to all its provinces. Crimes are immediately transformed into virtues, and virtues into crimes; evildoers are free, and honest people are cast in chains. Houses are pillaged, massacred, demolished, to prove that the empire of destruction has arrived, and that still greater upheavals will follow these first attacks closely. The priests of religion are assassinated in the streets, the faithful servants are dragged through the mud, and, in the midst of all these crimes, the scoundrels who are their authors dare to boast because still greater evils did not signal the first moments of the revolution. Supreme power is already vested in the Jacobins, for this was basically the sole aim of the Constitution: it must elevate the sect to sovereignty, so that it can thereby carry out the execution of its principles, and that a small minority can enslave the whole nation, and moreover slander it by making pass as an effect of its will the crimes which are committed in its name. Since the first moment the hypocrites throw off the liberal mask: they begin by decreeing, without any indulgence, under pain of death against all those who, by word or deed, opposed the measures of the people, that is to say those of their factions; but this itself is a proof of the resistance they

experience, and shows how much it inspires fear. They abolish the most necessary of all the courts of judicature, those which had been intended to combat false doctrines [i.e. the Inquisition]. The faith which the Cortes themselves recognized as true must no longer be kept, but in exchange they will establish revolutionary police forces, inquisitorial committees for the protection of the Jacobins and against the safety of all honest people. Under the name of freedom of the press we encourage lies and calumny, or they are given a privilege of impunity; but virtue and truth are forced into silence, and they are condemned to servitude. Against God, the king and justice, it is allowed to write and print whatever you want; but against the Cortes, their principles and their Constitutions, each word, each writing is regarded as a crime worthy of death. We will ask, for example, these gentlemen, if, by virtue of this freedom of which they make such a great display, could this writing have been safely printed?

The Spaniards did not just fight for the king, but also for all that was dear and sacred to them, for their religion and for the supreme law, for their personal liberty, for their property, for their wives, and their children, for their acquired rights, for all their social relations, and for the king only, in so far as he guarantees and preserves all these advantages; in general, the one who defends his natural and legitimate superior fights even less for him than for himself, and for all the benefits which flow from this salutary authority; because people need their legitimate kings even more than kings need their people. It is in the nature of things, and experience has often confirmed it, that dethroned kings still lead in other countries, as private individuals, a quiet and fairly happy life; while abandoned peoples, like sheep dispersed and deprived of their shepherd, devour each other, and become the prey of the first wolves or the first tyrants who present themselves.

7. Addendum II: Haller's proposal for the salvation of the Bourbon monarchy (March 1830)

This essay, titled "Le chute de la revolution, suite necessaire d'un refus du budget," [The fall of the revolution, necessary result of a refusal of the budget], originally written in March 1830, is in my opinion one of the most brilliant things Haller has ever written.

The context behind this essay is the constitutional crisis in France in 1830, with the liberal chamber of deputies holding the king and his ministry hostage by gridlocking the political process, starting with their (in)famous Address of the 221. Earlier, I wrote an essay "Why the Bourbon Restoration failed" on this subject.

Unlike most royalists who saw this as a horrid calamity, Haller took it as a fortunate opportunity for the king to capitalize on and finalize the counterrevolution. He proved overly optimistic in his assessment, but what makes this essay so fascinating is it shows how Haller was not only a great political philosopher, but a clever economist and financier, as well. He gives proposals for a sweeping administrative reform in France, everything from the army, to taxes, tolls and tariffs, to reestablishing guild inspectors, to restoring the secularized properties of the Catholic Church, slashing the civil service, etc. The advice he gives is just as

inspiring today. What's more is he ends on a detailed historical tangent of the territorial acquisitions of the House of France, and how peace treaties and alliances did not require ratification by the parlements:

Similar to their adversaries, they seem to represent France as a society or an association properly so called; then they claim that any society is maintained only by the contributions of its members, and conclude that after the refusal of these contributions, it would necessarily be dissolved. Now this reasoning based on supposedly philosophical principles is false, I would even say revolutionary in all points; because first of all France is not a society or a community, but it is the aggregation of a multitude of individuals attached by various direct or indirect links to a common and independent leader; this leader does not live solely on taxes either, and finally the refusal of subsidies by the chamber, supposing it was even followed by that of the taxpayers, would not dethrone the king, but would only force him to save more money and entrenchments which would strike his enemies rather than his friends. **But such is today the effect of the revolutionary language and of the habits contracted for forty years, that on this capital point, as on many others, the royalists are, without knowing it, in agreement with their enemies, since they both imagine that the existence of the kingdom depends on the acceptance or rejection of taxes, and therefore rests on the fragile basis of good pleasure, whim and varying opinions of a few deputies... Also the royalist journals exhaust themselves in efforts and pile up the most pathetic sentences to prevent a misfortune which seems to them so appalling. They conjure the liberals out of their love for the charter, for the country and for the homeland, not to push things to such an extreme; they beg them, so to speak, on their knees, not to refuse the budget to a ministry, which, although sounding badly for the revolution, has not yet signaled itself by any hostile act against it, which has refrained from striking blows, which governs according to the charter and the existing laws, which has so far done neither good to the royalists nor bad to the liberals.**

In a word, they seem to ask for mercy from the revolution and to implore it at least some mild temperament. **They paint the most dismal picture of the alleged disasters that would follow the rejection of the budget. To hear them, from that moment there would no longer be a crown in the treasury; the royal family would be begging, bankruptcy would be declared, the army reduced to living on plunder and pillage, France in dissolution; we would have dried up the source of credit, ruined the rentiers and employees, paralyzed the action of the government at home and abroad, even suspended the life of the state. Not long ago a royalist newspaper entered into details of another nature and cried out with pain, that the refusal of the budget would destroy the charter and would transfer all power to the chamber of deputies, although by destroying the charter he would thereby destroy the chamber and its power; that this refusal “would deprive France of canals,” of highways, hospitals and stud farms, “(as if stud farms were supported by taxes and horses could not breed without the consent of the chambers); It would condemn the king’s vessels to rot in the ports, “would disinherit the people from education and sever them from religious consolations.”**

Childish fears! Rest easy, you who call yourselves royalists of France! None of this will happen, and we will even prove to you, that the refusal of taxes would, on the contrary, be the most favorable event for the monarchy, a prompt and happy ending, a legal deliverance, to serve us in

the opposite direction.”

“Indeed, those who in their bravado threaten to refuse taxes, would basically refuse them to themselves, and no one would suffer less than the king, who would on the contrary be richer, stronger and freer than before. **First, as we have already said, as soon as there are no more taxes there are no more voters, since no one can be without paying three hundred francs in direct contributions; consequently there will be neither charter nor chambers, and we can say that far from the refusal of taxes passing all power into the hands of the chambers, it would destroy even the very possibility of the chambers, necessarily pass all power into the hands of the king. We will be forced to dissolve the current chamber, and it will be impossible to convene another, because there will be neither voters nor eligible, and I ask who would then remain in power if not the king.**”

“Now, either you consider the charter as a fundamental law, although the kingdom existed before it; or as a pact with the nation, although no one has stipulated its clauses and it is only signed by the king and his minister; or, finally, as an ordinance and a royal concession, which in fact it is; it still forms an indivisible whole and that no one is allowed to accept one part, reject the other, take the advantages and leave the charges alone to the king. The law ceases to exist, the pact is broken, the concession revoked, as long as a party, and especially the favored party, rejects the articles or makes their execution impossible. **Thus, if by the refusal of taxes the chambers annul the charter, they legally deliver the king from all the obstacles he imposed on himself, from all the sacrifices he made by this immense concession, and to which he committed himself only on condition that his subjects in turn make similar sacrifices, that they would pay above all for their own faults and suffer the consequences of a revolution which was their work.** The king will be the master of repealing all the laws passed by chambers which will have ceased to exist, and most of which restrict his authority, even more that it has not been restricted by the charter. There will no longer be a civil list! So much the better, the king will therefore return to the possession and usufruct of all his domains, his forests, his income and royalties or regal rights; he will be able to allocate to the expenses of his house and to his numerous benefices such part of his income which he pleases, and will thus dispose, as owner, of a sum equal to and even greater than that which is now allocated to him under the guise of a humiliating support; an appearance which, soon taken for a reality, would alone suffice to kill the monarchy. **That if the king is refused the necessary subsidies to pay the debts of the revolution and the empire, he will be released from them by right, since he has not made them; he will be authorized to have at least half of the public debt written off from the ledger; and if the creditors suffer from it, they will be able to attack only the liberals alone who will have refused the means to pay the totality of the charges.**

All the civil and military pensions granted during the interregnum from 1792 to 1814, particularly those which are guaranteed by the charter to retired officers and soldiers, or to their widows, will cease to be chargeable to the king, and to obtain the payment these boarders will be authorized to address themselves to the superiors whom they have served, or to those who claim to represent them, and give themselves alone for the nation, that is to say to secret and

liberal societies. The army will be reduced and only made up of those who voluntarily engage in the service of the king, who have been or who promise to be faithful to him in every encounter; and we guarantee that this army will still be strong enough, either to compress its enemies from within or to earn respect the name of the king abroad, and that it will not lack good pay or an honorable existence. Many civil treaties will experience either a suppression or a considerable diminution, for it will not be difficult to establish in France an administration less expensive and which will approach the old one. **No more lavish hotels for so many directors, no more furnishings, no more heating, lighting and laundry at the expense of the king, a luxury unheard of in other monarchies. With the exception of one or two, the other ministers and their first clerks will stay in their own houses, as in England and elsewhere, and for work they will go to their offices, which can all be established in the Louvre, a destination which would also be much more suitable than making it a market hall for merchants, as if the products of their industry were not sufficiently exposed elsewhere. An intendant will suffice to administer four to five departments united in a single province; business will also be less numerous, and by assuring these king's officers the stability of their places, and consequently a certain honor in the world, they will also be content with a lower salary. In addition, as a general rule, employees of all kinds will be salaried only for functions which relate to the affairs of the king; but any service which they render to individuals will be paid to them as in the past, by emoluments or service fees; for certainly, if the citizens do not want to contribute anything, the king is not obliged to do all their business for free; it is much fairer and simpler for everyone to pay for the service or favor they ask for and when they receive it."**

"In particular, all these aids, these benefits and these many sinecures that the revolution created for men of letters, under the pretext of encouraging the sciences and the arts, but which benefit neither one nor the other, and only serve to fuel mediocrity, to breed a presumptuous race of superficial writers, to encourage libelists or to buy their silence. The academies themselves are a vain parade, a useless superficiality, and yet these deeds of transfer are not drawn up by the king's employees, but are drawn up by the notaries who must still be paid separately. On the other hand, the innumerable changes in rents on the estates, which are also property, and moreover free from any contribution, do not cost a penny. The state is responsible for taking care of and drafting all these deeds of sale and purchases free of charge, and for this it spends enormous sums on buildings, office costs, employee salaries, transfer models, new items, registration certificates and general ledger registration. Is this equality before the law, is such a prodigious privilege indeed in conformity with the charter and even with justice? That we take then, I do not say four percent, but only a half or a quarter per cent for each transfer of annuities, and you will have an income which, in the first case, will be 72, and in the second 36 millions; income which will not be a tax, but a fair indemnity, a slight remuneration for a service requested and obtained. We will cry for eight days, and after that we will not talk about it any more. It would be vain to say that the present inconceivable facility is necessary to support credit. It is a pure fallacy invented by the stockbrokers who made the law; credit or confidence is acquired by fidelity in fulfilling one's commitments, by the known morality and solvency of the debtor, and not by ill-understood generosity, let us say better, by deception to

still pay for all acts by which individuals deem fit to assign or transfer their debt securities. On the contrary, it is only an embarrassed or insolvent debtor who could impose such a burden on himself, lest he be asked for repayment; danger which is not to be feared here, since it is the creditors who fear repayment and can never demand it.”

“Apart from these savings, there will be other resources to replace, at least in part, the proceeds of the eliminated taxes. **If the chambers refuse the land contribution, they will thereby have authorized the reestablishment of tithes, censures and feudal rights, of which the land tax is the fair compensation, and there will be nothing to complain about, because these territorial royalties were debts and not taxes; who even knows if most taxpayers would not prefer them to current contributions.** The chambers no longer want to vote subsidies for the maintenance of the Catholic clergy, although the salary he receives is a slight indemnity which is guaranteed to him by a public treaty. All in good time! We accept the principle that each religious society must itself pay the costs of its worship; but also we must leave or give back to each one what belongs to him. **So the Catholic clergy will no longer be salaried, but the Chambers will have by that very authorization to give back its goods, which will be worth to the royal treasury an annual saving of thirty-five million. The Protestants also will no longer receive any treatment, for nothing has been taken from them; they were not despoiled by the revolution, they still enjoy what they once possessed, so they cannot claim anything from the state; another saving of about three million.**”

The patents are a remuneration, or if one wants a tax for the enjoyment of a privilege, because no one can exercise an industry without taking a license; we pay them moreover, not because of one's fortune, as required by the charter, but because of one's profession, whatever the fortune of the licensee, moreover, because of its benefit. So if the chambers no longer want to consent to it, we will re-establish the masteries and jurandes [guild inspectors] whose patents are the compensation: the public will be better served, order and morality will be reborn among the industrialists and to ensure the enjoyment of such an exclusive advantage, these corporations will perhaps offer the king an annual sum which will come very close to the product of the patents.”

“Finally, if customs are abolished and duties on foreign goods abolished, because they are considered as taxes, no one will be able to prevent the king from establishing, as in the past, and as in any other country, tolls for the use of roads and bridges, tolls which will relate not to the quality but to the quantity of goods, cattle or team horses. This is a private right which private individuals also enjoy, it is the legitimate rent of a disbursed capital, given that the king is no more than any other obliged to build and maintain roads and bridges free of charge. It is to be bet that the proceeds of these tolls would perhaps equal and even surpass that of customs. So no more fraud, no more searches, no more repulsive and expensive annoyances. **The numerous men of the lower classes, especially the inhabitants of the frontiers, today hampered in a thousand ways in their means of existence, will bless the name of the king, because in the extension of a free trade they will find an infinity of honorable, independent and assured resources; a work by which strong bodies and vigorous souls would be formed; the king**

will also win the affection of all the neighboring peoples, the foreigners abroad, more than ever in France, which will then be the most hospitable country in Europe; the owners of its land will sell their products better, French consumers will experience a notable relief and an increase in ease, because they will no longer pay taxes to privileged industrialists.”

“The first king of the Bourbon race, Hugh Capet, did he not become king, that is to say independent and head of other vassals, by the preponderance given to him by his immense domains? And when his successors acquired Berry by purchase, Languedoc and Burgundy by inheritance, Champagne and Brittany by marriage, Dauphiné, Provence, Anjou and Maine through donation, several other provinces by confiscation on account of felony, others finally by conquest and by treaties of cession; when these various titles succeeded the rights and revenues of the former lords of these provinces: is it believed that this increase in fortune consisted only of subsidies or contributions, which did not exist even at that time, and not territorial possessions and seigneurial revenues. Do we not know that before Philippe-le-Bel there were neither taxes nor subsidies in France, and that until 1789 the major part of the royal revenues still consisted of domains and sovereign rights, that is to say, in productive establishments which the king is the master of forming, since he forces no one to use them.”

“It is therefore in this capacity, by virtue of their personal freedom and not by virtue of a delegation from the people, that the kings of France, as well as other sovereigns, have always made treaties of peace, alliance and commerce, without it having occurred to anyone to contest this faculty; without any body of the state having arrogated to itself the right to examine these treaties, to discuss their conditions, to approve or reject them, on the pretext that they infringe a previous law or that they contain a tax provision and result in an expenditure that is not legally permitted. In vain do we pretend to unearth from history a small number of ill-conceived examples to the contrary, and thus give the arbitrary or forced violation of the rule for the rule itself.

These examples are drawn only from times of anarchy, from weakness, even from the captivity of kings, or they were an exception formally granted by the king and which still confirms the rule. The peace of Brétigny, in 1360, which ceded Guyenne, Poitou, Angoumois, Calais and Ponthieu, had been made under the weak King Jean, who died prisoner in England, and it is not surprising that the great of kingdom, in such circumstances, were opposed to the execution of such a disastrous treaty, not because they had the right, but because they had the force. As for the Treaty of Madrid, in 1526, everyone knows that Francis I himself had brought about the resilience of the States of Burgundy, and he was glad to find a pretext for annulling what he had only signed against court during his captivity in Madrid. The parliaments and the states of the other provinces did not interfere in it. Finally, if England demanded in 1713 that the Peace of Utrecht is registered in the parlement, because it believed it would thus be better to secure the advantages it had obtained there, this example further proves that without this formal convention, the formality of a registration was not customary. But none of the numerous treaties, both earlier and later, has been examined, discussed, approved or rejected, either by parlements, or by the states-general or provincial.

They did not deal with the peace of Arras in 1435, which ceded Burgundy; nor that of Senlis in 1493, which left to the Archduke Philippe, Burgundy, Artois and Charolais; nor that of Cambray in 1529, who renounced Artois and Flanders, to recover Burgundy; nor that of Cateau-Cambresis in 1559; nor of the different peace treaties with the Huguenots of France, which however also derogated from previous laws and touched very closely on the general interests of the nation; they neither discussed nor sanctioned the peace of Vervins in 1595, which ceded the Charolais to Spain; nor the Peace of Munster in 1648; nor that of the Pyrenees in 1657; nor that of Aix-la-Chapelle in 1668; nor that of Nijmegen in 1678; nor that of Ryswik in 1697; nor that of Rastadt and Baden in 1714; nor the second peace of Aix-la-Chapelle in 1748; nor the family pact with Spain in 1761; nor the peace of Paris in 1763, however expensive it was for France; nor the many alliances and capitulations with the Swiss, again renewed in 1777; nor the peace of Versailles in 1783; neither the commercial treaty concluded with England in 1786, nor so many other conventions of all kinds. If, finally, some treaties concluded and ratified have been communicated to parlements, it was to give them official knowledge of them, to register them and to have them observed like other laws, in cases which might arise, but not for their own sake, recognize the right to discuss the conditions, to approve or reject them and to suspend their execution until after this assent. It is therefore indisputable that, throughout the old regime, the kings of France used alone and without restriction the right to make treaties of peace, alliance and commerce, whether they were contrary or not to previous laws.

The charter of 1814 did not therefore establish a representative government, for this word is nowhere to be found; it is a vicious expression, introduced only by the habits of the revolution, and which should be banned from official language, since it means, in the sense of the revolutionary system, that the people, claimed to be sovereign, govern themselves by its representatives; subversive principle and diametrically opposed both to the facts, to the spirit of the charter and to the intention of its author. **At all times and in all countries there has been around thrones, chambers, estates or other more or less influential assemblies, voting on subsidies or deliberating on the prince's proposals, without having heard of representative government because of this.** In France itself and according to the charter, the chambers, far from being the government, are only assemblies instituted by the king and invested by him alone with the right to enlighten him with their advice or to deliberate on his proposals; they are composed of peers freely appointed by the king, or of deputies appointed by colleges of departments, and who themselves are still instituted by the king; consequently they are not the representatives of the nation, and the king himself is not, since this title would also suppose that he is its functionary or agent; but on the contrary, he is the common father, the prince, the natural lord; within the limits of his right he governs by virtue of his personal authority, and not as the representative of another.

Neither is the charter a contract or a social pact, although ministers themselves have called it so from the top of the rostrum; for nobody asked for it, nobody negotiated or stipulated the conditions; no one has had, for this purpose, full power either of the nation or of any body of the state; there are not two contracting parties in the charter; no other signature is found there

than that of the king and his minister; finally it was not discussed and freely accepted, but received and recorded, and if we owe it obedience and submission, it is only out of respect for the authority of the king.

Even in the event that by a hard-born capitulation a king cedes a province, he basically only renounces the rights, goods and revenues he possessed there, and not the rights of individuals who, as a rule, and at least according to the old principles of public law, did not experience any alteration in their private rights; only he declares to the inhabitants of the country that he is henceforth unable to protect them; he releases them from the engagements which they had towards him, and leaves them free, either to contract with the new master, or to leave his territory and thus to provide for their own safety.