

FOUNDATION OF THE SWISS REPUBLIC.

BY JOHN D. WASHBURN.

COPY OF THE LATIN "PACT OF 1291" IN THE ARCHIVES OF SCHWYZ.

IN nomine domini Amen. Honestati consulitur, et vtilitati publice prouidetur, dum pacta, quietis et pacis statu debito solidantur. Noverint igitur vniversi, quod homines vallis Vranie, vniuersitasque | vallis de Switz, ac communitas hominum intramontanorum vallis inferioris, maliciam temporis attendentes, ut se, et sua magis defendere valeant, et in statu debito melius conservare, fide | bona promiserunt, inuicem sibi assistere, auxilio, consilio, quolibet ac fauore personis et rebus, infra valles et extra, toto posse. toto nisv, contra omnes, ac singulos, qui eis vel alicui de ipsis, aliquam | intulerint violenciam, molestiam, aut iniuriam, in personis et rebus malum quodlibet machinando, ac in omnem eventum quolibet vniuersitas, promisit alteri accurrere, cum necesse fuerit ad succurrendum. | et in expensis propriis, prout opus fuerit, contra inpetus malignorum resistere, iniurias vindicare prestito super hiis corporaliter iuramento, absque dolo servandis, antequam confederationis formam iuramento vallatam, presentibus innovando, | Ita tamen, quod quilibet homo iuxta sui nominis conditionem domino suo conuenienter subesse teneatur et seruire. Communj etiam consilio, et fauore vnanimi promissimus, statuimus. ac ordinauimus, vt in vallibus prenotatis, nullum | iudicem, qui ipsum officium aliquo precio, vel pecunia, aliqualiter comparauerit, vel qui noster incola vel provincialis non fuerit aliquatenus accipiamus, vel acceptemus.

Si uero dissensio suborta fuerit, inter aliquos conspiratos, prudentio— | res de conspiratis accedere debent, ad sopiendam discordiam inter partes, prout ipsis videbitur expedire. et que pars illam respuerit ordinationem, alij contrarii deberent fore conspirati. Super omnia autem, inter ipsos extitit | statutum. ut qui alium fraudulenter, et sine culpa trucidauerit, si deprehensus fuerit uitam amittat, nisi suam de dicto maleficio valeat ostendere innocenciam, suis nefandis culpis exigentibus. et si | forsan discesserit, nunquam remeare debet. Receptatores et defensores prefati malefactoris, a vallibus segregandi sunt, donec a coniuratis prouide reuocentur. Si quis uero quemquam de conspiratis, die sev | nocte silentio, fraudulenter per incendium uastauerit, is nunquam haberi debet pro conprovinciali. Et si quis dictum malefactorem foveat et defendit, infra valles, satisfactionem prestare debet dampnificato. Ad | hec si quis de coniuratis alium rebus spoliauerit, vel dampnificauerit qualitercumque; si res nocentis infra valles possunt reperiri, seruari debent, ad procurandam secundum iusticiam lesis satisfactionem. Insuper nullus capere | debet pignus alterius nisi sit manifeste debitor. vel fideiussor, et hoc tantum fieri debet de licencia sui iudicis speciali. Preter hec quilibet obedire debet suo iudici, et ipsum si necesse fuerit iudicem ostendere infra | sub quo parere potius debeat iuri. Et si quis iudicio rebellis extiterit, ac de ipsius pertinacia quis de conspiratis dampnificatus fuerit, predictum contumacem ad prestandam satisfactionem,

irati compellere tenentur | uniuersi. Si uero guerra vel discordia inter aliquos de conspiratis suborta fuerit, si pars vna litigantium, iusticie vel satisfactionis non curat recipere complementum, reliquam defendere tenentur coniurati. Supra | scriptis statutis, pro communi vtilitate. salubriter ordinatis, concedente domino, in perpetuum duraturis. In cuius facti euidentiam presens instrumentum, ad petitionem predictorum confectum, Sigillorum prefatarum | trium vniuersitatum et vallium est munimine roboratum. Actum Anno domini. M. CC. LXXX. primo. Incipiente mense Au—gu—sto.

The foregoing is an exact copy of the original pact, still preserved, in perfect order and condition in the archives of Schwyz. By permission of the State and municipal authorities a photographic fac-simile of this most remarkable document, which rivals in historic interest the Declaration of Independence and *Magna Charta*, will be made during the coming summer, and transmitted to this Society for preservation in the Library, or, if it can be so arranged, for publication with the Proceedings. Up to the present time, no reproduction of this pact has ever been made.

Although Schwyz is a place of exceptional historic importance, and easy of access, it is seldom visited by Americans or English. The Archives are of peculiar interest, and the place is "beautiful for situation." The people are cordial and obliging, though it need hardly be stated that English is not the vernacular there.

THE writer of a brief and sensible article in one of the leading American periodicals,¹ brings to especial notice the valuable work on the Swiss Confederation, published last year in London, the result of the joint labors of Sir Francis O. Adams, for many years Her Britannic Majesty's Minister to Switzerland, and Mr. Carus D. Cunningham, an accomplished historical scholar, peculiarly qualified for this work by his great personal familiarity with the country of which he writes, an Alpine climber of the first rank, and a careful student of statistics; of manners and of men. An interesting chapter, wherein is instituted a comparison between the constitution of Switzerland and that of the United States, was prepared in consultation with the Honorable Boyd Winchester, of Kentucky, lately the able and faithful minister of the United States in Switzerland. Let it be added in passing, that this book, accessible to and valued as it already is by English readers, has been translated into

¹ *Atlantic Monthly*, January, 1890.

the French language by Mr. Henri Loumyer, the accomplished secretary and counsellor of the Belgian Legation at Berne, and just published at Basle. This translation is rendered still more valuable by a brief introduction written by His Excellency Louis Ruchonnet, the President of the Swiss Confederation.

The writer of the article above referred to, after stating the fact that "the mechanism and spirit of the institutions of Switzerland have not been hitherto much studied either in England or America," says, "Students of other institutions have long deplored this neglect, which has left the smallest free commonwealth of Europe almost unknown in the oldest, and the oldest federal republic in the world unknown to the greatest: which amounts almost to contempt for a very valuable stock of political experience."

That Switzerland is the smallest free commonwealth of Europe, and England the oldest, may probably, with slight additional phrases of explanation, and unimportant exceptions, be true; that the greatest federal republic in the world is the United States of America, it would not be becoming to question here; that Switzerland is the oldest federal republic in the world is an opinion commonly held, certainly by the "general public," and accepted, apparently by many students of history. Into the merit of this opinion, and the foundations on which it rests, it is proposed at this time briefly to inquire.

To some brief observations, also, on two incidents, separated by the space of nearly six centuries, the foundation of Switzerland and the character of that foundation on the one hand, and the latest international question to which the Swiss Confederation as now organized has attracted the attention of the world, on the other, the writer of this report feels warranted, having looked at them from a convenient point of view, in asking the indulgent ear of the Society. The subject is germane to our studies. These institutions closely resemble, in some respects are modelled

on, our own. The historical parallels are, as will appear, striking and interesting. Questions of international as well as those of domestic or municipal law are fairly within the purview of an Association, whose motto suggests an immortal energy of inquiry, and the guiding principle of whose studies is that of the *Heautontimoroumenos*: "*humani nihil a me alienum puto.*"

The first branch of the subject now to be considered, relates to the foundation or substructure of the present Swiss Republic, and to the true historic date of its establishment as the "oldest federal republic in the world," with the view of illustrating the difference between a declaration of modified independence and league for mutual protection on the one hand, and the institution of a federal, free and autonomic government on the other.

The foundation stone on which it is generally understood that the whole superstructure rests is known as the Pact, —Letter of Alliance,—*Bundesbrief*, of 1291. Some reasonable historic doubts exist as to the place where this fundamental compact was signed, which will be considered in an appendix to this report. It is hard to read dates or assign localities with absolute exactness in the *chiaro-scuro* of the later middle ages. The period was full of picturesque figures, but they have been dimly painted; the outlines are shadowy, and the canvas is very old. The form of Rodolph of Hapsburg, a looming and portentous figure is descried. He dies, and a season of anarchy and confusion succeeds. The systems of government, authority, dependency and subordination are perhaps well understood in general, though it is difficult to describe them with absolute definiteness and detail. The central portions of what is now Switzerland, recognized the authority of the German Emperor, nor did they deny that of certain feudal lords. Some of the inhabitants of this small portion, the *Waldstätten*, three little states, in view of all the uncertainty of the future, the complications liable to grow out of the ac-

cession of Albert of Austria, in view, also, of certain present inconveniences and oppressions, did draw up a declaration, the substance of which, and, as is believed, its exact phraseology, is preserved, and whose date is assigned as August 1, 1291.

This is not a myth, but apart, perhaps, from absolute exactness of date, and some extraneous circumstances alleged to attend it, a well-established record of history.¹ Two copies of it, probably contemporaneous, are still preserved, one in Latin, in the archives of Schwytz, which accompanies this report, the other in German, in the archives of Stanz. That the nature of the declaration may be clearly understood, as it might not readily be in the antiquated German, and peculiar Latin construction, a translation into the French language, made by an excellent local authority, is here submitted.

“Faisons savoir à chacun que les hommes de la vallée d’Uri, que la communauté de Schwytz, qu’en outre les hommes des montagnes d’Unterwalden, en considération des temps mauvais, ont conclu en toute confiance une alliance, et ont juré de se prêter au de hors des vallées comme au dedans mutuellement aide, à leur risques et périls en déployant toute force et toute énergie, en sacrifient tous biens et gens, pour repousser ceux qui voudraient leur faire violence ou faire violence à l’un d’eux : telle est l’ancienne alliance.

“Quiconque a un supérieur lui doit obéissance par devoir. Nous sommes tombés d’accord de n’accepter dans ces vallées aucun juge qui ne soit ne-combourgeois ni habitant, ou qui ait acheté son emploi. C’est l’homme plus sage qui doit trancher toute querelle éclatant parmi les confédérés et si quelq’un repousse le sentence, les autres le contraindront à l’accepter. Quiconque tue sciemment ou par surprise sera exécuté pour cette impiété, et quiconque protège le meurtrier doit être banni. Quiconque met le feu à une maison ne

¹ There seems no real reason to doubt the date. It appears on the Latin copy of the Pact which accompanies this report, and it must be considered that the historic doubts relate only to the place where the agreement was signed.

sera plus tenu pour un combourgeois et quiconque lui donne asile devra réparer le dommage. Il sera pris, pour compenser le mal, sur les biens, s'il en a chez nous, de celui qui nuit et pille.

“Nul ne doit opérer une saisie sans l'aide du juge, et la saisie ne doit jamais s'adresser à celui qui n'est pas débiteur ou n'est pas garant. Chacun doit obéissance à un juge des vallées, sinon, nous, les confédérés obligeront le récalcitrant à réparer les conséquences dommageables de son opiniâtreté. Et si dans un différend une partie des alliés ne veulent pas se conformer au droit, les autres les y contraignent. Ces ordonnances, édictées pour notre bien général seront, Dieu le voulant, éternelles.”

This instrument well repays a careful study, not only as a wonderfully bold declaration of modified independence, at a very early day, but as especially interesting to the American student, for the remarkable parallels of thought in the minds of these ancient men, and in the minds of those who nearly five hundred years later, made the preliminary declarations of American Independence. As is well observed by Gaullier, “les confédérés n'attaquaient pas directement les droits du chef de l'empire, ils se proposaient seulement de diminuer le pouvoir despotique des avoués, dont plusieurs empereurs même avaient blâmé les exactions.” The office and duties of the judge (ammam) were not, at that early day, identical with those of our colonial times, though they perhaps resembled them as closely as those of any of the officials of that day did those of the successors to the same title five hundred years later, but they declared that *they would not tolerate any judge who did not live among them as a fellow citizen, or who had bought his office*, while at the same time they declared *their allegiance to the sovereign*.

So the men of Lancaster, in their town meeting in January, 1773, took into consideration “the dangerous condition of our Publick affairs in Particular the Independancy of our Superior Judges,” and in May of the same year, resolved

“That the absolute Dependancy of the Judges of the Superior Court of this Province upon the Crown for their support, would, if it should ever take place have the strongest tendency to bias the Minds of the Judges and would weaken our Confidence in them.”

So too, the men of Lexington, in town meeting, January, 1772, said, “But not enough that the right of taxation is violated, but the right of determining the merit and services of those that are employed in government must be yielded, too—Particularly we have reason to think this to be the fact with respect to the Judges of the Supreme Court, the highest court of justice in the Province, the court upon the decisions and determinations of which, all our interests respecting property, liberty or life do chiefly or ultimately depend.”

The Plymouth Convention, September, 1774, resolved, “That the judges, justices, sheriffs and other civil officers in this province who are appointed to their several offices agreeably to the *laws* and *charters* of the same, and refuse to act in conformity to the acts of parliament, or to assist the administration in the execution of them, are the only proper persons who are entitled to the obedience of the people.”

See also similar declarations by the Suffolk Convention, Middlesex Convention, Essex Convention in 1774, the Letters of the Massachusetts House of Representatives to Dennis De Berdt, Esq. and others in 1768, Governor Hutchinson's letter to Lord Dartmouth, October 23, 1772, and Assembly's letter to same, June 29, 1773. See also, Almon, *passim*. Also as especially illustrative of the same sentiment, the “Refusal of Grand Jurors to be sworn, Boston, Aug. 30, 1774.” In an appendix to this report, a few other citations appear, in continuance of this parallel, familiar indeed to the student of American history, and by no means difficult of access, yet peculiarly interesting in the present connection. Like the men who laid the foun-

dation of Swiss Independence, at the close of the Thirteenth century, the Fathers of American Independence denounce as their first and most direct of grievances, *judicial officers, non-resident, dependent on external support and influence, or who had corruptly obtained their place of authority.*

Even more interesting is the comparison of the views and expressions of the early Swiss patriots, with those of the founders of the American Republic, in reference to their relations to the ultimate sovereign. Both declared their loyalty to the head of the State, while denouncing the abuses from which they were suffering at the hands of the officers or appointees of that head. There were, indeed, in the avowals of each country, the germs, or seeds, of full independence. In Switzerland, hemmed in by neighboring despotisms, and oppressed by local tyrannies, centuries were needed for their full development. In America, remote from the domain of absolutism and under the impulse of circumstances, too familiar to justify their presentation in detail or summary at this time, years only were needed to convert the expressions of earnest and devout loyalty to the Crown, into the resolute and defiant declamations of 1776. In Switzerland, generation after generation passed, phase followed phase of alliance and mutual protection, century handed down to century the unfinished work of achieving full and autonomic independence, the incomplete aspiration even. In America, the very same generation which gave utterance to the "present discontents," found themselves the possessors and administrators of a "federal Republic." To cite a few of the declarations, contemporaneous almost, of some of the revolutionary fathers, and also of those of the Swiss leagues made at intervals of decades and centuries, may serve to make more manifest the likeness and unlikeness of their declarations, and also to throw some light on the question of the actual date of birth of the Swiss Republic. The recognition of the principles of freedom is not necessarily a declaration of independence. Those princi-

ples, some of them at least, were avowed in Schwytz and Uri before Columbus had dreamed his first dream. Thus Freeman, in his "Norman Conquest," says, "Our Parliament is the true and lawful representative, by true and lawful succession, of the ancient 'Meeting of the Wise': but if we would search out the origin and constitution of that 'Meeting of the Wise,' we must go to the *Landsgemeinden* of Schwytz and Uri." But the *Landsgemeinden* — (were they the legitimate successors, in conduct and procedure, of those spoken of in the *Germania* of Tacitus, *q. v.?*) — the assembly of all the people of the canton, the prototype on a large scale of the New England Town meeting, while it passed on all questions falling within its jurisdiction, was not, by the mere fact of its existence, proof of general autonomy, or of any system of federal association. It was the out-cropping, so to phrase it, of the view of liberty, proof absolute that the spirit was there, but embodied no complete symmetrical form.

The men of Uri, Schwytz and Unterwalden said, in their declaration of 1291, "*Quiconque a un supérieur lui doit obéissance par devoir.*"¹ In 1768(?) the Massachusetts House of Representatives, in their letter to the Marquis of Rockingham, said, "This house, my Lord, have the honour to join with you in sentiment: and they speak the language of their constituents. So sensible are they of their happiness and safety, in their union with, and dependence upon, the mother country, that they would by no means be inclined to accept of an independency if offered them." In 1315, the men of the same three Swiss cantons, after the victory of Morgarten ("*cette mémorable journée, qui ne le cède en rien à celle de Marathon*"), renewed their alliance in a declaration which is considered by some of the highest local authorities as being, rather than that of 1291, the true

¹ "*Chacun de nous qui à un seigneur sera tenu de lui montrer de l'obéissance, et de la servir conformément à sa condition et à son devoir.*"—[*Magnanat, traduction.*]

foundation stone of the Swiss Republic. Certainly they take one step farther toward the ultimate goal of independence, when they say that whoever has a "seigneur" ought to obey him, in all things just and legitimate, but never against his confederates.

The convention of the people of Middlesex, August, 1774, said, "As true and loyal subjects of our gracious Sovereign George the Third, King of Great Britain, we by no means intend to withdraw our allegiance from him: but while permitted the free exercise of our natural and charter rights, are resolved to expend life and treasure in his service." In like manner the other County Conventions of Massachusetts expressed themselves; and the County Conventions of New Jersey, Pennsylvania, Virginia, Delaware and Georgia, and notably, the great mass meeting (*Lands-gemeinde*) of the people of South Carolina, prefaced their resolutions with an earnest declaration of allegiance to King George.

In 1323, by a declaration still preserved in the archives of Obwalden, these states renewed their declaration of homage to the Emperor, with this reserved right, that their subordination to the empire should be direct, without the power of transfer ("*être jamais aliéné*"), and that they should have only their own citizens for judges (or *landammanen*). So also, in the act of union or allegiance between the three original "confederates" and Lucerne, in 1332, Lucerne reserved the right and jurisdiction of the Dukes of Austria, and the three others those of the empire.—[*Archives of Gersan and Niewalden.*] And when the alliance was made between these four states and Zurich, in 1351, like reservation was made of the rights of the King and of the holy Roman Empire.—[*Archives of Zurich.*]

Nor does any desire of independence of the ultimate sovereign appear in the alliance of Zug or Glarus in 1352 [*Archives of Zug for Zug, Archives of Zurich for Glarus*], or in that of Berne with the three original states, on March

6th, 1353. [*State Archives of Bern*].¹ More than half a century had thus already passed, and the seeds of independence had not germinated, still less borne flower or fruit. Long years of confusion and anarchy were to follow, when all ideas of independence were held in complete abeyance. For America, on the other hand, five centuries later, growth was rapid. The Provincial Congress did (no doubt truly) say, in October, 1774, that "notwithstanding the province has not the most distant design of attacking, annoying or molesting his majesty's troops aforesaid, but on the other hand will consider and treat every attempt of the kind, as well as all measures tending to prevent a reconciliation between Great Britain and the Colonies as the highest degree of enmity to the province, nevertheless, there is great reason, from the consideration aforesaid, to be apprehensive of the most fatal consequences" * * * * * and yet within two years, the tree of independence was in flower, and has been bearing fruit for a hundred years. Yet a hundred years was but a moderate fraction of the period of incubation of Swiss Independence. When, then, may it be fairly considered to have been achieved, and how really ancient in date is the (generally so called) "oldest federal republic of the world"?

The various acts of alliance, to which reference has already been made, and which may be said to have been in some sense the bond of union between eight states, did not, as has been shown, assert, much less establish, a claim to independence; nor, as is entirely clear on inspection of the original documents, which are relied upon for these inferences and conclusions, did they create a confederation regulated by a real federal pact. There was no homogeneity, no claim to autonomy of any form. The pact of 1291, or if that is less clearly verified, that of Brunnen, in 1315, was between three states (*Waldstätten*): these *three* states

¹ On the general condition of their archives, the character, etc. of original documents, etc., etc., the results of personal examination, see appendix.

made alliance with Lucerne; these *four* with Zurich; these *five* with Glaris and Zug; and finally, the *first three* with Bern. This constituted the entire organization of the Confederacy for one hundred and twenty-eight years,—no federal government, no central controlling power,—wars and fightings of one state with another, of one or more states with outside powers. It would be impossible, useless too, to attempt any detailed account of the events of this long and dreary period. The sovereignty of the empire not being questioned, these events show discord, feuds, violations of the terms of alliance, alienations, a fierce and tameless spirit of liberty, not fully protected nor fully restrained by law, certainly no semblance of a federal republic, before 1481.

In this year, counted as a new era in Swiss history, the number of the "Confederates" grew to thirteen. The Confederation, limited as were its objects and range, which had been shaken almost to pieces by quarrels over the distribution of booty taken in the battles with Charles the Bold, by rivalries, jealousies, mutual dislikes, even hatreds of town and country, was patched and strengthened by the Convention of Stanz. The number of states remained thirteen till the Nineteenth Century began. But it is important to bear in mind that these were after all, mere *alliances*, more or less complete, of varying and in many instances of more than doubtful obligation. There was nothing really approaching a Federal Constitution. There were "Diets," assemblies, meeting from time to time at the invitation of some leading state or canton, but they had little authority. The cantons were sovereign in their own domain: deputies could only act on the instructions of their local constituency; the Federal principle was wholly absent.

The error of those who call Switzerland the oldest Federal Republic in the world, is in confounding the existence of a permanent and abiding spirit of freedom, which could never be wholly repressed, whatever powers of absolutism

might be arrayed against it, with the idea of an *organized federal republic*, the best modern illustration of the embodiment of that spirit in its most effective form. It is one of the wonders of history that freedom should have survived all these shocks, that it did not degenerate into a license and excess; the only remedy for which should have been the man on horseback. Although there was no complete semblance of organization as a Federal Republic till 1798, yet it may be truly claimed and admitted that institutions republican in their nature, existed here and there and for greater or less periods of time, local in their scope, as for example, the *Landsgemeinden*. These, varying in their object and scope, helped keep alive the spirit of liberty, during a period in which the dim light of doubtful chronicle lets us see little that could stimulate the hope of eventual, enlightened, effective self-government by the people. The Fifteenth Century was one of strife and internecine bloodshed. The spirit of liberty did not die, nor was valor equal to that of the founders wanting, but it is the testimony of the Swiss historians, that this century was one of unjust conquests, of the longest and most cruel civil wars, the century "où la vénalité et les autres misères des services étrangers pénètrent la Confédération comme un ver rougeur."

The Sixteenth Century, era of the Reformation, brought not peace but a sword. Of the Seventeenth Century; no better summarized description can be given than in the graphic words of *Maguenat*.

"Le XVII^{ième} siècle va nous montrer les confédérés toujours plus divisés, le lien fédéral complètement rompu : la mine de la patrie commune semble imminente, parceque les Suisses ont trop oublié la devise de leurs pères ; ' Un pour tous, tous pour un ;' et, si cette patrie ne succombe pas, ce n'est point à ses enfants qu'elle le doit, mais à la protection du Dieu qui avait guidé et soutenu les vieux Confédérés au Morgarten et à Sempach." In the Seventeenth Century the

titular independence of Switzerland was proclaimed, guaranteed, and its neutrality established by the Treaties of Westphalia at the close of the Thirty Years War, in 1648.

The Eighteenth Century was marked as the era of foreign interventions, culminating in the establishment of the republic, at the instance and under the influence and intervention of France.¹ Of the character of this government, the words of Messrs. Adams and Cunningham give a forcible description: "The establishment of the Helvetic Republic, one and indivisible *was the first attempt at a Constitution* and the fourth phase of the Confederation. It was imposed upon Switzerland by foreign pressure, and offended against all the traditions of that country: the Cantons, from sovereign states became nothing more than Prefectures, or simple administrative districts." The first three centuries and a half after the Pact were not years of even asserted Independence: from the Peace of Westphalia to 1798 were one hundred and fifty years of independent cantonal sovereignty and alliance more or less complete, but no organized constitution or federal system; and the theory of the Helvetic Republic, forced by arms and influence from abroad, on an unwilling people was subversive of the federal principle. When, then, was the federal Republic established? The Act of Mediation in 1803 was an approximation, but it was still the application of an outside power, and Napoleon has not been considered the Father of Republican ideas: nor yet was this establishment completed by the Congress of Vienna in 1815. These last may be regarded as "essays towards" establishment, yet for all these essays, up to the beginning of the Eighteenth century, and for some years after, republican government (even republican *ideas* of government) in Switzerland, may be said, in the

¹ See Vuillemin "Historie de la Confédération Suisse," Vol. II. (cited by Prof. Dicey in *Edinburgh Review* of January, 1890, article—"Democracy in Switzerland") for some account of the condition of that country during the Seventeenth and Eighteenth Centuries.

language of Burke, to have been "rather in its causes than formed." If the close observer may think he discerns that through all those "ages one increasing purpose runs," the literal historian will be compelled to admit that the fulfilment of that purpose, the establishment of an organized federal republic in Switzerland, was accomplished only on the 12th of September, 1848. The light of freedom, whether under the figure of torch, candle or fire, kindled among these mountains in the Thirteenth century, burned through all those centuries as a vestal flame. This proposition must, in justice to these successive generations, be always conceded. This persistent, continuous flame began to glow two centuries before the discovery of America, and is burning still, more brightly if possible, than ever; but the "oldest federal republic in the world" is, in the personal judgment of the writer of this report, junior to the "greatest federal republic of the world," by something more than half a century.¹

For an appendix to this report, it is proposed to make somewhat more detailed reference to several of these intermediate steps, especially those taken under foreign influence. The Constitution of 1848 ought to be carefully studied. That its authors had studied that of the United States of America with great care is most obvious. That it is in any respect a servile imitation of that instrument no intelligent critic would for a moment claim. As modified, in 1874, with sundry amendments since, it is the organic law of a truly federal republic.

The two legislative branches of the Assembly are well understood in America. The organization of the Council is peculiar, as closely resembling neither the English Ministry nor the American Cabinet. It may be briefly explained. It consists of seven members, each the head of a Depart-

¹ These views as to the proper "age" to be accorded to the Federal Republic of Switzerland are not announced as historical dogma, but submitted as on the whole the reasonable finding, on the undisputed facts.

ment. The members are chosen by the two houses of Assembly, by joint ballot. They are elected for three years, eligible for re-election without limit, and are usually re-elected. The President of the Confederation is the chairman of the Council, chosen to this position by the Assembly, for a single year. As *President*, he has no enlarged functions, beyond the chairmanship of the Council. The members hold absolutely for three years, have the right to speak in either house, though not to vote, and cannot be turned out of office by votes of want of confidence. They are regarded as business agents of the people, laboring very hard for extremely moderate compensation, and are not considered as the agents of any party, or answerable, morally or politically, to party chiefs. The Council is responsible for the conduct of the whole Federal Administration, but that is not a responsibility on which their continuance in office depends, nor can they dissolve the legislative body which elected them. The system is unique, and depends for its success very largely on the character of its administration. While men of the ability and character of those just named can be found to devote all their great ability, for every working day of the year, to the service of the State, at an annual salary of from \$2,000 to \$2,400, the system will deserve all that is said of it by the most favorable commentators; and when such men can no longer be found, the commendation will undoubtedly need to be modified. This will certainly be the case, even though it be not claimed that, "for forms of government" as Mr. Pope alleges, "that which is best administered is [necessarily] best."

The *Landsgemeinde*, or Mass Meeting of all the voters, still retained in three or four cantons, abolished elsewhere, presents a curious object for the contemplation of the student. As indicated by Mr. Freeman, it may well be considered the prototype of "The Meeting of the Wise." At the present time, it must not be considered as essential to or a part of the Federal system.

We have spoken of the Council as one of the two cornerstones of Swiss Constitutionalism. It remains to call attention briefly to the REFERENDUM, which is counted the other. To the *Referendum* the writer in the Edinburgh devotes eleven of the thirty-three pages of his article, interesting pages of course, in the general line of commendation of DEMOCRACY IN SWITZERLAND, slightly apologetical in tone, yet in general vindication of the claim of its "complete success." Sir Francis Adams also seems mildly to approve the *Referendum* which he defines "The reference to all vote-possessing citizens, either of the Confederation or of a Canton, for acceptance or rejection, of laws and resolutions framed by their representatives." That this is one of the most important provisions which could be incorporated into the constitution of any country, is evident. It may be more fully explained in a few words. By it, two classes of subjects are presented for the suffrage of the people—

I. All amendments or revisions of the Constitution.

II. Any or all laws enacted by the Federal Assembly.

The first is *imperative*. Whether initiated by the Legislature, or by the people themselves, the *Constitution* can only be established, or amended by the people. This is the "*Referendum obligatory*," as to the wisdom and propriety of which, no question can arise in a democracy. But the *optional Referendum* presents a very different question, no longer constitutional but legislative. Any [general] law passed by the Assembly must be submitted to the Swiss people for ratification or rejection, if such submission is demanded by thirty thousand voters within ninety days of its passage, and if the law fails to receive a majority vote, it is inoperative and dead.

How far the principle of REFERENDUM may be regarded as a sound one, and whether the example thus set by Switzerland may be easily or safely followed by other republics, are questions as to which opinions may widely differ, and whose consideration must be postponed to a later day.

NOTE.—Reference has been made in the foregoing Report, to a proposed *Appendix*, and also to a photographic reproduction of the Latin "Pact." It has not been found convenient to complete the latter in season for these Proceedings. It also seems desirable to add to the points intended to be elucidated in the *Appendix*, some considerations which the present relations of the writer with the government of Switzerland and the United States make it proper to postpone for a season.

The writer will therefore ask leave to present, at a future meeting of the Society, a paper which shall cover all these subjects.

BERNE, *August, 1890.*

J. D. W.

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