# The Swiss Confederation In the Eyes of America's Founders

*by Stephen P. Halbrook**

The Swiss experience had a positive influence on the American Revolution, figured in the debates on adoption of the United States Constitution, and was a matter of commentary in the political struggles of the early Republic. The American model influenced the Swiss Constitution of 1848,[1] but before that the Swiss Confederation—then 500 years old—helped inspire the birth of the American Republic, particularly regarding the interrelated concepts of resistance to oppression, independence from foreign states, neutrality, a people's militia, and federalism.

Americans examined the Swiss experience in three periods. First, before and during the Revolution, when they faced the world's mightiest military power—Great Britain—the colonists were inspired by how a small country had repeatedly defeated the great monarchies of Europe and preserved its independence. Second, when the federal Constitution was proposed and considered for ratification, the Swiss Confederation was depicted as too weak by the Federalists who supported the Con-

[1] See Myron L. Tripp, *The Swiss and United States Federal Constitutional Systems* (Paris: Libraire Sociale et Économique, 1940), Ch. 1 ("American Influence on the Swiss Constitution").

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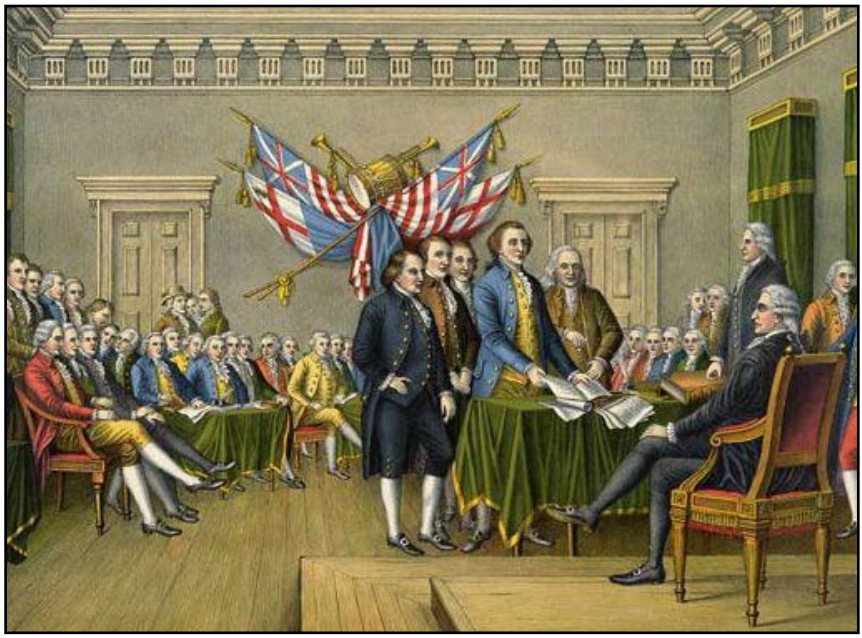

*Signing the Declaration of Independence in Philadelphia, Pennsylvania.*

stitution, but was heralded by the Anti-Federalist opponents as worthy of emulation. Third, when France overran Switzerland in 1798-99, the lessons for neutrality, the militia, and federalism were subjected to conflicting interpretations by the Federalist and Republican parties that had now emerged.

## How the Swiss History of Resistance to the Great European Powers Helped Inspire the American Revolution

The events of Swiss history came to be precedents worthy of emulation to English and American republicans in the 17t$^{h}$ and 18$^{th}$ centuries. The English Whigs who advocated the replacement of royal absolutism with constitutional liberty, and the Americans who carried out that political philosophy, derived inspiration from Switzerland, which was seen as a republican island in a sea of tyranny. The following analyzes major events of early Swiss history and the institutions of the Swiss Confederation through the eyes of those who influenced or participated in America's founding, particularly preceding and during the American Revolution.

Since the founding of the Swiss Confederation in 1291, the Swiss preserved their independence by defeating the invasions of the great monarchies of Europe. A poor country, her militia armies of all able-bodied men armed with pike and halberd prevailed against far-larger standing armies equipped with armor and horse. English republicans lauded that history, which was favorably received by the Americans suffering under the British yoke. The following traces the great battles which preserved Swiss independence chronologically as seen through the eyes of these English and American publicists.

On the eve of the American Revolution, John Zubly published *The Law of Liberty: A Sermon on American Affairs* (1775). A native of St. Gall, Switzerland, Zubly emigrated to America, where he was elected to the Continental Congress as a delegate from Georgia and became a spokesman for American rights.[2] Zubly denounced "all those who stand up for unlimited passive obedience and non-resistance." An appendix entitled an "Account of the Struggles of Swisserland for Liberty" compared America's resistance against Britain with Switzerland's historic struggles against Austria. Noting that "liberty, which is the birthright of man, is still confined to a few small parts of our earth," Zubly stated that Switzerland "is the only country which deserves to be called free."[3]

Zubly retold the familiar saga of William Tell. Governor Grisler of Uri, an Austrian stooge, in order to discover malcontents, "placed a hat on a pole at Altdorff, and gave strict orders, that everyone should pay that hat the same honour as if he were present himself." When Tell repeatedly passed without taking off his hat, he was condemned to shoot an apple off the head of his six-year old son at 120 yards (an impossible distance for a crossbow!). The alternative was death to both father and son. When Tell succeeded, Grisler asked why he had another arrow in his quiver. Tell responded that had he injured his child, "he was determined to send the next arrow to the heart of the tyrannical governor."[4]

The governor condemned Tell to life imprisonment, but Tell escaped while being taken across the lake of Lucerne in a boat. The governor landed, but "in the way to his castle he was waylaid by Tell in a narrow road, who placed the reserved arrow in his heart." This sparked a rebel-

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[2] Ellis Sandoz ed., *Political Sermons of the American Founding Era* (1990), p. 266.

[3] John J. Zubly, *The Law of Liberty: A Sermon on American Affairs* (Philadelphia, 1775), pp. 14, 33. Spellings are as in the original.

[4] *Ibid*. at pp. 35-36.

lion in which the Austrian puppets were deposed and the three cantons of Ury, Schwyz, and Underwalden swore loyalty to each other. "This small beginning laid the foundation of the republic of Switzerland, which has maintained its freedom and independency until this time . . . ."[5]

Abraham Stanyan's *An Account of Switzerland* (1714) was well known to the founders of the American republic. This work had perhaps more information on the Swiss military system and its history than any other book in the English language. Stanyan portrayed the clash between the Swiss and the Austrians at Morgarten as follows:

> Toward the end of the Year 1315, the Arch-Duke *Leopold* Son of *Albert* drew together an Army of twenty Thousand Men, in order to March into the Canton of *Schwitz*, with a Design of destroying the Three Cantons by Fire and Sword. . . . Having got Notice, that the Enemy was necessarily to pass thro' a very narrow Valley, they posted some Men upon the Mountains near *Morgarten*, who, by rolling vast Numbers of Stones down upon the Calvary, wounded abundance of Men and Horses, and by that Stratagem put the whole Army into Confusion. In the midst of this Disorder, their little Body attack'd the Enemy with so much Bravery, that the Austrians were intirely routed, great Numbers of them slain, and the rest drove quite out of the Country. . . . Thus with an handful of Men did these three Cantons defeat a powerful Army; and performed in the Battle such prodigious Acts of Bravery in Defence of their Liberty . . . .[6]

This battle prompted the original three cantons to create a permanent league known as the Swiss Confederation. Stanyan explained:

> This Victory of *Morgarten* laid the Foundation of the Helvetick Union or Alliance. For the League, which the Three Cantons had formerly made for ten Years only, was upon this Occasion converted to a perpetual one; into which all the Thirteen Cantons have since entered at different times, and upon different Occasions. And as they all then swore to the Observation of it, they from thence had the Name of Eydgnossen, a German Word, which signifies Parties to the same Oath.[7]

Zubly estimated Austrian forces at 20,000 and set the number of Swiss at only 1,400. The Austrians believed that they were "sure to obtain an easy victory upon peasants, badly armed, and without military

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[5] *Ibid*. at pp. 36-37.

[6] Abraham Stanyan, *An Account of Switzerland* (London 1714), pp. 42-44.

[7] *Ibid*. at pp. 44-45.

discipline."[8] A modern account puts the Habsburg deaths at 2000 and the Swiss at only 12.[9]

Lucerne annexed the town of Sempach in 1386. Duke Leopold III again sent his knights to teach the Swiss a lesson. According to Zubly's account of the battle of Sempach:

> The duke's army consisted of about 4000 picked men, and among them many princes and noblemen, armed from head to foot. The confederates were about 1300 men, badly armed, and all on foot; they had no arms but halbards, and fastened pieces of wood on their arms, to fend off and break the blows of enemies . . . .[10]

Before the battle, the Swiss leaders told their men that anyone who could not defeat ten Austrians should withdraw. Folklore has it that Arnold Winkelried held enough enemy lances which had been thrust into his body long enough to allow his comrades to drive through the Austrian lines. The battle ended with 2000 Austrian dead (including the Duke himself) to 200 Swiss casualties.[11]

Next came Näfels, in 1388. Zubly explained that the Austrians retaliated against the Swiss for Sempach by seizing Wessen, which opened the entire canton of Glarius to their ravages. Some 8000 Austrians invaded, and were met at an entrenchment guarded by only 350 Swiss. The Swiss retreated, and the Austrians burned the village of Näfels, whose inhabitants showered the Austrians with stones. The Swiss attacked with fury, and the Austrians fell back. Zubly continued:

> The Swiss pursued and came up with them at a bridge, where about 700 Swiss had gathered; the Austrians, in their confusion not aware that the bridge was broke, pressed on, and numbers were drowned. The loss of the Austrians was computed at 2000, while that of the Swiss did not exceed 55 men.[12]

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[8] Zubly, *The Law of Liberty,* p. 38.

[9] John C. McCormack, *One Million Mercenaries* (London: Leo Cooper, 1993), p. 7. See M. Feldman and H.G. Wirz eds., *Schweizer Kriegsgeschichte* (Bern: Oberkriegskommissariat, 1915), I, Heft 1, pp. 74-78.

[10] Zubly, *The Law of Liberty*, p. 39.

[11] *Ibid*. See Feldman & Wirz, *Schweizer Kriegsgeschichte* (Bern 1935), I, Heft 2, pp. 26-32; McCormack, *One Million Mercenaries*, p. 9.

[12] Zubly, *The Law of Liberty*, pp. 39-41. See Feldman and Wirz, *Schweizer Kriegsgeschichte*, I, Heft 2, pp. 33-37.

Yet another account was rendered by Stanyan, who compared the battle with a glorious victory in ancient Greece:

> The battle of Wesen may not only be compared to that of Thermopylae, but seems to be a copy of it that exceeded the original: for as 300 Spartans attacked the Persians at that narrow pass, and all perished in the attempt; so 350 Switzers not only attacked in such another pass an army of eight thousand Austrians, but gained the field of battle. Eleven pillars, (the monuments of this victory) are now to be seen in that glorious field, to mark the place where the Switzers rallied: for their history says, that they were repulsed ten times, but rallying the eleventh, broke the enemy's army, and put them to flight with great slaughter.[13]

The splendid victories of small numbers of armed Swiss citizens against huge standing armies were exploited by the English Whigs. Colonel John A. Martin, in his anonymous pamphlet *A Plan for Establishing and Disciplining a National Militia in Great Britain, Ireland, and in All the British Dominions of America* (1745), noted about proponents of standing armies: "prostitute wit, ever fawning upon power for the sake of luxury, has without shame joined in the general ridicule of a militia . . . ." Yet their influence was strong, as "they have been amazingly successful in establishing mercenary armies all over Europe, except in Switzerland," and those countries included France, Spain, Italy and Sweden. As to the "state-witlings" who ridicule the militia, Martin asked:

> What says the witling to the militia of Switzerland, the only army properly called a militia in all Europe? Is that a ridiculous army, which, without barrier towns, and bordering upon the greatest potentates of the continent, have preserved their country free, and in profound tranquility, with respect to foreign invasion, for more than two centuries? Thirteen hundred of this militia routed the arch-duke Leopold's army at the battle of Morgarten, and killed above twice their own number of the enemy. In battle of Sampach, where the same archduke lost his life, twenty thousand of his mercenary fores were defeated by sixteen hundred of those Switzers. At Wesen, in the canton of Glaris, three hundred and fifty of this militia won the field of battle from a regular army of eight thousand Austrians. . . . When for a paltry pay they invaded the natural rights of a brave free people formed into a regular militia, and fighting in defense of their country, the Austrians were not able to stand before them.[14]

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[13] Stanyan, *An Account of Switzerland*, pp. 212-13.

[14] Colonel John A. Martin, *A Plan for Establishing and Disciplining a National Militia in Great Britain, Ireland, and in All the British Dominions of America* (London, 1745), pp. xxvi-xxviii, xxxviii, xxxix-xii.

Martin described the Swiss militiamen, who could be called out immediately with arms in hand. "In Switzerland the common method of giving the alarm is by lighting an heap of straw in the day-time, or a pile of wood at night . . . ."[15] The ability of the Swiss militia to mobilize immediately would continue to be its distinguishing characteristic over the centuries, including in World War II.

Niccolò Machiavelli, with whom the English and Americans were intimately familiar, observed in *The Prince* (1532) that "the Swiss are well armed and enjoy great freedom."[16] He traveled through Switzerland and observed its militia, which he found to be the worthy descendent of the militia of Republican Rome.[17] A militia of the entire citizenry promoted civic *virtù* and guaranteed freedom, while mercenary armies subjected the social order to the whims of the goddess *fortuna* and were synonymous with slavery.

Machiavelli analyzed the Swiss model in detail in *Discourses on The First Ten Books of Titus Livy* (1513-1519).[18] Referring to the Swiss as "masters of modern warfare,"[19] Machiavelli found their politico-military order of an armed people to be imminently suitable for defense of the country but not for aggression against others:

> But when states are strongly armed, as Rome was and as the Swiss are, the more difficult it is to overcome them the nearer they are to their homes: for such bodies can bring more forces together to resist attack than they can to attack others. . . . The Swiss are easy to beat when away from home, whither they cannot send more than thirty or forty thousand men; but to defeat them at home where they can muster a hundred thousand, is very difficult.
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> In conclusion, therefore, I say again that a ruler who has his people well armed and equipped for war, would always wait at home to wage war with a powerful and dangerous enemy, and should not go out to meet him . . . .[20]

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[15] *Ibid*. at p. 69.

[16] Machiavelli, *The Prince,* L. Ricci transl. (New York: New American Library of World Literature, 1952), p. 73.

[17] Bernard Wicht, *L'idée de Milice et le Modèle Suisse dans la Pensée de Machiavel* (Lausanne, Switzerland: L'Age d'Homme, 1995).

[18] Machiavelli, *The Discourses*, L. Walker transl. (New York: Penguin Books, 1970), pp. 308-10, 321.

[19] *Ibid*. at p. 321.

[20] *Ibid*. at pp. 309-310.

Machiavelli continued his observations in *The Art of War* (1521).[21] He described the arms used by the Swiss and their ability to maintain their freedom as follows:

> The infantry cover their body with a demicuirass, or iron breastplate, which reaches down to their waist; they have a spear 18 feet long, called a pike, and a broadsword by their side. This is their common way of arming themselves, for very few of them have backplates, greaves, or gauntlets, and none at all have helmets; those few carry, instead of pikes, halberds, about six feet long, with sharp points and heads something like a battle-ax; they also have harquebusiers among them, instead of the slingers and bowmen employed by the ancients.
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> These arms and this sort of armor were invented and are still used by the Germans, particularly by the Swiss; since they are poor, yet anxious to defend their liberties against the ambition of the German princes—who are rich and can afford to keep cavalry, which the poverty of the Swiss will not allow them to do—the Swiss are obliged to engage an enemy on foot, and therefore find it necessary to continue their ancient manner of fighting in order to make headway against the fury of the enemy's cavalry. This necessity forces them still to use the pike, a weapon enabling them not only to hold the cavalry off, but also very often to break and defeat them . . . .[22]

The harquebus mentioned above was a short matchlock shoulder arm, one of the first firearm designs. For infantry exercises, Machiavelli recommended physical conditioning "and using the crossbow, longbow, and harquebus—the last, you know, is a new, but very useful weapon. To these exercises I would accustom all the youth in the country . . . ."[23]

Machiavelli became a sourcebook of republicanism for English Whigs and their later American counterparts.[24] In particular, "the Second Amendment to the [U.S.] Constitution establishes clearly and explicitly the relation between the militia and the popular liberty in terms directly reminiscent of Machiavelli."[25]

French absolutist Jean Bodin, in *Six livres de la République* (1576), dwelt on the means for preventing commoners from wresting political

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[22] *Id*. at pp. 46-7.

[23] *Id*. at p. 59.

[24] C. Bradley Thompson, "John Adams's Machiavellian Moment," *The Review of Politics,* LVII, No. 3, pp. 389-91, 406-07 (Summer 1995).

[25] Wicht, *L'Idée de Milice et le Modèle Suisse dans la Pensée de Machiavel,* pp. 208-09. See also Stephen P. Halbrook, *That Every Man Be Armed,* pp. 7-8, 20-24 (1984).

control from the monarch. Besides suppression of oratory, "the most visual way to prevent sedition is to take away the subject's arms." The practice of wearing a sword in peacetime, Bodin wrote, "which by our laws, as also by the manners and customs of the Germans and Englishmen is not only lawful; but by the laws and decrees of the Swiss even necessarily commanded: the cause of an infinite number of murders, he which weareth a sword, a dagger, or a pistol."[26] Bodin suggested no evidence for this view. Moreover, the armed character of the populace preserved democracy and served to prevent governmental violence against its own unarmed subjects. Bodin's absolutist model failed to take account of the killing, on a massive scale, of subjects by rulers.

Such royalist ideas were countered by the English republican Marchamount Nedham in *The Excellencie of a Free-State* (1656), stating: "In Switzerland the people are free indeed, because all Officers and Governours in the Cantons, are questionable by the People in their successive Assemblies."[27] Unlike other small countries, "the Switzers took a surer course for the preservation of their Liberty, and banish'd them [the Nobility]; which had they not done, it had been almost impossible for them (as things then stood) to stand against that shock of Fury wherewith they were assailed on every side, by the French, Burgundian, and Austrian Tyrants."[28]

One of "the Rules for preserving a Free-State,"[29] according to Nedham, is "to see, that the people be continually trained up in the Exercise of Arms, and the Militia lodged only in the Peoples hands . . . ."[30] That way, "nothing could at any time be imposed upon the people, but by their consent," for as Aristotle wrote, "the Free-States of Greece . . . ever had special care to place the Use and Exercise of Arms in the people: because (say they) the Common-wealth is theirs who held the arms."[31] John Adams endorsed these specific passages of Nedham.[32]

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[26] Jean Bodin, *The Six Books of a Commonweale*, R. Knolles transl. (London: G. Bishop, 1606), p. 542.

[27] Marchamount Nedham, *The Excellencie of a Free-State; Or, the Right Constitution of a Commonwealth* (Indianapolis: Liberty Fund, 2011), p. 46.

[28] *Ibid*. at p. 178.

[29] *Ibid*. at p. 83.

[30] *Ibid*. at p. 89.

[31] *Ibid*.

[32] John Adams, *A Defence of the Constitutions of Government of the United States of America* (London: C. Dilly, 1788), III, p. 475.

> The Swiss system of militia and democracy were well known to English republicans in the seventeenth and eighteenth centuries.[33] The English Whigs, supporters of individual liberty, rolled back the power of the monarch in the Glorious Revolution of 1689. Andrew Fletcher, in *A Discourse of Government with Relation to Militias* (1698), advocated "well-regulated militias" to defend the country. Fletcher wrote:
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> The Swiss at this day are the freest, happiest, and the people of all Europe who can best defend themselves, because they have the best militia. . . .
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> . . . . And I cannot see why arms should be denied to any man who is not a slave, since they are the only true badges of liberty . . . .[34]

As noted above, Abraham Stanyan's *Account of Switzerland* included considerable detail on the Swiss wars for independence. This work also included general politico-military principles. Among the institutions of popular government was "a well regulated Militia, in Opposition to a standing Army of mercenary Troops, that may overturn a Government at Pleasure."[35] Stanyan began a chapter developed to the Swiss militia with the following:

> The Cantons of *Switzerland*, from the first Institution of their Governments, never kept in Pay any standing Troops. All their Military Expeditions, during their Wars with the House of *Austria*, were perform'd by their Militia, which were paid by their respective Cantons, while they kept the Field, and dismiss'd as soon as the Campaign was ended. However they gain'd so much Experience in the Course of that long War, that their Troops had the Reputation of being the best Soldiers in *Europe*.[36]

The Swiss Cantons, Stanyan continued, "are taught by the Experience of all Ages, that a Standing Army endangers the Liberty of a Country, and has often overturn'd Governments." They thus maintained no standing troops, and instead the burghers protected the cities. The militia, which "passes for the best regulated of any in *Europe*," defended against any sudden invasion.[37]

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[33] Jürg Stüssi-Lauterburg, "The Swiss Military System and Neutrality in the Seventeenth Century as Seen by Contemporary Europe," *War & Society* (Sept. 1984), II, p. 19; Jürg Stüssi, *Das Schweizer Militärwesen des 17. Jahrhunderts in ausländischer Sicht* (Zürich: ADAG, 1982), pp. 203-14, 229-37, 267-88.

[34] Fletcher, *Political Works,* pp. 33-35 (1749).

[35] Stanyan, *An Account of Switzerland*, p. 101.

[36] *Ibid*. at p. 190.

[37] *Ibid*. at pp. 192-193.

The Bern militia consisted of "the whole Body of the People, from sixteen to sixty," and included *Fusileers*, unmarried men who must be ready to march at one hour's warning, and *Electionaries,* the remainder. Stanyan explained:

> Every Man that is listed, provides himself with Arms at his own Expence; and the Regiments are all armed in an uniforme manner, after the newest Fashion; for which Purpose, there is an Officer called a C*ommissioner of Arms*, whose Business it is, to inspect their Arms and Mounting, to take Care they be conformable to the Standard, and to punish such as fail in those Particulars.[38]

While "the chief Objection to a Militia, is their want of Discipline," Stanyan continued, "great Care is taken of exercising the Officers and Soldiers" every Sunday and Holy Day. "Besides this publick Exercise, there are Butts [shooting ranges] set up in every Community, where the People at certain times of the Year meet every Day, to shoot with their Muskets, that they may learn to be good Marksmen."[39] Stanyan added that "their Militia being thus regulated," "when therefore any Alarm is in the Country, the whole Body of the Militia takes Arms, and marches to their several Places of Rendezvous, according to the private Orders given to all the Commanding Officers for that purpose."[40]

Similarly, William Windham's *A Plan of Discipline for the Use of the Norfolk Militia* (1768) demonstrated "how easily an healthy, robust countryman, or a resolute mechanic, may be taught the use of arms," and called for instruction of "the body of the nation in the use of arms." If the militia was put to service before an invasion, "this country will have a better security against the calamities of war than any other in the world, Switzerland alone excepted."[41] Extracts of the work were repeatedly reprinted in America.[42]

The *Boston Gazette* in 1771 reprinted the following from Thomas Gordon's *Discourses on Tacitus* (1728), an English Whig tract: "The

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[38] *Ibid*. at pp. 193-94.

[39] *Ibid*. at pp. 201-202.

[40] *Ibid*. at pp. 203-04.

[41] William Windham, *A Plan of Discipline for the Use of the Norfolk Militia* (2nd ed., J. Millan, 1768).

[42] William Windham, *A Plan of exercise for the militia of Massachusetts-Bay; extracted from the Plan of discipline of the Norfolk militia* (Boston: Richard Draper, 1768, 1771, 1772, 1774; New London: Timothy Green, 1772; New Haven: T. and S. Green, 1772).

people of Switzerland groaned long under the heavy yoke of Austria, sustained a courage of suffering and indignities too many and too great for human patience: So insolent and barbarous were their governors, so tame and submissive the governed." Gordon wrote that, after the Swiss sent the tyrants from their borders:

> Thence forth they asserted their native freedom, and asserted with amazing valor. With handfuls of men they overthrew mighty hosts, and could never be conquered by all the neighboring powers. Their exploits are scarce credible. Three hundred and fifty Swiss, route at one time eight thousand Austrians, some say sixteen thousand: an hundred and thirteen vanquished the Arch Duke Leopold's army of twenty thousand: an hundred and sixteen beat another army of near twenty thousand and slew him.[43]

Gordon explained how tyrants push their subjects into resistance against oppression. His concluding remarks about William Tell had application by the Americans regarding the Crown: "Was there not a cause, was it not high time to exterminate such instruments of cruelty?"[44]

On the eve of the Revolution, the Continental Congress mentioned the Swiss model in attempting to woo Canada to the cause. In its *Appeal to the Inhabitants of Quebec* of October 26, 1774, the Continental Congress asked their northern neighbors not to let religious differences prevent them from pursuing unity. It contended:

> The Swiss Cantons furnish a memorable proof of this truth. Their union is composed of Roman Catholic and Protestant States, living in the utmost concord and peace with one another and thereby enabled, ever since they bravely vindicated their freedom, to defy and defeat every tyrant that has invaded them.[45]

John Zubly's *Great Britain's Right to Tax her colonies. Placed in the clearest light, By A Swiss* (1775) heralded the American militiamen's stand at Lexington against British regulars, and deplored General Gage's tricking of the people of Boston into surrendering their arms on a false promise to allow them to depart the city. Zubly observed that

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[43] *Boston Gazette,* April 1, 1771, p. 3.

[44] *Ibid*.

[45] Charles S. Hyneman and Donald S. Lutz, *American Political Writings During the Founding Era* (Indianapolis: Liberty Press, 1983), I, p. 238.

"in a strong sense of liberty, and the use of fire-arms almost from the cradle, the Americans have vastly the advantage over men of their rank almost every where else."[46] Although he later sought reconciliation with Britain and would die a Loyalist in 1781, Zubly's pamphlets contributed to the Revolutionary cause.

As seen above, Zubly detailed Switzerland's wars for independence in *The Law of Liberty*. He ended his account of "the rise and progress of liberty in Swisserland" with the following:

> When attacked, they defended themselves with incredible bravery, and under every possible disadvantage resisted every attack and at last obliged their enemies not only to desist, but to declare them a free state; and surrounded by Austria, France and Savoy they have continued free and brave ever since, and may they do so to the end of time.[47]

In 1778, while the Revolutionary War dragged on, Johann R. Valltravers, councillor of Bienne, wrote to the American leader Benjamin Franklin: "Let us be united, as two Sister-Republicks." He proposed a "lasting Foundation of Friendship, and of mutual good offices between the two Sisters, the 13 republican states of N. America, and of Switzerland."48 The phenomenon of the "Sister Republics" had great political significance in a world ruled by monarchies.

Indeed, the Declaration of Independence of 1776 declared the American colonies to be "free and independent states,"[49] and the Articles of Confederation—agreed to by the Continental Congress in 1777, but not operable until 1781—declared: "Each state retains its sovereignty, freedom, and independence, and every power, jurisdiction, and right, which is not by this Confederation expressly delegated to the United States, in Congress assembled."[50] According to John Adams, no one

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[46] Zubly, *Great Britain's Right to Tax her colonies. Placed in the clearest light, By a Swiss* (London 1775), pp. 11, 13, 15.

[47] Zubly, *The Law of Liberty,* p. 41.

[48] James H. Hutson, *The Sister Republics* (Washington, D.C.: Library of Congress, 1991), p. 9. See also "The Sister Republics," *Rapport Annuel* 1992 (Berne: Bibliothèque Nationale Suisse, 1993), pp. 41-57.

[49] The Declaration's philosophical statements about natural rights and law bear the imprint not only of John Locke, but also the Swiss Burlamaqui. See Ray F. Harvey, *Jean Jacques Burlamaqui: A Liberal Tradition in American Constitutionalism* (Chapel Hill: University of North Carolina Press, 1937).

[50] Articles of Confederation, Art. II.

proposed "consolidating the vast Continent under one national Government." Rather the preference in the Continental Congress was to "follow the Example of the Greeks, the Dutch, and the Swiss, [and] form a Confederacy of States each of which must have a separate Government."[51]

## II. Debating the Proposed Federal Constitution

Once the Revolution was won, the Swiss experience would figure prominently in the period when the Constitution was proposed and debated. The Articles of Confederation was similar in some respects to the Swiss Confederation. However, by 1786 growing support existed to adopt a constitution with a stronger central government, albeit one based on federalism. The following year, the constitutional convention would be assembled in Philadelphia which drafted what would be adopted as the U.S. Constitution. James Madison and John Adams were both intensely studying models of government during this period, including that of the Swiss Confederation.

Madison wrote a study in 1786 of "Ancient & Modern Confederancies" which described the Swiss Confederation as follows:

> Commenced in 1308 by the temporary, and in 1315 by the perpetual Union, of Uri, Switz & Underwald, for the defence of their liberties agst. the invasions of the House of Austria. In 1315 the Confederacy included 8 Cantons; and 1513 the number of 13 was compleated by the accession of appenzel. . . .
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> The General Diet representing the United Cantons is composed of two deputies from each. Some of their allies as the Abbe St. Gall &c. are allowed by long usage to attend by their deputies.[52]

Madison regarded the Swiss Confederation the same as the American States under the Articles of Confederation, i.e., as not having a central government with sufficient power. He wrote: "The title of Republic and Sovereign State improperly given to this Confederacy, which has no concentered authority the Diets being only a Congress of Delegates from some or all of the Cantons, and having no fixt objects that are national."[53]

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[51] Lyman H. Butterfield et al., *Diary and Autobiography of John Adams* (Cambridge, 1961), III, p. 352.

[52] Papers of James Madison (University of Chicago Press 1975), IX, 8.

[53] *Ibid*. at p. 9.

"The 13 Cantons do not make one Commonwealth," he continued, adding that they "are so many independent Commonwealths in strict alliance." No "common instrument" bound them all together, and instead "The 3 Primitive Cantons alone being each directly allied to the other twelve." Yet they were Allies, and "any one Canton may draw in all the others to make a common cause in its defence."[54]

Madison then made a comment he would repeat later in debates on what would become the proposed U.S. Constitution: "The Confederacy has no common Treasury—no common troops—no common Coin—no common Judicatory nor any other common mark of Sovereignty."[55] Those powers were reserved to each Canton. But he conceded as "truly national" the "federal army, as regulated in 1668" and the existence of "a perpetual defensive engagement against external attacks, and internal troubles," noting: "It is an essential Object of the League to preserve interior tranquility by the reciprocal protection of the form of Government. established in each Canton, so that each is armed with the force of the whole Corps for the suppression of rebellions & Revolts, and the History of Switzerland affords frequent instances of mutual succors for these purposes."[56]

Similar to a demand by Anti-Federalists regarding State militias in the coming debates on the ratification of the U.S. Constitution, Madison noted: "On no pretext is a Canton to be forced to march its troops out of the limits of Switzerland." And similar to the Interstate Commerce Clause that would be adopted in the U.S. Constitution, in part to prohibit States from imposing tariffs on goods from other States, each Canton "must allow it [merchandise] to pass thro' from one neighboring Canton to another without any augmentation of the tolls."[57]

Madison concluded with four "VICES of the [Swiss] Constitution."[58] First, "disparity in size of Cantons." That also characterized the American States then and now. Second, "different principles of Government. in difft. Cantons." That too existed then and now in the American States, although perhaps not as dramatically. Third, "intolerance in Religion." Yet at that time and for many decades later, there were State-supported

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[54] *Ibid*. "By the Convention of Stantz, any member attacked has a *direct claim on the succour of the whole Confederacy." Id.

[55] *Ibid*. at p. 10.

[56] *Ibid*.

[57] *Ibid*. at pp. 10-11.

[58] *Ibid*. at p. 11.

churches, particularly in New England, although Madison and Jefferson succeeded in banning establishments of religion in the Virginia Act for Establishing Religious Freedom (1786). Fourth, Madison listed "weakness of the Union." He had the same complaint about the Articles of Confederation, which he would seek to cure the following year in the Philadelphia constitutional convention by drafting what became the Constitution.

In this same period, John Adams was also studying models of confederations, including the Swiss Cantons. In his *A Defense of the Constitutions of Government of the United States of America* (1787), a survey of ancient and modern republics and other political models, Adams devoted a chapter to the Swiss Cantons, dividing them into "democratical" and "aristocratical."[59] Regardless of which category Adams placed a particular canton, he noted two institutions of direct democracy: the rights to bear arms and to vote on laws. Adams began his description of democratical cantons with Appenzel: "It is not at all surprising, among so much freedom, though among rocks and herds, to hear of literature, and men of letters who are a ornament to their country."[60] Of Underwald, Adams wrote: "The sovereign is the whole country, the sovereignty residing in the general assembly, where all the males of fifteen have entry and suffrage . . . ."[61]

While not entirely democratical, in Glaris "the sovereign is the whole country, and the sovereignty resides in the general assembly, where each male of fifteen, with his sword at his side, has his seat and vote." Further, "this assembly, which is annually held in an open plain, ratifies the laws, lays taxes, enters into alliance, declares war, and make peace."[62] Adams continued that "governments like these, where a large

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[59] Adams' contribution is analyzed in Paul Widmer, "Der Einfluss der Schweiz auf die Amerikanische Verfassung von 1787," *Schweizerische Zeitschrift für Geschichte* (1988), XXXVIII 359. See also the condensed version by Paul Widmer, "John Adams, the Second President of the United States, and Switzerland," *Swiss-American Historical Society Review* (June 2000), XXXVI, No. 2, at p. 3. As Widmer points out, Adams got most of his information from two sources, from which he copied whole passages, often without using quotation marks, and at times was inaccurate. Those sources were Claude Emanuel Faber, Quarante tables politiques de la Suisse (1746) and William Coxe, Sketches of the Natural, Political and Civil State of Switzerland (1779).

[60] John Adams, *A Defence of the Constitutions of Government of the United States of America* (1787), I, p. 23.

[61] *Ibid*. at pp. 23, 26. The above uses the spellings found in Adams.

[62] *Ibid*. at pp. 28-30.

share of power is preserved by the people, deserve to be admired and imitated." He added:

> Their history is full of examples of victories obtained by small numbers of men over large armies. In 1388 the Austrians made an irruption into their territory, with an army of fifteen thousand men; but, instead of conquering the country as they expected, in attacking about four hundred men posted on the mountains at Naefel, they were broken by the stones rolled upon them from the summit: the Swiss, at this critical moment, rushed down upon them with such fury, as forced them to retire with an immense loss.[63]

In Zug, "the sovereignty resides in the general assembly of the five quarters, where each male person of fifteen years of age has admittance and a voice. It assembles annually, to enact laws, and choose their magistrates." In Switz, Adams wrote: "The sovereign is the whole country; that is to say, the sovereignty resides in the general assembly of the country, where all the males of fifteen years of age have a right of entry and suffrage." Uri had similar institutions.[64]

Among the "Aristocratical Republics," Berne had a democratic military system:

> There is no standing army, but every male of sixteen is enrolled in the militia, and obligated to provide himself an uniform, a musket, powder and ball; and no peasant is allowed to marry, without producing his arms and uniform. The arms are inspected every year, and the men exercised.[65]

Fribourg, Adams commented, had "more troops in foreign service than any other canton in proportion."[66]

Soleure had the following feature of direct democracy: "There is an annual meeting of the whole body of the citizens, in which the avoyers and banneret are confirmed in their places." In Lucerne, the people made the most fundamental decisions: "In some few instances, such as declaring war and making peace, forming alliances or imposing taxes, the citizens must be assembled and give their consent, which is one

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[63] *Ibid*. at pp. 28-30.
[64] *Ibid*. at pp. 31, 34.
[65] *Ibid*. at pp. 38-39.
[66] *Ibid*. at p. 41.
[67] *Ibid*. at pp. 41, 43-44, 47, 53-54.

check upon the power of the nobles." The general council of the republic of Geneva "is composed of all the citizens or freemen of twenty-five years of age."[67]

Adams noted that the Zürich arsenal supposedly contained William Tell's bow and arrow, and quoted from a poem about Tell:

> *Who with the generous rustics fate,*
> *On Uri's rock, in close divan,*
> *And wing'd that arrow, sure as fate,*
> *Which fix'd the sacred rights of man*.[68]

Adams noted that the Canton of Uri, birthplace of William Tell, "shook off the yoke of Austria in 1308, and, with Switz and Underwald, laid the foundation of the perpetual alliance of the cantons, in 1315."[69] The year 1315 was the date of one of Switzerland's most inspiring victories, the battle of Morgarten.

Remarks on Switzerland were not limited to the musings of political leaders such as Madison and Adams. In June 1787, an anonymous article was widely published in American newspapers denouncing the worship of tyrants. The article recalled William Tell's confrontation with an oppressive ruler:

> When people are once thoroughly prepared for political idolatry, it is curious, and degrading to human nature, to think what slight qualifications are necessary to compose the object. . . . The hat of *Griesler,* hoisted on a pole in *Switzerland*, was saluted with respectable conges by every passenger, excepting *Tell*, a whimsical old patriot, who thought proper to withhold his homage.[70]

Under the Articles of Confederation, the American States retained primary sovereignty; the federal power consisted only of the Continental Congress, and there was no federal executive or judicial power. The constitutional convention which met in Philadelphia in the Summer of 1787 framed a constitution which delegated more powers to Congress, established an executive branch headed by the President, and provided for a judiciary. Its drafters rejected confederation models, mentioning

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[68] *Ibid*. at pp. 47-48.
[69] *Ibid*. at p. 32.
[70] *Documentary History of the Ratification of the Constitution*, XIII, p. 142.

Switzerland by name, while convention delegates who favored retention of sovereignty in the States mentioned Switzerland favorably.

Alexander Hamilton proposed a wholly central government with unlimited powers,[71] but the scheme was not considered further. In his speech introducing his plan and attacking the competing proposals, Hamilton averred:

> The Swiss Cantons have scarce any union at all, and have been more than once at war with one another. How then are all these evils to be avoided? Only by such a complete sovereignty in the general government as will turn all the strong principles and passions above mentioned on its side.7[2]

James Madison rejected complete centralization but did not wish to leave too much power in the hands of the States. "If we recur to the examples of other confederacies, we shall find in all of them the same tendency of the parts to encroach on the authority of the whole." Madison proceeded to review "the Helvetic, Germanic, and Belgic, among the moderns; tracing their analogy to the United States in the constitution and extent of their federal authorities; in the tendency of the particular members to usurp on these authorities, and to bring confusion and ruin on the whole." Charles Pinckney concurred.[73]

Arguing that "the basis of all ancient and modern confederacies is the freedom and independency of the states composing it," Luther Martin, in support of an equal voice for each State, asked:

> Has Holland or Switzerland ever complained of the equality of the states which compose their respective confederacies? Berne and Zurich are larger than the remaining eleven cantons. . . . Berne alone might usurp the whole power of the Helvetic confederacy, but she is contented still with being equal.[74]

George Mason, who had authored the Virginia Declaration of Rights of 1776, proposed that the office of president under the new constitution should consist of three persons rather than just one (ironi-

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[71] *Ibid*. at p. 205.
[72] *Ibid*. at p. 201.
[73] *Ibid*. at pp. 208, 236.
[74] J. Elliot, *Debates in the Several State Conventions* (1836), I, pp. 456-57.

cally similar to what would become the Federal Council in the Swiss Constitution of 1848). A single person as president had the advantages of unity and secrecy, especially during war. Yet that was also a principle of monarchies, which had been defeated when they invaded republics. Republics without a single leader had advantages too: "Every Husbandman will be quickly converted into a Soldier, when he knows & feels that he is to fight not in defence of the Rights of a particular Family, or a Prince; but for his own. . . . It is this which preserves the Freedom and Independence of the Swiss Cantons, in the midst of the most powerful Nations." That also was the secret to the success of the Americans in the Revolution.[75]

The proposed Constitution was hotly debated. The Swiss model was held in high esteem by the "Antifederalists" (somewhat of a misnomer), who supported civil liberties guaranteed by a bill of rights, an armed populace instead of a standing army, and strong state powers over federal power. "Federalists," in their quest for a centralized power, were not enamored of the Swiss example.

James Wilson was the first delegate to the Philadelphia convention to deliver a public speech defending the proposed Constitution, including a standing army. In response, a pamphlet entitled *A Democratic Federalist* called the standing army "that great support of tyrants," recalled that the American militia defeated the British at Lexington and Bunker Hill, and called for "a well regulated militia." As to the argument that no nation lacked a standing army, the pamphlet adduced:

> . . . the example of Switzerland, which, like us, is a *republic*, whose *thirteen* cantons, like our thirteen States, are under a *federal government*, and which besides is surrounded by the most powerful nations in Europe, all jealous of its liberty and prosperity: And yet that nation has preserved its freedom for many ages, with the sole help of a militia, and has never been known to have a standing army, except when in actual war.– Why should we not follow so glorious an example, and are we less able to defend our liberty without an army, than that brave but small nation, which with its militia alone has hitherto defied all Europe?[76]

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[75] Robert A. Rutland, ed., *The Papers of George Mason* (University of North Carolina Press, 1970), III, pp. 896-97.

[76] *Documentary History of the Ratification of the Constitution* (1981), XIII, pp. 341, 390-91.

"Cincinnatus," apparently Richard Henry Lee or Arthur Lee, wrote in the *New York Journal* in November 1787 that the Grecian and Roman republics kept no standing armies and that:

> . . . in the free Swiss Cantons, no standing army, was ever, or is now permitted; no, sir, in all these great and glorious republics, though surrounded with enemies, their military array was occasional, or at the utmost, annual; nor was there formerly, nor is there now, in the Swiss Cantons, any more appearance of strength kept up in time of peace, than their militia gives: and yet they are free and formidable.[77]

Cincinnatus renewed the attack on Wilson's advocacy of a standing army, counterpoising the Swiss militia model. Standing armies existed to serve the ambitions of rulers, were financed by oppressive taxation, and ensured the submission of the people.[78]

The federalists counterattacked. *The Federalist* No. 19, written by James Madison with Alexander Hamilton's assistance, asserted that "the connection among the Swiss Cantons scarcely amounts to a confederacy," adding:

> They have no common treasury—no common troops even in war—no common coin—no common judicatory, nor any other common mark of sovereignty.
>
> They are kept together by the peculiarity of their topographical position, by their individual weakness and insignificancy; by the fear of powerful neighbours, to one of which they were formerly subject . . . .[79]

In *The Federalist* No. 43, Madison addressed the provision of the Constitution providing that state authorities may request federal assistance in the event of domestic violence. On this occasion, he made a favorable reference to the Swiss: "Even among the Swiss Cantons, which properly speaking are not under one government, provision is made for this object; and the history of that league informs us, that mutual aid is frequently claimed and afforded; and as well by the most democratic, as the other Cantons."[80]

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[77] *Documentary History of the Ratification of the Constitution* (1983), XIV, p. 127.

[78] *Ibid*. at pp. 186-187.

[79] *Ibid*. at p. 394.

[80] *Documentary History of the Ratification of the Constitution*, XV, pp. 442-43 (1984).

Further, in *The Federalist* No. 46, Madison replied to the argument that the federal government may raise a standing army to oppress the people: "To these would be opposed a militia amounting to near half a million of citizens with arms in their hands, officered by men chosen from among themselves, fighting for their common liberties, and united and conducted by governments possessing their affections and confidence."[81] The success of the militia against British troops demonstrated the point. Referring to "the advantage of being armed, which the Americans possess over the people of almost every other nation," Madison continued: "Notwithstanding the military establishments in the several kingdoms of Europe, which are carried as far as the public resources will bear, the governments are afraid to trust the people with arms."[82] He did not, but could have, mentioned the parallel with the Swiss Confederation, where the people were trusted with arms, enabling them to resist the aggression of the kingdoms of Europe.

At Connecticut's ratification convention in January 1788, Oliver Ellsworth, who had been a delegate at the Philadelphia convention, argued for a central coercive power. He commented about the Swiss Cantons:

> They are small republics, about twenty miles square, situated among the Alps, and inaccessible to hostile attacks. They have nothing to temp an invasion. Till lately, they had neither commerce, nor manufactures. They were merely a set of herdsmen. Their inaccessibleness has availed them. Four hundred of those mountaineers defeated 15,000 Austrians, who were marching to subdue them. They spend the ardour of youth in foreign service; they return old, and disposed for tranquility.[83]

Under the pseudonym A Virginia Planter, an Antifederalist paid tribute to the Sister Republics in the Winchester *Virginia Gazette* in March 1788:

> From the examples of the introduction of the most arbitrary Forms of Government, we may venture to declare this plan to be replete with shackles for the free born sons of America. Every intelligent person must know, that all the world is now groaning in a Hell of Slavery (America and Switzerland excepted) whereby it becomes absolutely

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[81] *Ibid*. at pp. 492-93.
[82] *Ibid*.
[83] *Ibid*. at p. 246.

> necessary to consider the way the means by which they were brought into that infernal state.[84]

James Monroe argued in a pamphlet that European models exemplified the need to define the federal-State balance with precision:

> The Amphictionic council, Achaean, Belgic, or Helvetic confederacies were but leagues of independent states, somewhat similar to the present one. To mark the precise point at which the powers of the general government shall cease, and that from whence those of the states shall commence, to poise them in such manner as to prevent either destroying the other, will require the utmost force of human wisdom and ingenuity.[85]

When the Virginia ratification convention assembled, America's greatest political gladiators clashed. Leading the Antifederalists was Patrick Henry, who advocated rejection of the Constitution, especially prior to amendments which would include a bill of rights. In debate in June 1788, Henry alluded to the Swiss to demonstrate that ratification of sufficient other states to form the Union without Virginia would not lead to catastrophe:

> Switzerland is a Confederacy, consisting of dissimilar Governments. This is an example which proves that Governments of dissimilar structures may be Confederated; that Confederate Republic has stood upwards of 400 years; and although several of the individual republics are democratic, and the rest aristocratic, no evil has resulted from this dissimilarity, for they have braved all the power of France and Germany during that long period. The Swiss spirit, Sir, has kept them together: They have encountered and overcome immense difficulties with patience and fortitude. In this vicinity of powerful and ambitious monarchs, they have retained their independence, republican simplicity and valour.[86]

James Madison, draftsman of the Constitution and the leading Federalist in the convention, counseled against imitation of the Swiss. He made the exaggerated claim that the peasants of the aristocratic cantons "are more oppressed and degraded, than the subjects of any Monarch

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[84] *Documentary History of the Ratification of the Constitution* (1988), VIII, p. 470.

[85] *Documentary History of the Ratification of the Constitution* (1990), IX, pp. 1040-1041.

[86] *Ibid*. at p. 966.

in Europe: Nay, (almost) as much so, as those of any Eastern despot." Aristocratical rigor and close alliance prevented dismemberment. Madison also alluded to the wars between the Cantons, averring that "there is a schism this moment in their Confederacy, which, without the necessity of uniting for their external defense, would immediately produce its dissolution."[87]

Patrick Henry returned to the floor. At the beginning of the Revolution, Henry's speech with the words "give me liberty or give me death" won him the reputation as America's foremost orator. He lived up to this reputation with the following eloquent remarks on Switzerland, which are worth quoting at length:

> Switzerland consists of thirteen cantons expressly confederated for national defence. They have stood the shock of 400 years: That country has enjoyed internal tranquility most of that long period. Their distentions have been comparatively, to those of other countries, very few. What has passed in the neighbouring countries? Wars, distentions, and intrigues. Germany involved in the most deplorable civil war, thirty years successively—Continually convulsed with intestine divisions, and harassed by foreign wars. France with her mighty monarchy perpetually at war. Compare the peasants of Switzerland with those of any other mighty nation: You will find them far more happy—for one civil war among them, there have been five or six among other nations—Their attachment to their country, and to freedom—their resolute intrepidity in their defense; the consequent security and happiness which they have enjoyed, and the respect and awe which these things produced in their bordering nations, have signalized them republicans. Their valor, Sir, has been active; every thing that sets in motion the springs of the human heart, engaged them to the protection of their inestimable privileges. They have not only secured their own liberty, but have been the arbiters of the fate of other people. Here, Sir, contemplate the triumph of republican Governments over the pride of monarchy. I acknowledge, Sir, that the necessity of national defence has prevailed in invigorating their councils and arms, and has been in a considerable degree the means of keeping these honest people together. But, Sir, they have had wisdom enough to keep together and render themselves formidable. Their heroism is proverbial. They would heroically fight for their Government, and their laws. . . .Those virtuous and simple people have not a mighty and splendid President—nor enormously expensive navies and armies to support. No, Sir, those brave republicans have acquired their reputation no less

[87] *Ibid*. at pp. 994, 1030.

> by their undaunted intrepidity, than by the wisdom of their frugal and economical policy. Let us follow their example, and be equally happy.[88]

History supported Henry's argument that the democratic and decentralized character of the Swiss polity made it stronger, rather than weaker, militarily. Little could anyone have predicted how well this model would serve Switzerland in the greatest conflagration of the world, which would occur two centuries later. In 1938-41, countries with centralized governments and strong presidents or political elites would surrender their populaces to Hitler after a token fight or no fight at all. The Swiss, who had no strong president or centralized ruling class, retained the traditions of the medieval warrior—every man was armed and ready to fight, and at every level the decision was agreed never to surrender and to resist to the death.[89]

The response to Patrick Henry's oratory was rather hollow. Edmund Pendleton changed the subject from Switzerland's five centuries of federalism and democracy to the issue of mercenary service:

> The peasants of the Swiss Cantons, trade in war—Trained in arms, they become the mercenaries of the best bidder, to carry on the destruction of mankind, as an occupation, where they have not even resentment. Are these a fit people for our worthy farmers and planters . . .?[90]

In the end, a compromise was reached in which the Constitution would be ratified with the promise that a bill of rights would be considered when the first Congress convened. That took place, and the resultant Bill of Rights, which was ratified in 1791, included two provisions bearing the imprint of Swiss influence. The Second Amendment declared: "A well regulated militia, being necessary to the security of a free state, the right of the people to keep and bear arms, shall not be infringed." The Tenth Amendment provided: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." These declarations of armed popular sovereignty and federal-

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[88] *Ibid*. at pp. 1040-1041.

[89] See Stephen P. Halbrook, *Target Switzerland* (1998) and *The Swiss and the Nazis* (2006).

[90] *Documentary History of the Ratification of the Constitution* (1993), X, p. 1195.

ism, which were inspired in part by the Swiss model, remain part of the U.S. Constitution today.

The federal Militia Act of 1792, which required every able-bodied white male citizen aged 18-44 to enroll in the state militias and provide themselves with muskets, rifles, or pistols and swords,[91] would embody those principles. In debate on the bill, Representative James Jackson of Georgia argued that "the people of America would be highly displeased at being debarred the privilege of carrying arms. . . . Many nations owe their present liberty to their original regulations on this subject. The inhabitants of Switzerland emancipated themselves by the establishment of a militia, which finally delivered them from the tyranny of their lords."[92] Another account of this speech noted that Jackson argued that "the people of America would never consent to be deprived of the privilege of carrying arms." He specified some positive historical examples: "The Swiss cantons owed their emancipation to their militia establishment . . . . In a Republic every man ought to be a soldier, and be prepared to resist tyranny and usurpation, as well as invasion, and to prevent the greatest of all evils—a standing army."[93]

Similarly, Representative Roger Sherman "conceived it to be the privilege of every citizen, and one of his most essential rights, to bear arms, and to resist every attack upon his liberty or property, by whomsoever made. The particular states, like private citizens, have a right to be armed, and to defend, by force of arms, their rights, when invaded."[94]

The American Republic was now founded. Before long, the Swiss Confederation would be subjected to its first successful foreign invasion and occupation, which would reverberate across the Atlantic.

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[91] *Statutes at Large*, I, pp. 271-72 (1792).

[92] *The Pennsylvania Packet*, Dec. 18, 1790, in William C. diGiacomantonio *et al*. eds., *Documentary History of the First Federal Congress: Debates in the House of Representatives* (Baltimore: The Johns Hopkins University Press, 1995), XIV, pp. 56-57.

[93] *Gazette of the United States*, Dec. 22, 1790, in *ibid*. at pp. 73-74. Also in *Annals of Congress* (Dec. 16, 1790), II, p. 1806. Still another account of Jackson's speech quoted him as opining "that the people would never be dissatisfied with bearing arms in their own defence; this right . . . was one of the dearest to a freeman." He recalled "the history of the emancipation of the Swiss nation from tyrannical oppression . . . ." *Ibid*. at pp. 49-50, from *The General Adverstiser,* Dec. 17, 1790.

[94] *Ibid*. at pp. 92-3, from *The Pennsylvania Packet*, Dec. 21, 1790.

## III. American Neutrality and the French Invasion of Switzerland

Many Americans were initially enthused about the French Revolution in 1789, but became repulsed by its excesses. In 1793, news of the execution of Louis XVI and France's war with Britain and Holland caused American sympathizers to rethink the issue. A proclamation of neutrality was issued by President George Washington. Jefferson noted that the war between France and England "kindled and brought forward the two parties with an ardour which our own interests merely, could never excite."95 But later that year, Maximilien Robespierre denounced agitators who advocated French intervention in Switzerland, and submitted a law mandating strict adherence to France's commitment of friendship with her sister republics, the United States and the Swiss Confederation:

> Art. I. The national Convention declares, in the name of the French people, that the constant resolution of the Republic is to appear terrifying towards her enemies, generous towards her allies, just towards all peoples.
>
> Art. II. Treaties that bind the French People to the United States of America and the Swiss Cantons will be executed faithfully.[96]

As European conflicts escalated, the United States resolved to remain neutral. President George Washington admonished in his Farewell Address of 1796:

> Excessive partiality for one foreign nation and excessive dislike of another cause those whom they actuate to see danger only on one

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[95] Noble E. Cunningham, Jr., *The Jeffersonian Republicans: The Formation of Party Organization, 1789-1801* (Chapel Hill, N.C.: The University of North Carolina Press, 1957), p. 54.

[96] In French:

*Art. Ier. La Convention national déclare, au nom du peuple français, que la résolution constante de la République est de se montrer terrible envers ses ennemis, généreuse envers ses alliés, juste envers tous les peuples.*

*Art. II. Les traités qui lient le Peuple français aux Etats-Unis d'Amérique et aux Cantons Suisse seront fidèlement exécutés.*

Jürg Stüssi-Lauterburg *et al., "Wer sich nicht wehrt, lebt verkehrt!* Beilage zur 'Allgemeine Schweizerische Militärzeitschrift,'" *ASMZ*, Nr. 3, März 1998, p. 6.

> side, and serve to veil and even second the arts of influence on the other. . . . Europe has a set of primary interests which to us have none or a very remote relation. Hence she must be engaged in frequent controversies, the causes of which are essentially foreign to our concerns. Hence, therefore, it must be unwise in us to implicate ourselves by artificial ties in the ordinary vicissitudes of her politics of the ordinary combinations and collisions of her friendship or enmities.[97]

U.S.-British relations suffered over the years from British impressment of American seamen and other grievances. When the U.S. entered into the allegedly pro-British Jay Treaty, France suspended diplomatic relations with, and pursued maritime and diplomatic struggle, against the United States. The May 1797 message to the Congress by newly-elected President John Adams signaled the need to prepare for war against France. Needless to say, the French took great offense.[98]

Foreboding the coming war in Switzerland, it was reported in the American press that Napoleon was incensed at the Swiss' refusal to give his troops permission to pass through their territory. "He has even threatened to procure by force what entreaties have failed to obtain."[99]

In October 1797, French agents known as "XYZ" demanded from the American diplomats in Paris huge sums of money and support for the war against England. The diplomats responded that the United States had a right to remain neutral,[100] noting as an aside that "France would probably forbid America to receive them [British diplomats] in like manner as she had forbid Switzerland to permit the residence in its country of a British Minister."[101] Being informed of the attempted coercion, President Adams wrote to the U.S. Secretary of State: "It is even conjectured that neither the courage the hardihood or the poverty of Switzerland will protect it from partition."[102]

French-Swiss conflict taking place in February 1798 was reported in the American press, which exclaimed: "War with Berne is

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[97] *Messages and Papers of the Presidents* (1899), I, pp. 221-24.

[98] John Austin Stevens, *Albert Gallatin* (Boston: Houghton, Mifflin & Co., 1898), pp. 132-33; William C. Stinchcombe *et al*. ed., *The Papers of John Marshall* (Chapel Hill, NC: University of North Carolina Press, 1979), III, pp. 244, 250, 256-59.

[99] *Paris Journal*, Aug. 8, 1797, reprinted in Pennsylvania Gazette, Sept. 27, 1797.

[100] *The Papers of John Marshall,* III, p. 173.

[101] *Ibid*. at p. 282.

[102] *Ibid*. at p. 303.

inevitable."103 The city of Arau was captured by an army from Bern. Patriots of Pays de Vaud joined the French troops marching towards Bern. The pretext for the French attack on the Bernese was said to be the killing of two Hussars by Swiss sentries in the village of Thierens. "The pretended outrage is alleged by the French government as the motive for the French troops entering the territory of Berne . . . ."[104]

But it was reported that the French saw the Swiss as "an enemy worthy of their bravery." In one account, "Eighty YOUTHS of Berne defended a narrow passage with stubborn valor.—Killed many of the enemy, and finally perished with arms in their hands."[105]

In the same period, U.S. envoy John Marshall met with a French agent who asserted that, among other entities, "Switzerland would be obliged to advance them money, . . . and that the United States must also advance them money or take the consequences." He averred "that the Washington and Adams administration were entirely English."[106]

At this point in American politics, the "Federalist" party led by President John Adams did tend to favor the English and, on the domestic front, supported a stronger central government. The "Republican" party, which was led by Thomas Jefferson and included some "Federalists" (such as James Madison) and "Anti-Federalists" from the 1780s, had been sympathetic to the French Revolution and opposed a strong central government.

Federalists in Congress were quick to use the French invasion of Switzerland in support of their agenda. In March, in the House of Representatives, Federalist leader Robert Harper of South Carolina noted that continuous attempts "had been made by France on the independence" of Switzerland, adding:

> After going a variety of lengths, they effected their purpose of driving from thence that unfortunate class of men, the emigrants, who had been persecuted by those who had usurped all authority in France, and who sought the rights of hospitality amongst them. New aggressions were made; they took possession of a part of the Swiss territory,

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[103] *Maryland Gazette*, Apr. 26, 1798, p. 1.

[104] *Maryland Gazette,* June 7, 1798, p. 1.

[105] *Gazette Bordelaise,* Mar. 21, 1798, reprinted in *Pennsylvania Gazette*, May 23, 1798.

[106] *Papers of John Marshall*, III, p. 208.

> and displaced their magistrates. Seeing that every submission invited fresh insult, they united, hand in hand, took up arms, and reinstated the magistrates who had been displaced, and resolved to live free or die. What was the consequence of this spirited conduct? The French withdrew from their territory, disavowed the measures of their General, and declared that they desired nothing more than to leave the Swiss in full possession of their rights.[107]

Harper may have been misled by initial reports of successful Swiss resistance, and news traveled slowly across the Atlantic, but in actuality at that time the French aggression against Switzerland was in full sway. Harper continued that the U.S. should "take warning by this energetic example of the Swiss. Let us now begin to resist. Let us declare that we wish to preserve peace with all the world; that we allow that peace is good, but that we believe independence is better; that peace is desirable, but not at any price—and then France will relinquish her aggressions."[108] Things did not work out so fortunate for the Swiss.

On March 8, 1798, John Marshall wrote to President John Adams that no hope existed of resolving the differences with France consistent with American independence. France demanded money from the United States to be used for the prosecution of the war.[109] The letter also referred to the proposal of the Emperor of Prussia that all territory on the left of the Rhine be ceded to France, adding:

> It will probably too very much influence the affairs of Switzerland. The determination of France to revolutionize the helvetic body has been long known. In the pais de vaud belonging to the Canton of Berne the revolution has commenced & is completely affected under the protection & guidance of a french army for which that little country has already paid about 800,000 livres Swiss. France has insisted on extending the revolution throughout Switzerland. The existing governments in some of the cantons & especially in Berne declare their willingness to reorganize their constitution on the base of an equality of rights & a free representation, but they protest against foreign interposition & against a revolutionary intermediate government. In support of this resolution they have collected all their force & most of the cantons which have already changed their form of government have

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[107] *Annals of Congress,* 5th Congress, 2nd Session, March 1798, p. 1344.
[108] *Ibid*. at pp. 1344-45.
[109] *Papers of John Marshall*, III, p. 399.

> furnishd their contingents. The mass of the people in Berne are firmly united & seem to join the government in saying that they will to the last man bury themselves under the ruins of their country rather than submit to the intermeddling of foreigners in the formation of their constitutions. Such is the present truely interesting state of Switzerland. A powerful military force is advancing upon them & at the same time it is said that the negotiations are to be opened. The terms offered however are supposed to be such as if accepted will place that country in the same situation as if conquered. A revolutionary government is insisted on.
>
> The Swiss have observed an exact neutrality throughout the late war on the continent & have even since the peace sought to preserve the forbearance of France by concessions not perfectly compatible with the rights of an independent nation.[110]

Marshall noted in his diary two days after he wrote the above: "The papers announce that the troops of France & Switzerland have had some severe encounters in which those of the latter have been worsted & the French have entered Fribourg & Soleure. Report (which as yet wants confirmation & indeed is disbelieved) also says that Berne has submitted."[111]

In May, the American press reported news from March that General Schauenburg announced that "he has entered Lucerne, after a most vigorous defence on the part of the Swiss. It appears, that the women in the neighborhood of this place, turned out in great numbers, and with scythes in their hands, made great havock amongst the French troops."[112] Similarly, it was reported: "In proof of the valour displayed by the Bernese, we are likewise informed, that in the action near Neveneck, the undisciplined peasantry fought with such gallant desperation that they refused all quarter, and that they flung themselves on the ground to prevent the French artillery from advancing."[113] By June, Americans learned that Berne had capitulated in mid-March:

> The Bernese, we understand, have submitted to the following conditions: "The city of Berne is to maintain 4000 French foot, and 1000 horse; the inhabitants of the city, as well as the country people, are to be disarmed; the arsenal is to be given up to the disposal of the

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[110] *Ibid*. at p. 401.
[111] *Ibid*. at p. 402.
[112] *Maryland Gazette,* May 31, 1798, at p. 1.
[113] *Maryland Gazette,* June 14, 1798, at p. 1.

> French army; a provisional national assembly is to be substituted in the stead of the former regency; and the Helvetic constitution received from Paris, is to be accepted."[114]

In April 1798, Congress published the XYZ dispatches, in which French agents sought to extort bribes and loans from the United States. Public support increased for President Adams and the Federalist party, which promoted its agenda in Congress to create a navy and standing army for war against France.[115] In a letter to Jefferson in May, James Madison expressed shock that John Adams, formerly "a Revolutionary patriot," supported such measures. Adams had remarked to Madison that "that there was not a single principle the same in the American & French Revolutions," ignoring that both had abolished royalty.[116]

When the House of Representatives considered bills which would provide arms for the militia and establish a standing army,[117] Federalist leader Robert Harper asserted:

> . . . that those gentlemen who spoke of the militia as being a sufficient defence for the country, he would refer to the fate of the Canton of Berne, from which they will find that something more than spirit or bravery is necessary. It will be seen that nothing can be effected without discipline, for though the people of Berne, assisted by their wives and sisters, defended themselves bravely with their scythes and pitchforks they were mown down by the superior discipline and order of the enemy; so that for want of energy and decision in their Government, and discipline in their troops, they were crushed and destroyed."[118]

Since the Federalists favored a standing army over a militia, Harper now used the Swiss example to show the inferiority of a militia, although it is difficult to imagine that the result would have been different had the Swiss had a standing army. Representative Nathanael Macon, a Republican, replied that Harper should have "examined the Constitu-

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[114] *Ibid*.

[115] *Papers of John Marshall*, III, p. 495.

[116] *The Papers of James Madison,* eds. David B. Mattern, *et al*. (Charlottesville: University Press of Virginia, 1991), XVII, p. 134.

[117] *Annals of Congress,* 5th Congress, 2nd Session, June 1798, p. 1927.

[118] *Ibid*. at p. 1935.

tional question, instead of referring the House to the fate of Berne." He argued that the proposed army of volunteers who would be subject to militia duty was unconstitutional.[119] Representative Albert Gallatin of Pennsylvania agreed: "A great deal had been said about the great effect of discipline, and of the fate of Berne, which he thought was wholly irrelevant."[120] Gallatin was originally from Geneva, had emigrated to America in 1780, and by now had become the leader of the Republicans in the House of Representatives.[121]

In June 1798, Congress passed the Federalist-backed Alien and Sedition Acts, which authorized the President to arrest and expel aliens from the United States, and empowered the courts to suppress "sedition" by censoring newspapers and imprisoning writers. The Republicans charged that Federalist officeholders enforced the Acts to strangle political opposition—Jefferson believed them to be aimed in part at Gallatin personally.[122] The Kentucky and Virginia Resolutions, drafted respectively by Jefferson and Madison, sought to declare the Acts as contrary to the Bill of Rights and unconstitutional.[123]

The Republican positions on domestic and foreign policy were well articulated by Jefferson in a January 1799 letter as follows:

> I am for relying, for internal defense, on our militia solely, till actual invasion, and for such a naval force only as may protect our coasts and harbors from such depredations as we have experienced; not for a standing army in time of peace, which may overawe the public sentiment . . . . And I am not for linking ourselves by new treaties with the quarrels of Europe; entering that field of slaughter to preserve their balance, or joining in the confederacy of kings to war against the principles of liberty. I am . . . for freedom of the press, and against all violations of the constitution to silence by force and not by reason the complaints or criticisms, just or unjust, of our citizens against the conduct of their agents."[124]

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[119] *Ibid*. at p. 1935.

[120] *Ibid*. at p. 1936.

[121] See Benedict von Tscharner, *Albert Gallatin (1761-1849): Geneva's American Statesman* (Gollion: éditions infolio, 2008); John Austin Stevens, *Albert Gallatin* (Boston: Houghton, Mifflin & Co., 1898); Raymond Walters, *Albert Gallatin: Jeffersonian Financier and Diplomat* (New York: Macmillan, 1957).

[122] Stevens, *Albert Gallatin,* p. 52.

[123] Jonathan Elliot ed., *Debates in the Several State Conventions on the Adoption of the Federal Constitution* (Philadelphia: J.B. Lippincott, 1836), IV, pp. 528, 540.

[124] Cunningham, *The Jeffersonian Republicans,* p. 211.

On February 25, 1799, the House of Representatives considered the report of a committee to consider petitions signed by thousands of citizens seeking repeal of the Alien and Sedition Acts.[125] Defending the Acts, the committee report accused the petitioners of opposing "the principal measures hitherto adopted for repelling the aggressions and insults of France," including the creation of a navy and standing army with collection of taxes to pay for them.[126] The report argued that the constitutional rights of free speech and press were not violated by the Act's prohibition on "libels against the Government," which were punishable by imprisonment.[127]

The report included the following statement which could be said about many periods in European history: "Unfortunately for the present generation of mankind, a contest has arisen and rages with unabated ferocity, which has desolated the fairest portions of Europe, and shaken the fabric of society through the civilized world." Noting French aggression against Egypt, the East Indies, and the Ottoman Empire, the report added: "If, however, it be asserted that the system of France is hostile only to despotic or monarchical Governments, and that our security arises from the form of our constitution, let Switzerland, first divided and disarmed by perfidious seductions, now agonized by relentless power, illustrate the consequences of similar credulity."[128]

The irony of this argument was that the Federalists were not so sympathetic to the institutions of Switzerland, while the Republicans, despite their previous sympathy with the French Revolution, praised the Swiss institutions of federalism, the militia, and neutrality. In any event, the committee report conjured the image of French spies and French subversion as pervading the United States, thereby necessitating the Alien and Sedition Acts.[129]

Representative Albert Gallatin argued that the President had no constitutional power to expel peaceable aliens.[130] Under the Acts, "instead of being bound by a Constitution, they claim the omnipotence of a British Parliament," and the liberty of the press is "construed away by

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[125] Annals of Congress, 5th Congress, 3rd Session, p. 2985 (1799).
[126] *Ibid*. at p. 2986.
[127] *Ibid*. at pp. 2988-90.
[128] *Ibid*. at pp. 2990-91.
[129] *Ibid*. at pp. 2991-92.
[130] *Ibid*. at pp. 2993-94.

star-chamber definitions,"[131] a reference to despotic British institutions. The Acts, like related measures of "domestic oppression," exorbitant taxes, and the creation of a standing army, were wrongly justified as essential for "our general system of defence against France."[132] As for the committee report's claim that the United States offered as easy a conquest as Egypt, Gallatin responded: "They seem to have forgotten that Egypt was governed and defended by Mamelukes and inhabited by slaves; that the United States are *as yet* inhabited and defended by the people themselves."[133]

The Federalists refused to respond to opponents or even to debate the issue. By a vote of 52 to 48, the majority adopted the committee report and rejected any consideration of repealing the Alien and Sedition Acts.[134] The Acts would expire of their own accord in 1801.

Meanwhile, throughout 1799 Switzerland would be a battleground of the French against the allied armies of England, Austria, and Russia, about which the American press regularly reported.[135] It was suggested: "Should all Switzerland be conquered, they talk of convoking a congress at Bern, to give Switzerland a federal constitution similar to the United States of North-America."[136]

Perhaps the most dramatic event was the successful campaign of Russian General Suworow through some of the most treacherous mountains of the Gotthard region. Reporting that the French had been driven from Uri, an American newspaper stated: "The valley is as desolate as if the plague had raged there; no farmer, no cattle, no provisions; and the ruined cottages are quite deserted. Mount St. Gothard exhibits a dreadful sight, with its stupendous rocks, being every where besmeared with blood, and strewed with corpses."[137]

The Alien and Sedition Acts figured prominently in Thomas Jefferson's defeat of John Adams in the presidential election of 1800. In his inaugural address in 1801, Jefferson heralded "peace, commerce,

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[131] *Ibid*. at pp. 2996.

[132] *Ibid*. at pp. 3000.

[133] *Ibid*. at pp. 3001.

[134] *Ibid*. at pp. 3002, 3016.

[135] See Stephen P. Halbrook, "European History of 1799 as Seen From the USA," *Suworow in der Schweiz: Colloque Souvorov du bicentenaire 1799-1999* (Zurich: Thesis, 2001), pp. 162-79.

[136] *Maryland Gazette,* Sept. 5, 1799, p. 1.

[137] *Maryland Gazette,* Sept. 12, 1799, p. 1.

and honest friendship with all nations—entangling alliances with none; . . . a well-disciplined militia, our best reliance in peace and for the first moments of war until regulars may relieve them; . . . freedom of religion; freedom of the press, and freedom of person . . . ."[138] This reaffirmed American neutrality and adherence to the Bill of Rights.

The French would never invade the United States, but the British did. At the same time as the Americans were resisting British depredations in the War of 1812, Switzerland in 1813 became a battleground again in the clash between French, Austrian, and Russian forces. Both the United States and Switzerland would emerge from these invasions, albeit in different circumstances, stronger than ever before in the face of the great European powers.

In the epochs since then, both countries continued their traditions of neutrality, although the United States departed from this tradition in the twentieth century[139]—not voluntarily, as Pearl Harbor attests. Only Switzerland continues to rely on a militia army, although federal and state laws in the United States provide for an unorganized militia, and both countries recognize the right of citizens to have arms.[140] And while the growth of the central government in the United States ever escalates, both of the Sister Republics maintain basic systems of federalism.

**Postscript: An Issue of Federalism in the U.S. Supreme Court**

In 1997, I argued a case called *Sheriff Jay Printz v. United States* in the U.S. Supreme Court on issues of federalism in which the Swiss experience would be raised. At issue was an unfunded federal mandate commanding state and local law enforcement officers to conduct background checks on handgun buyers. I represented local sheriffs who objected to administering federal laws, which is the job of federal employees. During oral argument in the Supreme Court, Justice Breyer asked

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[138] Thomas Jefferson, *Writings* (New York: Literary Classics of the United States, Inc., 1984), 494-95. For an exposition of these concepts as set forth by Tench Coxe, a prominent Republican publicist and office holder, see Stephen P. Halbrook and David B. Kopel, "Tench Coxe and the Right to Keep and Bear Arms, 1787-1823," *William & Mary Bill of Rights Journal* (Feb. 1999), VII, p. 347.

[139] Phillips *et al*., *The American Neutrality Problem* (New York: H.W. Wilson Co., 1939), pp. 46, 56.

[140] See Stephen P. Halbrook, "Citizens in Arms: The Swiss Experience," *Texas Review of Law & Politics* (Fall 2003), VIII, Issue 1, p. 142.

me why we do not allow the central authority to give commands to the states, as is done in the European Union, Germany, and Switzerland. I responded simply that we must follow our Constitution, not foreign models. I did not want to expend my argument time explaining how different those political entities were historically—at the time, I was immersed in research for my book *Target Switzerland*, and was struck by how Hitler's Third Reich took over the German *Länder* (states) and obliterated any vestige of state sovereignty.

The Supreme Court ruled in favor of the sheriffs on the basis that the conscription of the states to administer a federal regulatory program is beyond the power of Congress to regulate commerce among the states and is inconsistent with the reservation of powers to the states in the Tenth Amendment.[141] Writing for the Court, Justice Scalia rejected Justice Breyer's argument on the basis that we must interpret our Constitution, not those of Europe.[142] Referring to the debates on the Constitution in 1787-89, Scalia continued: "Antifederalists . . . pointed specifically to Switzerland—and its then 400 years of success as a 'confederate republic'—as proof that the proposed Constitution and its federal structure was unnecessary."[143] He cited, but did not quote, speeches by Patrick Henry in the Virginia Ratifying Convention in 1788, parts of which are quoted above in this article.[144]

Justice Breyer, joined by Justice Stevens, argued in dissent that European models in which states implement laws passed by the central authority should counsel interpretation of the U.S. Constitution.[145] He stated: "The federal systems of Switzerland, Germany, and the European Union, for example, all provide that constituent states, not federal bureaucracies, will themselves implement many of the laws, rules, regulations, or decrees enacted by the central 'federal' body."[146] He did not refer to the Antifederalists or other historical references, nor did he explain how federalism could endure if Congress could simply hand out commands to the States without limit, and not pay for them to boot.

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[141] *Printz v. United States,* p. 521, U.S. 898 (1997).

[142] *Ibid*. at p. 921 n.11.

[143] *Ibid*.

[144] *Ibid*., citing Patrick Henry, Speeches given before the Virginia Ratifying Convention, 4 and 5 June, 1788, reprinted in *The Essential Antifederalist* (W. Allen & G. Lloyd ed. 1985), pp. 123, 135 136.

[145] *Ibid*. at p. 976 (Breyer, J., dissenting).

[146] *Ibid*. (citations omitted).

Yet historically, Switzerland, Germany, and the European Union could not be more diverse. Switzerland remains the *Confederation* Helvetia, where the central government is limited and the Cantons retain great sovereignty.[147] Germany has federal features today, but under National Socialism the German *Länder* (States) became mere puppets of the central Nazi authority.[148] The European Union is an unelected, centralized authority which the Swiss people deemed to threaten their democracy and voted not to join.[149]

Ironically, the Sister Republics bear closer federal similarities than one may glean from the above discussion. While the Constitution was adopted over Antifederalist objections, the Antifederalists succeeded in amending it with the Bill of Rights, which includes such provisions as the Second Amendment recognition of the militia and the right to keep and bear arms, and the Tenth Amendment reservation to the states or to the people of powers not delegated to the federal government. To that extent, Patrick Henry and the Antifederalists got some of the Swiss model of federalism and democracy that they fought for.

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[147] See Federal Constitution of the Swiss Confederation, Art. 3 ("The Cantons are sovereign except to the extent that their sovereignty is limited by the Federal Constitution. They shall exercise all rights that are not vested in the Confederation."); Art. 43a ("The Confederation shall only undertake tasks that the Cantons are unable to perform or which require uniform regulation by the Confederation."). Available at http://www.admin.ch/ch/e/rs/1/101.en.pdf.

[148] Hitler assumed executive power over the German States after coming to power in 1933. Ingo Müller, *Hitler's Justice: The Courts of the Third Reich,* trans. Deborah Lucas Schneider (Cambridge, Mass.: Harvard University Press, 1991), p. 33; Frederick T. Birchall, "Hindenburg Drops Flag of Republic," *New York Times,* Mar. 13, 1933, at p. 6. The Law for the Reconstruction of the Reich of January 30, 1934, finalized the liquidation of the power of the *Länder* (States) and consolidated power in the Reich. Reichsgesetzblatt 1934, I, S. p. 75.

[149] In 2001, 77.3% of Swiss voters rejected joining the European Union. http://switzerland.isyours.com/e/faq/switzerland eu.html.