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The Republican Alternative

The Netherlands and Switzerland compared

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5 Inventing the Sovereign Republic: Imperial Structures, French Challenges, Dutch Models and the Early Modern Swiss Confederation¹

Thomas Maissen

Sallustius' '*concordia res parvae crescunt*' inspired the device of the Dutch Republic, but the motto was also well-known in Early Modern Switzerland.² Around 1500, it appeared on a fresco in Geneva's town hall, and Zwingli quoted the phrase in his first Zurich disputation.³ Concord was always a major concern for the Confederate cantons. The lack of unity belonged to the structure of their league without a common sovereign. When Jean Bodin analysed Switzerland, he consequently spoke not of one state, but of thirteen sovereign petty states.⁴ There was of course the Diet; but compelled to decide unanimously and lacking the decisive leadership of a province like Holland, let alone an institution like the stadholderate, it was much weaker than the Dutch States General.

The absence of a centralised power was not yet a problem when the Confederation was gradually established during the late Middle Ages. At this time, it was just one among several other city leagues, like the Hanse or the Swabian League, where free or imperial cities helped each other to defend against foreign aggression and maintain domestic law and order. The distinguishing characteristics of the Swiss Confederation were that rural communities were equal members in the league and, unlike other leagues, it would survive and ultimately emerge as an independent territorial state. However, when the Confederation first emerged, nobody had this in mind. This chapter will show how the Swiss understanding of the Confederation and its cantons gradually evolved, how a league of free estates within the Empire would become one – if not several – sovereign nation(s) in the international community. To adopt this distinct concept of sovereignty, the Swiss had to follow and borrow from foreign models, especially from France and the Dutch Republic.

When the German vernacular notion of *Republic* (*Republik*, *Re-publick*, *Respublik* et al.) first appeared with the meaning of a 'free state', this was a sign of the evolution of the constitutional language which is studied in this chapter. In the sixteenth century, the Swiss did not refer to the Confederation or to any one single canton as a 'republic', and the traditional Latin word *respublica* was generally understood in a broader sense of a 'state' or 'commonwealth', as in Jean Bodin's *Six livres de la république* (1576). In Switzerland back then, there was no notion of what today's scholarship has baptised as 'republicanism'.⁵ Machiavelli's comparison of the '*Svizzeri armatissimi e liberissimi*' with Sparta and Rome was often quoted in the twentieth century and his praise interpreted as a republican qualification.⁶ But it is telling that, until Rousseau, the Swiss reception of the Florentine chancellor's work was generally negative.⁷ He was repudiated with theological arguments as the teacher of atheism and immorality. Neither was there enduring constancy in the moral criticism that Swiss humanists and early reformers like Zwingli and Bullinger had expressed against princes and the nobility. What was important during this sixteenth and seventeenth-century period of confessional conflict was not whether somebody was a monarch, an aristocrat, or a democrat, but that he adhered to the right creed. Even before the Reformation, however, the Swiss never had considered themselves to be outsiders in an otherwise feudal, hierarchic world. The cantons had defended their own autonomy against the Habsburgs, but they had always made it very clear that they were fighting against an intermediate power, not against the Empire. For the Swiss, the Swabian War of 1499 did not create a sense of 'de facto independence' from the Empire, until national historiography made it precisely that in the late nineteenth century.⁸

Legitimacy within the Empire

These points of reference are clearly visible in the writings of the most influential early modern authority on the Swiss constitution, Josias Simler (1530-1576), whose *De republica Helvetiorum* was first printed in 1576, the same year his own German translation *Regiment gemeiner loblicher Eydtgnoschafft* appeared. To Simler, Swiss liberty did not mean liberation from the Empire, but liberty through and within the Empire.⁹ Liberty was a privilege granted by the universal

source of all secular power, the Empire, the only source of legitimate rule and thus the foundation of the cantons' rule in their respective territories. The only theoretical framework that Simler used was the mixed constitution, with a surprising, apologetic emphasis on the role of the nobility in Swiss history. It was within this ideal concept of Empire that Simler best found the Swiss mixture of powers and privileges that generally belonged to the cantons, but to some extent also to the Confederation. Ultimately, they all emanated from the Emperor's jurisdiction, the *merum et mixtum imperium*. By using essentially jurisdictional powers – with high justice chiefly understood as capital punishment – to maintain law and order, the Swiss cantons claimed they proved their loyalty to the Empire.¹⁰

Simler's Latin text was often reprinted in Paris, Leiden and, for the last time in 1734, in Zurich; the German *Regiment* was also reprinted several times, and an expanded edition appeared as late as 1792 in Zurich. A French translation was often reprinted after 1577 and a Dutch translation appeared in 1613, so that Simler's essentially historical narrative remained the standard explanation of the Swiss constitution and more or less the only one accessible for an international audience throughout the Ancien Régime. The Swiss actually did not have a strong interest in political theory at the time, which was quite different from the Dutch, who published many political treatises including works of such illustrious philosophers as Grotius and Spinoza.¹¹

Why was there no similar impulse in the Confederation? Several structural reasons can help explain why. Reflections on (natural) law and legal practice were important aspects of modern political theory. Traditionally, however, the law, lawyers and jurisprudence never really played an important role in Swiss politics. Custom dominated, while written law – such as Roman Law used in the Empire – was at best a subsidiary aspect. In the Zwinglian tradition Swiss higher education was interested in producing ministers, and the Catholic institutions followed the Protestant example. Thus the schooling of the political elite had more of a theological than a legal slant. Their teachers were Reformed ministers or Jesuits who taught at theological colleges, and not professors of law. At the only Swiss university, in Basel, one could study public law, but throughout the seventeenth century, the curriculum offered only courses in imperial law and dissertations were accordingly very theoretical and far from the Swiss reality.¹² There was no academic discourse on politics in Switzerland

until after 1700, the first chairs in natural law were founded in Zurich, Berne, and Basel. Even then, the Confederation itself, as a league of independent states, did not instigate or necessitate theoretical analysis. Political reflection and criticism were confined to the city-states, where government was experienced. This was still the case in the eighteenth century, for example, in Rousseau's Geneva. Moreover, the Swiss were, for the most part, spared major domestic crises and civil wars that elsewhere had motivated authors like Bodin, Grotius, Hobbes, or Locke to write. Neither was there an external monarchical threat, as Spain and France were to the Dutch republic, nor was there a dichotomy between republican states and a paramonarchical stadholder. What was really at stake – the political legitimacy for the Swiss league of burghers and peasants – could not be provided by modern political theory. It was historiography, as in the case of Josias Simler, that could justify the revolt of the first cantons against Habsburg by telling a story of tyrannical reeves and, according to the rules of the Empire, a legitimate form of resistance against them.

According to nineteenth-century historiography, all this should have changed in 1648, when Switzerland acquired its 'de iure independence'.¹³ Meanwhile, the Westphalian treaties considered the Dutch provinces as 'liberi et supremi ordines, provincias ac terras', as their former ruler, the king of Spain, accorded sovereignty to them, although the institutions of the German Empire did not immediately recognise the independence of the Netherlands as a *Reichskreis*.¹⁴ The Swiss were an even more ambiguous case because, unlike the Dutch, the Confederation did not sign any of the Westphalian treaties as party to an international law contract, and the Emperor merely conceded the Swiss a so-called 'exemption' as part of his agreements with other sovereign powers (France and Sweden).¹⁵ From the imperial perspective, this was just an extension of privileges to the three newer cantons – Basel, Schaffhausen, and Appenzell – privileges which the first ten cantons had already enjoyed since 1499. According to Theodor Reinking, a renowned German scholar of public law, this exemption for the Swiss (like those for the Netherlands, Burgundy, or Savoy) meant that they were exempted from taxation, '*Imperii tamen Majestate non sprete*' – although they continued to recognise the majesty of the Empire.¹⁶ '*Majestas*' is the Latin word for sovereignty; for Reinking and other apologists of strong imperial power it was obvious that the sovereignty resided solely with the Emperor. Compared

to other members of the Empire, the privileges afforded the Swiss a special status; this did not necessarily mean that they were legally equal to the Emperor, as sovereign nations would be.

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.¹⁷ 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.¹⁸ 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 any time. 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*'.¹⁹ 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 1698.²⁰

Nidwalden's and Obwalden's town halls were embellished with two-headed eagles until as late as 1714 and 1733 [figure 1], 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'.²¹ Obviously, the reeve had not been ap-

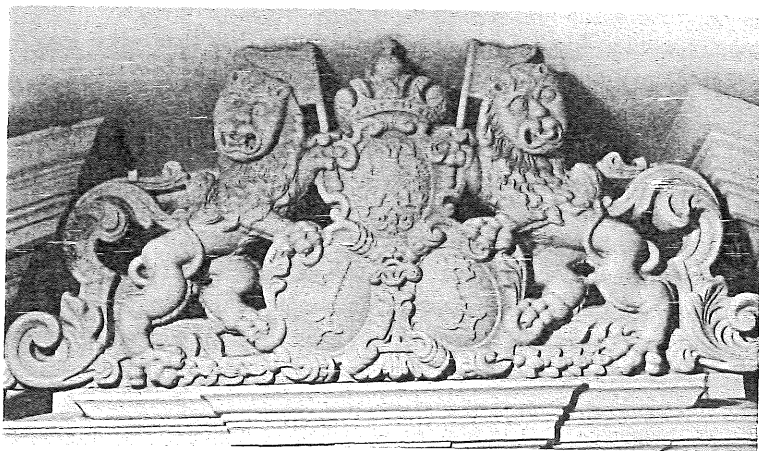


Figure 1: Supraporta of the town hall of Obwalden in Sarnen around 1730. Staatsarchiv Obwalden, Sarnen, Switzerland.

pointed by the Emperor, but had already been an elected community representative for centuries. 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 kejslerl. Rechtsens*) until 1730.²² This formula did not refer to positive law of the Empire, such as Charles V’s *Constitutio Criminalis Carolina*, but to the Emperor as source of jurisdictional power. However, these references could mean more than just a framework of legitimacy, especially in the Catholic rural cantons. Unlike the hostile Protestant cantons, most of these petty states were so small and weak that their independence depended on the moral and political powers of the Emperor and the Pope. The conservative, static, ‘medieval’ notion of political order therefore seemed to suit them best.

Sovereignty as an alternative concept in the cantons

What type of legitimacy could successfully replace these traditional justifications of political power? The alternative was obviously of-

fered by the concept of sovereignty, as defined in 1576 by Jean Bodin in the aforementioned *Six livres de la république*: ‘la puissance absolue & perpétuelle d’une République’.²³ Sovereignty as the absolute and perpetual power in any given state consists of the monopoly of the legitimate use of physical force and the ultimate decision in choosing officials to perform political tasks. The sovereign is immediate to God the Almighty and he does not recognise any secular power above himself. Absolute sovereign power does not depend on someone’s privileges, concessions or delegation, but only on God’s will and the ruler’s capacity to maintain his authority by force. The core element of Bodin’s sovereignty was no longer jurisdiction, as in the traditional, medieval understanding of government, but legislation. From this it follows that the sovereign could introduce new laws and abolish old norms as he pleased, without any consent from other (internal) powers, such as the Estates.²⁴

Bodin’s concept combines two theoretical goals: on the one hand, the sovereign is unrestrained, absolute in foreign affairs based on international law and involving other sovereigns as his peers, on the other in the nation’s internal affairs involving constitutional and public law where he does no longer recognise any peers. These implications help explain the growing interest in the concept of sovereignty during the seventeenth century, at least for those Swiss cantons powerful enough to a) defend their territories with the sword against foreign threats, and b) to vanquish internal rivals through the competence of the state to abolish existing laws and create new ones, something they were not able to do within the imperial framework. It was in this situation that the term ‘republic’ emerged also in the political language of the Swiss (and later in the other German speaking territories, as well). The use of neologisms or rather germanised words like ‘republic(k)’, combined with terms adopted from Italian or French such as ‘*souverän*’, ‘*absolut*’, ‘*neutral(ität)*’, and ‘*Staat*’ (the state itself) indicates that the traditional language of imperial law had been abandoned in favour of the modern Western European language of constitutional and international law. The new ‘language’ enabled the Swiss to better adapt to the changing world of European politics, to render their own ruling and administration more dynamic and less reverent of ancient privileges.

It was for a variety of concrete reasons, usually including political conflicts, that the Swiss cantons and their allies (*Zugewandte*) eventually emerged as republics. This means that they began considering

themselves sovereign aristocracies or democracies outside the Empire, with a constitution fundamentally different from that of monarchies precisely because the monopoly of the legitimate use of physical force was not in the hand of a single ruler. It belonged to a group or corporation, as the following examples will show.²⁵ When the French king Henry IV granted diplomatic assistance to the '*Ville et République de Genève*' in 1602, he made a sovereign republic out of a city and thus reinforced its position in the ongoing conflict with the house of Savoy, which pretended to the sovereignty of the city. In 1610, another Swiss ally, the city of Neuchâtel, expressed a similar desire for autonomy and tried to replace the traditional oath to the common weal (*bien commun*) by an oath to the 'republic'. However, the territorial lord of Neuchâtel, Henri II of Orléans-Longueville, immediately prohibited what he called the usurpation of '*ledict mot de republicque*', because Neuchâtel, unlike Berne, was not sovereign. A little later, the communes of Valais, a Swiss ally as well, declared themselves a free democratic government that owed its liberty to God and to its own blood and arms. The territorial lord in this case was the bishop of Sion, who had to resign his secular powers to the communes in 1628, or, more precisely, to the dominant patrician families, who considered themselves a '*souverainischer status*' beyond the reach of the Empire and minted their own coins with the inscription '*Mon[eta] Reip[ublica]e Vallesiae*'.

In the late seventeenth century, in the canton of Zug and in the Grisons (an allied federation like the Valais), the rural communes managed to limit the importance of their respective capital city, Zug (the city) as well as Chur, arguing that within a small sovereign democratic republic the equality of the members was opposed to privileges of one particular community. In both cases, the popular assembly (*Landsgemeinde*) claimed to be the prince and supreme governing authority ('*Fürst und höchste Gewalt*'). This phenomenon can be labelled 'democratic absolutism', as the popular assembly abolished prerogatives of the capital and created new political regulations. The fear of absolutism was exactly why the village of Wilchingen, in the canton Schaffhausen, revolted during the period 1718 to 1730, denying the city of Schaffhausen the title of absolute ruler (*dominus absolutus*). Wilchingen then declared itself to be a fiefdom under the Emperor, implying that the village could appeal to him – the imperial structure was supposed to preserve local, communal privileges of autonomy against the domineering city. In Basel, the citizens wanted to

abolish the Secret Council, the town's most important governmental institution, in 1691 because it 'tasted' of sovereignty. However, Basel's citizens failed, and, as a consequence, both the craft guilds and the citizenry were ostracised from the 'Republic'. In a similar controversy, Berne's Great Council in 1682 protested against the Small Council's tendency towards 'absolute rule', because it tried to exclude the Great Council (let alone the ordinary citizens) from participating in government. An edict eventually resolved the conflict and posited sovereign authority with the mayor, the Small, and Great Councils as governing bodies and claimed the same power for them as for the 'sovereign prince and supreme lord' of any 'well-policed' state.²⁶

Other examples could be included, but the trend seems obvious. The traditional imperial structure corresponded to a pyramid as it was symbolically expressed in the superstructure of Swiss armorial bearings [figure 1], where the top, the Emperor, conceded a decreasing number of privileges and rights of autonomy to rulers and corporations (such as the cantons) at various lower levels of government. While members of the (universal) Empire held positions in a hierarchy of relative dependencies, the political relationships within the sovereign state (be it monarchy or republic) remained absolute because everybody was either part of the sovereign authority or a subject. Subjects did not belong to the 'republic' in the pre-modern sense of *repraesentatio identitatis*, just like a king's subjects were not members of the royalty.²⁷ The homogenous submission of subjects overruled any political (but not social) characteristics that might have distinguished them in a corporatist society.

Although the transition from an imperial concept of government to the modern idea of sovereignty gradually evolved throughout most of the seventeenth and eighteenth centuries in Switzerland, this evolution was most conspicuous in the last thirty years of the seventeenth century. Internal conflicts during this period stimulated the publication of more or less sophisticated pamphlets, but also led to the first constitutional analyses of the Swiss forms of government. This included Johann Rudolph Gatschet's *Dissertatio politica de inclyta republica Bernensi* (1676), which listed the functions of the magistrate's office in the same way as Bodin had done in chapter 10 of book 1 in his *République*, and in agreement with the aforementioned edicts of 1682. Gatschet also stated that the Bernese magistrate could only claim '*summa & absoluta potestas, nullam agnoscens praeter*

Deum superiorem' as a total entity (i.e. including the Great Council).²⁸ Simultaneously, female allegories who personified the state began serving as representations of this concept of a sovereign republic. Again in 1682, when the government of Berne redefined the members of the republic, the Great Council's hall (*Bürgerstube*) was redecorated, and Joseph Werner's allegory of a dominant *Berna* replaced Humbert Mareschet's depiction of thirteen confederates swearing an oath of (feudal) allegiance. *Basilea*, *Lucerna*, *Tigurina*, and *Geneva* also made their first appearance in the following years to represent external sovereignty against foreign states and internal sovereignty against the canton's subjects.²⁹

The sovereignty of the Confederation

In the 1670s, *Helvetia* emerged as well: the personification of the entire Confederation, on paintings and frontispieces, in poetry and drama.³⁰ Because the Diet had almost no domestic powers, these representations referred to the Confederation not as a state superior to the cantons, but as a subject of the law of nations, a sovereign member of the international community of states. Again, it was not the Swiss themselves who had looked for international recognition of their archaic league as a sovereign state. When Basel's mayor, Johann Rudolf Wettstein, left for the Westphalian negotiations in late 1646, he barely knew what sovereignty was. He essentially wanted to abolish the case that litigants appealed to the imperial chamber after a judge at the local court of Basel had given his verdict. Therefore Wettstein planned to refer to the status of the ten older cantons which had already acquired privilege of exemption from the imperial chamber in 1499. But the French ambassador in Switzerland implored him to do like the Dutch and to cite the liberty acquired by the force of their own arms, rather than the privileges conceded by the Empire. This was an argument of a sovereign within international law and implied that the Swiss did not belong to the Empire. In Münster, the eminent legal scholar Théodore Godefroy, a member of the French delegation, similarly advised Wettstein to refer only to the effective possession of rights and not to their historical origin – precisely what the French were practising in the provinces conquered from the Empire. When the French used the language of sovereignty in Westphalia, they came with a hidden agenda because if members of

the Empire adopted sovereignty for themselves, they were inevitably emancipated from the grip of imperial power, where the Emperor was the unique sovereign. The ultimate effect of this discourse on sovereignty was that the Empire would fall apart, but this only happened during the Napoleonic era. The Emperor's negotiators anticipated the strategies meant to weaken the Empire and cautiously avoided the use of the word 'sovereign' during the negotiations, as well as in the drafting of the treaty.

Wettstein, however, insisted that the Confederation was a free and independent state that did not accept judges it had not itself appointed.³¹ In his so called *Recharge*, Wettstein no longer requested a mere confirmation or extension of privileges, but demanded that the Empire leave the Confederation undisturbed to pursue its free, sovereign status.³² By employing the word 'sovereign' as one of the first in the German-speaking areas, Wettstein created a case of international law out of an issue that until then had belonged to imperial public law. The Emperor, who did not want to drive the Swiss into the French camp, found a solution in an 'exemption' – a title that originated in traditional imperial law and that even Wettstein himself did not clearly distinguish from sovereignty. Most of his compatriots, who were completely ignorant of these subtle distinctions, saw no real reason to oppose the Emperor's solution; they considered the Westphalian treaty a confirmation of existing privileges which were merely extended to the three most recent members of the Confederation.

It took the Swiss several decades and some serious learning to fully comprehend Bodin's message not only at the cantonal level, as Gatschet had, but also for the Confederation as a whole. In 1689, Fritz Michael Büeler from the Catholic canton of Schwyz, a chancellor and secretary of the Swiss Diet, published his *Tractatus von der Freyheit, Souverainitet und Independenz der Loblichen Dreyzehnen Orthen der Eydgnossschafft*. Büeler quoted Wettstein's *Recharge* to demonstrate that the Westphalian treaties merely confirmed that, for 150 years, the Swiss had not paid homage to the Emperor and were abiding their own laws. Unlike the aforementioned Johann Caspar Steiner, Büeler repudiated the two-headed eagles on Swiss armorial bearings as an old, obsolete custom. But the assertion that both the individual cantons and the Confederation as a whole were free, sovereign and independent ignored Bodin's tricky question (and answer) where sovereignty resided in Switzerland. Büeler's position was again

contrary to Bodin, because he did not consider legislation the main quality of sovereignty – which was no surprise, since the Diet had no real legislative powers. Instead, Büeler stressed the right to wage war and the related right to form alliances as criteria for sovereignty; they belong to the realm of foreign politics, the only sphere where the Confederation as a whole could be perceived as a – sovereign – entity.³³

In his *Compendium des gemeinen eidgenössischen Rechts* from 1696, Büeler altered his focus and began placing sovereignty within the cantons themselves. This sovereignty, like the supreme power of a prince, was absolute, in the sense that the sovereign was allowed to ignore existing laws and privileges in the name of the common good, according to the Roman maxim ‘*Salus populi suprema lex esto*’. This interpretation of absolutism may not have been the most sophisticated in the eyes of a French legal scholar, but it was quite surprising to hear it coming from the chancellor of a rural canton like Schwyz with a democratically elected popular assembly.³⁴ If Büeler can be considered the founder of modern Swiss constitutional law, Isaak Iselin, in his *Tentamen iuris publici Helvetici* (1751), was the first to systematically discuss the problems of Swiss sovereignty. It was not based on common positive laws, Iselin pointed out, but on diplomatic exchanges and foreign recognition within the framework of international law. It actually was external, not internal sovereignty.

After all, it was not so much the theory of international law that taught the Swiss what a sovereign state was, but the diplomatic practise and ceremonies, especially when dealing with the *ius foederis*, the sovereign right to form alliances. Wettstein had already complained that the Diet had not provided for a suitable entrance for him into Münster, which had cost him considerable status compared to the Dutch, who spent more than four times as much money on their attendance.³⁵ The lessons learned from foreign powers went on after 1648: France and Venice taught the Swiss that it was a sign of subjugation when the Emperor continued to address them as ‘faithful’ (*‘Unsere und des Reichs Liebe und Getreue’*).³⁶ The Emperor only ceased addressing them in this way after another of Wettstein’s missions, this time to Vienna in 1651. But the essential problem soon changed from that of the imperial tradition to the condescension of the French king Louis XIV vis-à-vis other sovereigns and especially the republics. Official Swiss delegates already experienced how French ministers treated them with disdain and disputed their title as ambassadors in as early as 1650.³⁷ For France and other monarchies,

it was obvious that only one single ambassador corresponded to the one sovereign king, while the Swiss were used to send at least one envoy per canton. Such a large number of representatives did not symbolise power to the monarchists, but rather the vices typical for republics: individual lust for honours and the discord and the distrust that split the cantons.

In 1663, the Paris ceremony to celebrate the signature of the renewed alliance turned out to be an especially memorable humiliation.³⁸ The Swiss envoys, led by the mayors of Zurich and Berne, were seated on low benches, while the king mounted his throne. The Swiss had to take their hats off when the king entered while he kept his on – which was the privilege of sovereigns. Subsequent etchings, journals, and a tapestry Charles le Brun later designed to commemorate the event, all showed the Swiss as humble subordinates; in one depiction even the oath was interpreted as a vassal’s vow of fidelity. The ambassadors from Venice and the Netherlands, who used to keep their hats on, were desperate because the humiliation applied to all republics. Rather than to listen to their advice, the Swiss had allowed themselves to be manipulated by the French officials in return for some nice gifts for each member of their delegation. The poor reputation of the Swiss at ceremonies would last for several more decades. Gregorio Leti, in 1685, spoke of an ‘*ambasciata vergognosa*’, and in 1715, according to Gottfried Stieve, a student of ceremonies, everybody knew that the Swiss were always treated poorly at royal European ceremonies.³⁹

The Dutch model

Where could and where did the Swiss go to learn more about how a republic and republicans should behave? The obvious models, especially as far as the relationship with France was concerned, were the other European republics: Genoa, which Louis XIV bombarded into neutrality in 1684; the formerly mythical Venice that French authors like Amelot de la Houssaye regularly denigrated as a corrupt and arbitrary aristocracy of merchants who tyrannised their subjects;⁴⁰ and the States General that the Sun King in 1672 assaulted after criticising their alleged lack of respect. The Dutch had developed their good contacts with the reformed cantons from a theological basis to a political common ground, which highlighted the republican constitution and the antagonism toward absolute monarchy, especially the

French one.⁴¹ Of course, this position was not a question of pure idealism, or even ideology – the renowned Swiss mercenaries were at stake, who were traditionally almost always exclusively in the service of the French. The Dutch ambassador had already sounded out the possibility of a republican alliance with Venice and the Confederation during the aforementioned Swiss state visit in Paris in 1663. After Louis XIV had precipitated the Dutch War (1672–1678), an anonymous pamphlet, *L'affermissement des republicques de Hollande & de Suisse*, in 1675 advocated an alliance between republics, and especially between the Dutch and the Swiss. A common past of defending themselves against the Habsburgs could unite them; the patrons of the alliance would be Saint Nicholas of Flüe, William of Orange, 'le premier Libérateur de la Hollande', and William Tell, 'le fondateur de la liberté des Suisses'. The anonymous author, besides the historical communities, also pointed out that the two countries were even religiously similar – even though religion, according to him, no longer played a role in the building of alliances. The *Affermissement* proposed a secular pact against the threat of royal absolutism: 'Toute sorte de Couronnes absolües & Ministres souverains doivent estre suspectes aux Republicains' – republicans should not trust any kind of absolutist crowns and sovereign ministers.⁴²

The same message was repeated even more intensely during the War of the Grand Alliance (1688–1697), and this time, the Dutch spokesman was no longer some anonymous author, but the extraordinary envoy to Switzerland Petrus Valkenier, author of *Het Verwerd Europa* (1675, translated into German in 1677), a historiographic pamphlet attacking the Sun King because he had 'confused' Europe. Valkenier believed that historical and geographical similarities on the outskirts of the Empire could unite the two countries in their defence of liberty, because their shared republican form of government was despised by all potentates everywhere.⁴³ This was also the motto of Valkenier's addresses to the Swiss Diet where he fought rhetorical battles against the French ambassador Amelot in the early 1690s. Valkenier blamed Louis XIV for dealing with sovereign republics as if they were his subjects. He deliberately used the language of modern constitutional law in addressing the Confederation as an 'Absolute, Independente, Souveraine und zugleich auch Neutrale Republic'.⁴⁴ These – at least to Swiss ears – rather exceptional words expressed the fact that the Confederation, as a sovereign state, was not unilaterally bound by its earlier alliances to France, but could also choose a

policy of neutrality if it so desired. That would mean hiring out mercenaries not only to the Sun King, but also to the United Provinces. Valkenier added several elements to the established list of geographic and historical similarities which included a similar constitution, a similar defence policy, no expansionism, a desire for justice, beneficial commerce and the development of factories. The harmony and sympathy the two republics shared should naturally lead to a security pact which was not only directed against France, but as a matter of principle against all monarchies, which resented the republics in general and would overthrow them as soon as they could if the free states did not protect themselves with prudent treaties.⁴⁵ On 15 May 1693, Valkenier's arguments won: Zurich signed a treaty and sent a battalion of mercenaries to the Dutch – thereby breaking the French monopoly on Swiss mercenaries.

It was only in these years that the fundamental difference between monarchies and republics became the main theme of Swiss statesmen. In 1706, Zurich's Johann Ludwig Hirzel feared that the Austrian envoys preferred submission to liberty if they were to follow their 'monarchic principles'.⁴⁶ That same year, Zurich's mayor Heinrich Escher, for a long time a pragmatic ally of France, told the Venetian ambassador that alliances between republics were always good and even more so when monarchies despised them.⁴⁷ Meanwhile, the ambassador Peter von Salis from the Grisons was convinced that the only real brotherhood between states was the one established between republics.⁴⁸

It is difficult to say how directly this 'Dutch moment' influenced artistic representation, but the impact is at least indirectly obvious. Since the late sixteenth century, the Dutch had turned the roman liberty cap, the 'pileus', into a hat with a wide brim, which the Swiss adopted later as well, for example in 1722, when it appeared on the cover of an edition of Simler's *Regiment* [figure 2]. The hat covering the Swiss cantons' coats of arms became a symbol of republican sovereignty, effectively replacing the imperial eagle (or the crown in monarchical iconography). Jahve's sun shining on the liberty hat symbolised the immediate relationship between the sovereign and God. This was a motif well-known to the Dutch; it was found on the frontispiece of Lieuwe van Aitzema's *Herstelde Leeuw* (1652), for example, where the *Leo belgicus* holds the hat aloft with a lance, surrounded by personifications of the seven provinces.⁴⁹

To represent the Netherlands as a whole, artists like Crispijn van

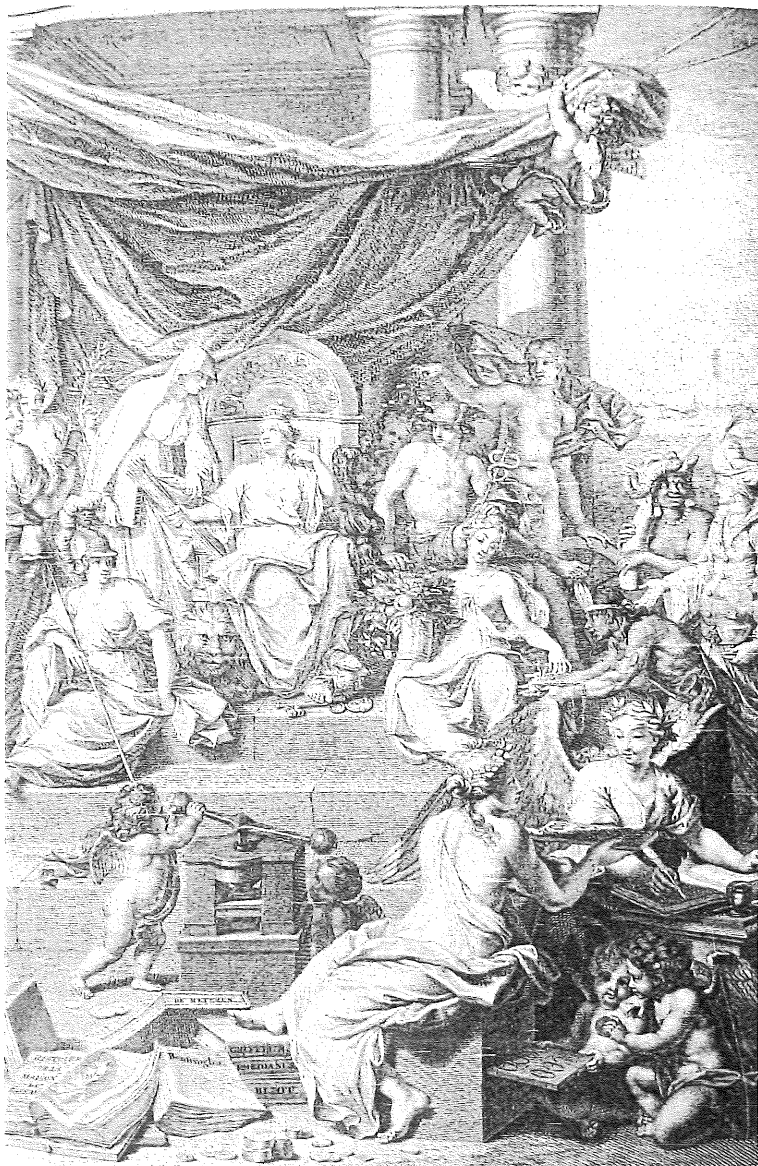


Figure 3: Frontispiece of Jean le Clerc, *Histoire des Provinces unies des Pays-Bas* (Amsterdam 1723). Zentralbibliothek Zürich



Figure 4: Frontispiece of Aegidius Tschudi, *Chronicon Helveticum*, ed. by Johann Rudolf Iselin, Basel 1734. Zentralbibliothek Zürich, Switzerland.

De imperio summarum potestatum circa sacra obviously also served as a source for Johann Ludwig Hirzel's *Theses politicae de magistratus iure circa sacra* (1695), which was intensely discussed, but in the end not published because of its Erastian positions. Neither did the orthodox church council in Zurich like the abridged version of *De iure belli et pacis*, that professor Johann Heinrich Schweizer, a friend of Valkenier's, published in 1689; its 'disgusting' doctrine was criticised as Dutch inventions ('*holländische Novationen*').⁵³

Most of the authors mentioned above belonged to a circle of young elites from Zurich who continued their intellectual training in learned societies after they had finished the orthodox Divinity School.⁵⁴ This enlightened form of self-education enabled them to discuss the most recent and controversial books they had to understand if they were to seek a career in politics and administration, careers that had rapidly evolved since 1648 and had become more professional, more legal, and more international. One of these self-educated students was the later mayor of Zurich, Johann Caspar Escher (1678-1762), who studied in Utrecht with professor Gerard de Vries, whom he called a 'fervent republican'. Escher and De Vries discussed the constitutions of their respective countries, and in 1697, Escher

handed in his thesis *De libertate populi*, openly written from a republican standpoint.⁵⁵ Escher condemned absolutism and defended the liberty of the people that originated in the state of nature and led to democracy, at least during the early stages of societal development. Escher thus combined recent theories regarding the social contract, probably following the Dutchman (of Swiss origin) Ulric Huber, and the older Calvinist right to resist, which was one of De Vries's favourite themes and was much debated after the Glorious Revolution.

Escher's friend and fellow member of the Zurich learned society called *Wohlgesinde* (Well-minded) was the famous natural scientist and palaeontologist Johann Jacob Scheuchzer (1672-1733), who, in 1694, received his doctorate (in medicine) in Utrecht. Scheuchzer was the most prolific member of Zurich's learned societies and his interests were not limited to science. In 1713, the physician became the leader of a revolt by the craft guilds, which were making claims to be included in the sovereign authority. This conflict involved the question of who was an integral part of the republic, similar to the debates already mentioned in Berne (1682) and Basel (1691). Scheuchzer justified the revolt of the guilds against Zurich's town council – which included most of his former colleagues from the learned societies – by invoking the principles of natural law such as natural equality by birth, or the right of resistance if tyrants violated one's fundamental rights. The original '*Jus ferendi leges et mutandi regiminis formam*', according to Scheuchzer, therefore belonged to the whole community, i.e., all of its citizens.⁵⁶ With an explicit reference to Grotius, the guild delegates distinguished between two kinds of sovereigns: the absolute ruler who pronounced himself to be immediate to God and therefore above the positive law and another kind of ruler who, although close to God, acknowledged himself being subject to the law. The latter type governed in Venice and Zurich where the sovereign was '*singulis major*', but '*universis minor*'.⁵⁷ Scheuchzer and the craft guilds successfully applied these arguments and reached the official declaration that the citizens were included among the true possessors of sovereignty. Little changed in reality, however, because most practical and urgent decisions were left to the councils. When Scheuchzer later, in his *Allgemeine Observationes über die Staats Reforme*, analysed what had happened in 1713, he reflected upon the original contract of Zurich's society and compared the present situation in his hometown to the freedom of the farmers in the Catholic,

democratic cantons, where sovereignty still resided in the people so that every poor farmer was interested in and knowledgeable about politics. Scheuchzer concluded that a rebellion like the one in Zurich was necessary every now and then to awaken the people who had remained ignorant over centuries and now, refusing blind obedience, had discovered their own liberties. Thus the common people not only mended their ways, but also learned to control the ruler's designs and vices; the ruler was going to improve, by way of virtue, or fear.⁵⁸

Conclusion

Re-inventing the Swiss Confederation within the framework of modern constitutional and international law as taught by Bodin, Grotius and others changed a league of imperial estates into sovereign states united in a sovereign federation. This multi-dimensional modification was mostly conceptual: the constitutions of both the cantons and the Confederation barely evolved during the Early Modern period. But the formal stability and the new political language of western law included the rise of a new, professionalised elite in the late seventeenth century, with at least some legal training and knowledge of the world and the languages abroad, where they sought out their republican models. In the increasingly secularised Swiss state, they gradually replaced the former aldermen who were characterised by theological education, confessional loyalties and a lasting affinity to the idea of Empire. The concept of sovereignty for its part contributed to the definition of hitherto unusual, clear frontiers between the rulers and the ruled. This distinction was usually accompanied by the establishment of a limited number of ruling families in the cities, an informal aristocracy. But cantons or allies like Zug, Valais, and the Grisons have shown that a kind of democratic absolutism existed as well, where rural communes (with their own local elites) ended up withdrawing jurisdiction from the formerly privileged towns or bishops. On another level, the arguments Escher and Scheuchzer employed prove that the language of natural law – equal rights for men born equally in a state of nature – inevitably implied the idea of political emancipation for all citizens, or even all of the inhabitants in a state, including its subjects. The lessons that the Swiss learnt abroad in the seventeenth century would thus make the Confederation a laboratory of revolutionary change in the eighteenth century that would

eventually inspire Rousseau when he momentarily combined unification and the rule of law, popular sovereignty, and republican legitimacy.

Notes

- 1 This article relies on material I developed in *Die Geburt der Republic: Staatsverständnis und Repräsentation in der frühneuzeitlichen Eidgenossenschaft* (Göttingen 2006).
- 2 Sallustius, *Bellum Jugurthinum*, 10, 6; see also Martin van Gelderen, *The Political Thought of the Dutch Revolt 1555–1590* Ideas in Context vol. 23 (Cambridge 1992) 193–95.
- 3 Waldemar Deonna, ‘Les Fresques de la Maison de Ville in Genève’, *Zeitschrift für Schweizerische Archäologie und Kunstgeschichte* 13 (1952), 145; Ulrich Zwingli, *Handlung der Versammlung in der Stadt Zürich auf den 29. Jan. 1523*, in: id., *Sämtliche Werke* vol. 1 *Corpus Reformatorum* vol. 88 (Berlin 1905), 510.
- 4 Jean Bodin, *Les six livres de la République* *Corpus des oeuvres de philosophie en langue française* vol. 1–6 (Paris 1986) vol. 1, 163–67 (1, 7).
- 5 See Martin van Gelderen, Quentin Skinner (eds), *Republicanism: A Shared European Heritage*, vol. 1: *Republicanism and Constitutionalism in Early Modern Europe*; vol. 2: *The Values of Republicanism in Early Modern Europe* (Cambridge 2002).
- 6 Niccolò Machiavelli, *Il principe*, in: id., *Opere*, ed. by Corrado Vivanti (Turin 1997), 151 (cap. 12); see also id., *Discorsi sopra la prima deca di Tito Livio*, in: ibid. 234 (1, 12), 310 (1, 55). Volker Reinhardt, ‘Machiavellis helvetische Projektion: Neue Überlegungen zu einem alten Thema’, *Schweizerische Zeitschrift für Geschichte* 45 (1995) on p. 302 mentions the relevant texts of Swiss scholars.
- 7 See Thomas Maissen, ‘Frühneuzeitlicher Republikanismus und Machiavellismus. Zur Rezeption von Machiavelli in der Eidgenossenschaft’, in: Annette Meyer and Cornel Zwierlein (eds), *Machiavellismus in Deutschland* *Historische Zeitschrift. Beiheft, Neue Folge* (Munich 2009) (forthcoming).
- 8 Even the Wikipedia entries on Swiss history persist in the ‘de facto independence’ of 1499 and the ‘legal independence’ of 1648. For a critical assessment, see Peter Niederhäuser, ‘“Kriegs“-Geschichte im Wandel’, in: id., Werner Fischer (eds), *Vom „Freiheitskrieg“ zum Geschichtsmythos: 500 Jahre Schweizer- oder Schwabenkrieg* (Zurich 2000) 155–79.
- 9 Josias Simler, *Regiment gemeiner loblicher Eydgnoschafft* (Zurich 1577)

- (orig. 1576), 4; id., *De republica Helvetiorum libri duo* (Zurich 1576) 3* verso (Introduction).
- 10 Ibid., *Regiment*, 166^v.
- 11 See Maissen, *Geburt der Republic*, 60–62.
- 12 Karl Mommsen, *Auf dem Wege zur Staatssouveränität. Staatliche Grundbegriffe in Basler juristischen Doktordisputationen des 17. und 18. Jahrhunderts* (Berne 1970).
- 13 For a critical assessment, see Marco Jorio (ed.), 1648: *Die Schweiz und Europa: Aussenpolitik zur Zeit des Westfälischen Friedens* (Zurich 1999), especially 202–03.
- 14 The first article of the treaty of Münster, 30 January 1648 can be found in Johann Jakob Schmauß, *Corpus Juris Gentium* vol. 1 (Leipzig 1730), 614; see also Volker Jarren, ‘Die Vereinigten Niederlande und das Haus Österreich 1648–1748. Fremdbildwahrnehmung und politisches Handeln kaiserlicher Gesandter und Minister’, in: Helmut Gabel (ed.) *Kaufleute und Fürsten: Außenpolitik und politisch-kulturelle Perzeption im Spiegel niederländisch-deutscher Beziehungen 1648–1748* *Niederlande-Studien* vol. 18 (Münster 1998), 69, 117.
- 15 Art. VI Instrumentum Pacis Osnabrugensis = § 61 Instrumentum Pacis Monasteriensis; see *Die Friedensverträge mit Frankreich und Schweden, 1st part: Urkunden*, ed. by Antje Oschmann. *Acta Pacis Westphalicae*, ser. III, section B: Verhandlungsakten, vol. 1/1 (Münster 1998), 19, 128.
- 16 Theodor Reinking, *Tractatus de regimine seculari et ecclesiastico* (Basel, 1622), 94 (I, 2, 9, § 52–56).
- 17 Ludwig Friedrich von Jan, *Staatsrechtliches Verhältnis der Schweiz zu dem deutschen Reiche* vol. 1–3 (Nürnberg and Altdorf 1801–1803).
- 18 Johann Caspar Steiner, *Kurtz deutliche Grund-Zeichnung deß Alt-teutschen Spartier-Lands, das ist Schweitzerland* (Rottweil 1684), 74–75.
- 19 *Schweizerisches Kriegs-Recht, wie selbiges von denen loblichen Cantonen in alle Fürsten-Dienste den Herren Officierern mitgegeben und allezeit practiciert wird* (Frankfurt 1704), 230.
- 20 For examples see Maissen, *Geburt der Republic*, 383–400, 431–567; see also the illustrations in some of my articles mentioned on 640–642.
- 21 Ibid., 528.
- 22 Staatsarchiv Bern, A I 494, 69–71 (17 March 1730); Staatsarchiv Luzern, cod 4295, 33: *Libell oder Ordnung eines jeweiligen Raths Richters*, 27 August 1717 (inc. amendments).
- 23 Bodin, *République*, vol. 1, 179 (1, 8).
- 24 Ibid., 191–192, 198–199 (1, 8), 229 (1, 9).
- 25 For details on the following cases see Maissen, *Geburt der Republic*,

434–39 (Geneva), 452–53 (Neuchâtel), 444–49 (Valais), and my studies mentioned on 640–42.

26 See *Ibid.*, 511–13 (Zug); 498–509 (Grisons); 494–95 (Schaffhausen); 482–86 (Basel); 459–62 (Berne).

27 Wolfgang Mager, ‘Genossenschaft, Republikanismus und konsensgestütztes Ratsregiment. Zur Konzeptionalisierung der politischen Ordnung in der mittelalterlichen und frühneuzeitlichen deutschen Stadt’, in: Luise Schorn-Schütte (ed.), *Aspekte der politischen Kommunikation im Europa des 16. und 17. Jahrhunderts. Politische Theologie – Res Publica-Verständnis – konsensgestützte Herrschaft* Historische Zeitschrift. Beiheft, Neue Folge vol. 39 (Munich 2004), 105–106.

28 Johann Rudolph Gatschet, *Dissertatio politica de inlyta republica Bernensi* (Berne 1676) B-B2; C3^v.

29 See Maissen, *Geburt der Republic*, 410–21, 440–41, 460–66, 485–86, 517–22.

30 *Ibid.*, 253–77.

31 For the documents of the mission, see Johann Rudolf Wettstein, *Acta und Handlungen betreffend gemeiner Eydgnosschafft Exemption* (Basel, 1651).

32 *Ibid.*, 28: ‘bey ihrem freyen, souverainen Stand und Herkommen fürbaß ruhig und ohnturbirt zu lassen’.

33 Franz Michael Büeler, *Tractatus von der Freyheit, Souverainitet und Independenz der Loblichen Dreyzehen Orthen der Eydgnosschafft...* (Baden 1689) 17–19, 55.

34 Franz Michael Büeler, ‘Compendium des gemeinen eidgenössischen Rechts’, *Zeitschrift für schweizerisches Recht* 16 (1869), 11 [= 53].

35 Johann Rudolf Wettstein, *Diarium 1646/47 Quellen zur Schweizer Geschichte*, N. F. III: *Briefe und Denkwürdigkeiten*, vol. 8, ed. by Julia Gauss (Basel 1962), 129–30.

36 See Maissen, *Geburt der Republic*, 231–32.

37 Amtliche Sammlung der Eidgenössischen Abschiede (Luzern, 1858–1886) 6, 1, 41 (9 November 1650), 52 (April 1651).

38 See the sources mentioned in Maissen, *Geburt der Republic*, 230–42.

39 Gregorio Leti, *Il ceremoniale storico, e politico* vol. 6 (Amsterdam 1685), 463; Gottfried Stieve, *Europaeisches Hoff-Ceremoniel* (Leipzig 1715), 252.

40 See Maissen, *Geburt der Republic*, 108–14.

41 For the Dutch as a political model see also Jonathan I. Israel (ed.), *The Anglo-Dutch Moment: Essays on the Glorious Revolution and Its World Impact* (Cambridge 1991).

42 *L'affermissement des republiques de Hollande & de Suisse* (s. l. 1675), 20–21, 35, 45.

43 Petrus Valkenier, *Das verwirrte Europa* (Amsterdam 1677), 56.

44 Idem, *Ansprach an die Dreyzehen wie auch Zugewandete Ort der Lobl. Eydgnosschafft in Baden versamlet, gethan den 31. Oct./10. Nov. 1690* (s. l. 1690). 4.

45 Idem, Copia des Schreibens an Bürgermeister, Klein- und Grossrath, 19./29. April 1693, Staatsarchiv Zurich, B1329, 147.

46 Amtliche Sammlung der Eidgenössischen Abschiede, 6, 2, 1486 (9 November 1708).

47 Quoted in Hans Camille Huber, *Bürgermeister Johann Heinrich Escher von Zürich (1626–1710) und die eidgenössische Politik im Zeitalter Ludwig [sic] XIV* (Zurich 1936), 5n6.

48 Quoted in Conradin von Mohr, *Geschichte der bündnerischen Kriege und Unruhen*, ed. by Fortunat Sprecher von Bernegg (Chur 1857), 82–83.

49 Jonathan Israel, *The Dutch Republic: Its Rise, Greatness and Fall 1477–1806* (Oxford 1995), image 19, also XXI.

50 Thomas Maissen, ‘Von wackeren alten Eidgenossen und souveränen Jungfrauen: Zu Datierung und Deutung der frühesten „Helvetia“-Darstellungen’, *Zeitschrift für schweizerische Archäologie und Kunstgeschichte* 56 (1999), 280–82.

51 Maissen, *Geburt der Republic*, 276–77.

52 Christoph Werdmüller, *Quaestiones politicae de imperio et subiectione* (Zurich 1668) C1; Hugo Grotius, *De iure belli ac pacis libri tres*: Editio nova (Amsterdam 1646), Reprint: *The Classics of International Law* (Washington, DC 1913), 52 (1, 3, 6).

53 Johann Heinrich Schweizer, *Jus Belli et Pacis in Compendio* (Zurich 1689); id., *Jus Naturae et Gentium, ex Hugonis Grotii Opere* (Zurich 1694); id., *Kriegs- und Fridens-Recht* (Zurich 1718); see Claudio Soliva, ‘Der kleine Grotius von Zürich: Zum Studienbuch des Johann Heinrich Schweizer über des Hugo Grotius De Jure Belli ac Pacis’, in: Louis Carlen (ed.), *Festschrift für Ferdinand Elsener zum 65. Geburtstag* (Sigmaringen 1977), 233–243, quote 242.

54 See Michael Kempe, Thomas Maissen, *Die Collegia der Insulaner, Vertraulichen und Wohlgesinnten in Zürich, 1679–1709: Die ersten deutschsprachigen Aufklärungsgesellschaften zwischen Naturwissenschaften, Bibelkritik, Geschichte und Politik* (Zurich 2002).

55 See Maissen, *Geburt der Republic*, 402–03; an edition and German translation of *De libertate populi*, established by Werner Widmer, will be published in 2008 in *Daphnis*.

56 Zentralbibliothek Zurich MS v 119, 62–64; see Ernst Saxer, *Die zürcherische Verfassungsreform vom Jahre 1713 mit besonderer Berücksichtigung ihres ideengeschichtlichen Inhalts* (Zurich 1938), 54n76.

57 Staatsarchiv Zurich B III 14f, 322–323, see also 298.

58 Zentralbibliothek Zurich MS v 119, 5^v; Maissen, Kempe (eds), *Collegia*, 276–78.

6 Turning Swiss? Discord in Dutch Debates

Martin van Gelderen

Jean Baptiste Stoupe had an adventurous and troublesome life. Born in the Swiss Grisons, he studied theology at the university of Leiden and at Geneva's Calvinist academy. On 26 February 1652, Stoupe – also known as Giovanni Battista Stoppa – was elected pastor of the Threadneedle Street congregation, the gathering place in London of protestant refugees from Savoy. He was enlisted by the governing circles of the new English Republic to try and stir up Protestant revolts in France. The Restoration of the monarchy led to Stoupe's dismissal, as 'a notorious meddler in matters not of his calling'.¹ Stoupe changed countries, sides and profession, and started making a career as an officer in the French army. In this capacity he participated in the highly successful French invasion of the Dutch Republic in 1672, serving under the Prince of Condé. Stoupe's position was controversial. In the spring of 1673 he published his pamphlet *La Religion des Hollandais*, a series of letters to an unnamed Bernese theologian, arguing that it was fully acceptable for Swiss Protestants to serve the French Catholic, 'Most Christian King' in his attack on the Dutch Republic. The main thrust of the pamphlet, translated and published in 1680 in London as *The Religion of the Dutch*, was that any Swiss sense of Calvinist solidarity with the Dutch was misplaced. The United Provinces were by no means, Stoupe asserted, a 'Sanctif'd Republick'. Stoupe's aim was to convince Swiss Calvinists, that whilst the Dutch 'make an external Profession of the same Religion with yours, yet their Conduct and Deportment do evidently demonstrate, that they make not any account of it, or that they believe it not at all'.² It had been so from the very beginning of the Dutch Revolt, where the various parts of Dutch socie-