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On December 29, 1966, the Swiss-American Historical Society held its Annual Meeting in New York. On that occasion, Dr. Thomas Gelzer, Assistant Professor for Classics at the University of Zürich, at present Fellow of the Center for Hellenic Studies in Washington, D.C., read the following paper. As it goes to the heart of the basic relations between the United States and Switzerland, it may be of interest to many Swiss here in America. The Swiss-American Historical Society therefore gladly presents it not only to its own members, but also to the readers of the Bulletin for the Swiss Scientists and Engineers in North America and to friends of Switzerland.

L. Burckhardt
Secretary of the SAHS

SOURCES OF THE AMERICAN AND SWISS CONSTITUTIONS IN ANCIENT GREEK

POLITICAL THOUGHT

by Dr. THOMAS C. GELZER

Looking for a suitable subject for the Swiss-American Historical Society within the reach of a classicist, I found the question of the Ancient Greek Sources in the American Constitution. Although not a historian, I thought that this would mean treating matters of historical significance as well as of unbroken continuance of the effects of classical thinking. In addition to that the Constitution is one of the living connections which links the mighty United States of America with the tiny Swiss Confederation. But, big or small, both nations have drawn continuously vital forces from the order of life which is shaped by these constitutions. Their similarities and kindred aspirations are embodied in the similar structures of these documents from which every right and law in these countries derives its legality. And these similarities do not rest on superficial coincidence. They are in fact the result of conscious acceptance of structural elements of the American example by Swiss legislators in shaping their own state. So the philosophical background of the American constitution affects Swiss and American political life alike and reflects basic principles in the political purposes of both nations.

In dealing with these problems I am indebted to many authors who have

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one single book which is especially pleasant reading, Mr. Richard M. Gunmere's The American Colonial Mind and the Classical Tradition. From this as well as from other books I have freely drawn my information, and I shall quote, without mentioning it in every case, what I thought to be interesting in our context. (Short bibliography at the end of the paper).

The seven articles, subdivided into twenty-four sections, of the Constitution of the United States deal with their subject in an unemotional and entirely matter of fact style. They establish the legislative, executive, and judicial powers, and some basic rules for the relations between the states themselves and the Union, for the amending, authority and ratification of the Constitution, and for the regulation of a few more specific topics like debts and engagements. At first sight this text does not seem to contain any matter of philosophical implication, and all the more so, as the Constitution which the Federal Convention had adopted on September 17, 1787, did not include a bill of rights, as it was to supplement the original text only when the Congress at its first session adopted the ten amendments, declared to be in force on December 15, 1791. So the philosophical thought with which we shall be concerned does not consist in any statement of basic principles of purposes, nor in an explicit justification, as in Jefferson’s Declaration of Independence of 1776, nor, as many later constitutions, in the more restricted form of a preamble. In fact the philosophy at the bottom of it is completely expressed by the internal features of the very structure of these instruments of power and of the means of protection of the rights of the citizens, built into the frame of the new political organism created by the Constitution itself.

But, fortunately, we are not reduced to mere induction from outside or any guesswork about the ideas and motives of the men who accepted these specific solutions; we are informed in every desirable detail about the process which led to the acceptance of every paragraph of the Constitution, and we know the cultural background of the people who had drafted and discussed it sitting in the Convention at Philadelphia from May 15 to September 17, 1787. The famous principles, embodied in a singularly pure and efficient form, are the system of checks and balances, and the separation of powers. The colonials of the eighteenth century credited respectively Lord Bolingbroke with the first and Montesquieu with the second of these doctrines. Nevertheless, these were evidently not their only sources in dealing with these questions, not even the ones foremost in their consciousness. In their considerations they used to start from and to argue with historical experience. This they found, according to their education, most conveniently set off in exemplary cases and explained by theoretical considerations in the historians and philosophical thinkers of classical antiquity. The overwhelmingly important part played by the classics in the actual political thinking of the framers of the Constitution must really be explained as a direct consequence of their own educational background. The frequent invocation of classical testimony by the signatories of both the Declaration of Independence and the Constitution reveals the close connection between their studies and their political activities.

Their common education was so much shaped by a homogenous ideal of culture and by classical standards which are – alas – no longer the ones generally accepted in our own time, that we must look at this education briefly in order to understand the implications in the discussions concerning the
American Constitution. These men were brought up in colleges whose curricula followed the pattern of England's best classical traditions. At the Congress of 1776 which resulted in the Declaration of Independence, out of fifty-six supporters twenty-seven had gone through college, eight of them at Harvard. Even more impressive is the proportion of twenty-three college-men out of the thirty-nine who signed the Constitution in 1787. They were the heirs of a tradition imposed on this country already by the men who had organized and led the first settlers. Before 1646 some 130 alumni of the universities of Oxford, Cambridge, and Dublin emigrated to New England. Baron De la Warr, the first real governor of Virginia, and John Mason, the founder of "Laconia" (the present New Hampshire) had gone through Queen's and Magdalen, Oxford, Oglethorpe of Georgia matriculated at Oxford before entering the army, and among the pioneer Germans there were Pastorius, Ernst Muhlenberg, Peter Miller, and the count Zinzendorf with a corresponding background from German universities, most of them from Halle.

As in the British civil service, where the requirement of a classical B.A. as a basic qualification to higher advancement lasted almost unquestioned up to the beginning of this century, the members of the earlier cabinets of the United States were almost without exception composed of college graduates. Such was, e.g., the 1801 cabinet of Jefferson, the president himself from William and Mary, Madison and Robert Smith from Princeton, Lincoln from Harvard, Granger from Yale, and even the naturalized Galletin of Geneva had graduated from that city's venerable academy of Calvin and Isaac Casaubonius.

More than half a century older than the second of colonial colleges (William and Mary, 1661, Yale 1701), Harvard College, founded by the assembly of the Bay Colony in 1636, opened at Cambridge, outside Boston two years later. The charter of 1650 declared its purpose to be "the advancement of all good literature, arts and sciences". So Harvard set the pace and pattern for higher education in America. Its first president set up such high standards in the liberal arts as to attract students from all over the New World including Bermuda and Virginia, and even from England itself. The traditional English four-year liberal arts curriculum was followed mostly in Latin textbooks. Besides lectures and recitations the instruction comprised as a regular part Latin disputations. In correspondence with these goals were the entrance requirements for admission to the colleges. Solidly classical, with some mathematical additions, they remained unchanged for about one hundred and seventy-five years. So, for instance John Jay, the Federalist, on entering King's College (now Columbia) had to give a "rational account of the Greek and Latin grammars", read three orations of Cicero and three books of the Aeneid, and translate the first ten chapters of the Gospel of John into Latin.

Very important is the fact that this classical education was neither bound to social levels based on property, nor confined to sons of merchants or professional people. Free tuition was the law of many local schools. There were the "log colleges" in the Middle Colonies and Virginia, with special funds for "poor and pious youth". Farm lads paid their term bills for college in grain or pigs or cider. And the prevalence as well as the democracy of this classical program is proved by the fact that it was regarded as the duty of the settlers to offer its advantages also to the Indians. One Indian received the B.A. degree at Harvard; another fell by the wayside, and a third died in college. The successful candidate became an expert in Greek and Latin verse. William Byrd sent, from a journey inland,
back to William and Mary College recommending "two Nansemonds, two Nottaways, and two Meherrins to go to College." Later on several visitors to Indian camps reported conversations with Indians who wrote Latin or read Greek Books in the wilderness.

So this classical education was considered as an equal opportunity in the educational field available for every gifted boy. Classical education, far from being a matter confined to leisurely upper class aesthetes, was in fact a link uniting all the brighter minds independent of their extraction, and it had an intensely practical purpose. It was not only democratic, but it was conductive to leadership. We have already mentioned the proportion of subscribers of the Declaration and of the Constitution with college background. As a general rule, firsthand knowledge of the ancient writers was felt to be such an obvious requirement among people with political responsibility that also the ones who had not studied Greek and Latin at either school or college made up for this lack of instruction by studies of their own. Such was the situation (according to Bernard Fay) "that in the eighteenth century a cultivated man could do without his shirt but not without his Latin quotations." Therefore it is no surprise that in discussions of burning topical interest such as the ones about the Constitution, arguments were broadly drawn upon classical sources. Specific problems of contemporary issues were naturally correlated with similar crises or solutions of the familiar ancient world.

The discussions are the source from which we gather our insight into the ideas of the men responsible for the structure and the text of the Constitution. These short remarks on their cultural tradition will have attained their aim, if they have made plain the general impact of the classical tradition on the mind of the colonials, and the corresponding dissemination of the classical tools for thinking, arguing, and expressing political concerns. We are able to follow the discussions of the constitutional themes through three stages.

First came the period of cautious approach and experiment. The first Continental Congress in Philadelphia in 1774 set out to find a solution to the struggle between libertas and imperium and issued a Declaration of Rights. After the arms had been taken up in 1775 there followed more resolute steps towards a legal solution. On June 12, 1776, the state convention adopted the Virginia Bill of Rights, parent of all American bills of rights and drafted by George Mason. Then Congress worked through Jefferson's Declaration of Independence which was adopted, after some changes had been made, on July 4, 1776. Before the Constitution for the entire nation was under consideration, constitutions for individual states were adopted. These followed three main types of distribution of the powers. The Virginian constitution provided (following Locke's conceptions) for legislative supremacy; the Pennsylvanian type was unicameral and established something nearing a dictatorship of the proletariat.

The most interesting in our context is John Adam's constitution of Massachusetts, based on Polybius' theory of "mixed constitutions" which then was referred to as system of "checks and balances". The informal Union of the states received its first provisional legal organization, during the war, by the Articles of Confederation, which passed Congress on November 15, 1777 and were ratified by the last state only in 1781. The Articles were a first attempt to cope with the so-called federal question, the problem of finding a balance between a central government and the rights of the member states.
With this legal order established, the stage of preliminary discussion was definitely overcome. The difficulties of meeting the exigencies of the Union under the rule of the Articles were badly felt during the war and after. The necessity had to be acknowledged to provide for a more adequate constitution. The following debates over the type of government derived great benefit from the practical experience which by that time had been acquired. Main issues remained nevertheless the questions of principle, and in discussing them and in substantiating their decisions the delegates referred to those sources which we shall have to consider now. The third stage of the treatment of the subject was the effort of the supporters of the new document to prepare and to win over the electorate for the acceptance of the Constitution. It generated the Federalist Papers, an authoritative interpretation of the Constitution.

The production of the Constitution was in fact the heyday of practical use of classical materials, or, as Gummere says: "In no field were Greek and Roman sources more often invoked and at no time were they more frequently cited than during the preliminary discussions, the debates on the Constitution, the ratifying conventions, the Federalist papers, and such publications as John Dickinson's Fabius Letters." Many of the delegates to the Convention of 1787 had set themselves tasks of extensive reading and study in the classical literature of political science. Three of the most brilliant political scientists of the time, John Adams, Thomas Jefferson, and John Jay, although they were not themselves members of the Convention, being busy with the foreign relations of the Confederation, nevertheless contributed to the discussion. Jefferson shipped from Paris to his friends Madison, a former graduate of Harvard, and George Wythe, a finished Greek and Latin scholar, copies of Polybius and sets of ancient authors. Popular digests of ancient literature were at hand in collections loaned for the use of the delegates. Non-college men like Roger Sherman brought themselves up to date by systematic reading.

In the course of the debates of 1787 many different authors were referred to. Most frequently quoted in the discussions were Plutarch, Demosthenes, Thucydidcs, Xenophon, Dio Cassius and the Roman Antiquities of Dionysius of Halicarnassus among the Greek writers; most prominent among the Latins were Tacitus and Livy. Besides there are many references to other writers, used on single occasions only, and also quotations of the poets. But, with that, we have not yet named the three authorities whose testimony underlies the main patterns adopted for the new Constitution, namely Aristotle, Cicero, and Polybius. Some of the others were perhaps even more frequently appealed to. But the doctrines of these three theoreticians were seized and adapted consciously from the sources and transformed into instruments of government. These three were neither the first nor the only ones to advance their doctrines in antiquity. But we shall concentrate on them because these, and not the others, were actual sources for the men of 1787.

It is easily comprehensible why they chose, among the many possible ones, these three. First, their results had already been used and adapted by outstanding modern theoreticians. The most important in our context is certainly Polybius. He had analyzed what he had taken for the Roman Constitution of his time. For Montesquieu the English constitution played a similar role to that of the Roman constitution for him. But Montesquieu would hardly have arrived at his observation of how this order had come into existence without Polybius' development, which he declared as "natural," nor at
its analysis according to his terms, had there not been earlier such theories of which that of Polybius was the most influential. These sources had been discovered and exploited since the Renaissance. The advantage of our men was that their classical education enabled them to go through the modern interpretations and to draw directly on the originals. Aristotle, Cicero, and Polybius started from political experience and were less interested in formal aspects of legal questions than in moral conditions of public life, and pursued their studies in times of political changes with similar goals to that of the conventioners.

The leading formula, used for the definition of different types of states, was the one worked out by Aristotle in his Politics. For him the central aim of public life is Good, not as a Socratic abstraction, nor as a Platonistic Form, but as the final self-sufficient goal of human action. His objective is what man can reach as a historical being. He starts from the notion that man is by nature a being designed for political community, "physei politikwn zoG" (pol.1.2.1253 a 3) who only within the compass of that community is able to reach happiness, "eudaimonia". We may already see how these basic notions were to appeal to people who in their Declaration of Independence had stated as one of their inherent and inalienable rights "the pursuit of Happiness".

Aristotle's theory of the state was based on monographs describing 158 constitutions of Greek states. He gives first of all a system of the historically ascertainable types of states and of the conditions under which each of them comes into being; asserts itself or is finally destroyed. The formula which was in the mind of the men of 1787, was his definition of these types of state, in their sound and in their perverted forms (pol.3.7, 1279 a 32-39 + 1297 b 6-10): "Our customary designation for a monarchy that aims at the common advantage is "kingship"; for a government of more than one yet only a few, "aristocracy" (either because the best men rule or because they rule with a view to what is best for the state and for its members); while when the multitude govern the state with a view to the common advantage, it is called by the name common to all the forms of constitution, "constitutions government"....Deviations from the constitutions mentioned are tyranny corresponding to kingship, oligarchy to aristocracy, and democracy to constitutional government: for tyranny is monarchy ruling in the interest of the monarch, oligarchy government in the interest of the rich, democracy government in the interest of the poor, and none of these forms governs with regard to the profit of the community." Let us note that it is essential that none of these forms is presented by Aristotle as a perfect state, and by the way, democracy means here a dangerous unconstitutional ochlocracy. For Aristotle, the best constitutions are the ones governed by the best men. But for their stability he clearly states (po 14.10, 1297 a 7 ss): "The better the constitution is mixed, the more permanent it is." That is the famous mixed constitution.

As Jefferson and Adams agreed, Plato was too visionary for practical purposes, an idealist not a politician. While standing as a major authority behind Aristotle's conceptions as well as Ciero's and Polybius', he is almost completely absent from the debates over the Constitution in 1787.

Before we turn altogether towards Polybius who in chronological order would be the next of the three, we shall go through the sentences of Cicero which in their significance are related with Aristotle's formula. The consil of 63 met, if anybody, the requirements of practical experience in statesmanship. The existence of a universal law, eternal in duration and divine in
character, is a presupposition of Cicero's theory of the state. Law also originates in nature. Cicero, besides being a statesman and an orator, is a lawyer, and, in particular a Roman. So his state is far more than Aristotle's a legal construction. Although his De Republica which Cicero himself considered as his masterpiece, was lost until 1822 when the major part of the first three books was recovered in a palimpsest, several fundamental propositions were preserved by quotations of later authors. They correspond with what Cicero has pointed out in other places of his oeuvre, which were perfectly well known to the deputies of 1787 from their school- and college days. Nonius (p.342,28), compiler of a kind of a lexicon in the fourth century a.d., preserved the following statement, spoken in the dialogue by Scipio, Cicero's model of a Roman statesman (= de rep.2,41): "I hold that the best constituted state is one which is formed by the due combination of the three simple types: monarchy, aristocracy, and democracy, and which does not arouse a wild and untamed spirit (in its citizens) by punishing." Cicero, too, sees the danger deeply rooted in the deficiencies of human nature, of the simple types degenerating into forms which, by impairing the control of law, destroy the enjoyment of freedom. He expresses in Roman terms the sound and the perverted forms in the three primitive types. By degeneration, he says (de rep.1,69), there grows "e rege dominus", tyranny from monarchy, "ex optimatibus factio", oligarchy from aristocracy, "ex populo turba et confusio", turbulent ochlocracy from democracy. His personal experience gave him good reasons to share Aristotle's distrust of unrestrained democracy. And so numeral colonial leaders, including the puritan John Winthrop and Alexander Hamilton, believed that the mob, when it gets out of hands, become "immanius belua" "more dangerous than a wild beast".

Here again, we find some ideas already expressed in the passages quoted from Aristotle: the threat of degeneration connected with the three simple types of state, and the idea of a mixture of them as a defence against it. These ideas are combined with the general theory of constitutions, as Polybius presents it in the sixth book of his history. There he gives also the reasons for degeneration or stability.

Polybius of Megalopolis in the Peloponnesus (ca. 200-120 or somewhat earlier) had himself been an active politician, before he started writing his famous history. In the years 170/69 he had been hipparch of the Achaean confederation, and after the battle of Pydna (168), where Aemilius Paullus by his victory over Perseus of Macedon had brought Macedonia definitively under Roman supremacy, he was among the Greek politicians who in 167 were summoned before the Roman senate and released only in 150 a.Chr. In Rome he became mentor of the then nineteen years old P. Cornelius Scipio Aemilianus. With him he witnessed the fall of Carthage in 146, and afterwards reorganized Achaia.

Polybius' main work were the forty books of Universal History, which covered the time between 220 and 146 and ended with the already mentioned reorganization of Achaia. About one third of it is preserved. The aim of his historiography is, to be useful through instruction to politicians and military men, by showing the reasons which led to the events, based on true information and judged with impartiality. Its basic theme is the rise of Rome to world-power. First Polybius establishes in his sixth book the theoretical foundations of his reasoning. He distinguishes the three types of constitution which we know already from Aristotle, and he adds the Lycopolitan constitution of Sparta. He
describes also the three associated corruptions. Then he gives a rational account for the process of changes from one form into the other aiming so to explain the succession of the three constitutional forms, their three corruptions, and a preceding seventh type, primitive monarchy. They follow each other, according to his theory, in a cyclical succession "kata physin", "by nature", in the order of monarchy, kingship, tyranny, aristocracy, oligarchy, democracy, and ochlocracy. Lycurgus, according to him devised his mixed constitution to avoid the several corruptions implicit in the single constitutional forms. What Lycurgus achieved by reason, the Romans have achieved in a series of crises and struggles by practical historical experience.

Most interesting for our context is his analysis of the system of checks and balances operating within the mixed constitution of Rome, when at its prime, which accounts for the stability which preserves it from the fatal process of the cycle as it was described before. Though he never claims that its success should be permanent. The Roman constitution is then compared, for a full appreciation of its merits, with certain other well-regarded constitutions, in particular with that of her historical opponent, Carthage, whereas Plato's Republic is excluded from the comparison. In connection with the American constitution, the cases of all the other constitutions compared by Polybius with the Roman, were discussed at various times. The center of his argument is, of course, his analysis of the Roman constitution. To the colonials the highest interest lay with the reasons which Polybius gave, in this connection, for its functioning, more than with the question of its historical accuracy. So we shall concentrate entirely on that topic. He describes the Roman constitution in the following terms (6.11,1 ss.): "The three kinds of government that I spoke of above, all shared in the control of the Roman state... it was impossible even for a native to pronounce with certainty whether the whole system was aristocratic, democratic, or monarchical. For if one fixed one's eyes on the power of the consuls, the constitution seemed completely monarchical and royal; if on that of the senate it seemed again to be aristocratic; and when one looked at the power of the mass, it seemed clearly to be a democracy." He goes on describing in more detail the powers of every part of this system. The following are only the main features (6.12). "The consuls, previous to leading out their legions, exercise authority in Rome over all public affairs, since all the other magistrates except the tribunes are under them and bound to obey them, and it is they who introduce embassies to the senate." Then follows the senate (6.13): "In the first place it has the control of the treasury, all revenue and expenditure being regulated by it. For with the exception of payments made to the consuls, the quaestors are not allowed to disburse for any particular object without a decree of the senate." And finally (6.14), "there is a part and a very important part left for the people. For it is the people which alone has the right to confer honors and inflict punishments...Again it is the people who bestow office on the deserving, the noblest reward of virtue in a state; the people have the power of approving or rejecting laws, and what is most important of all, they deliberate on the question of war and peace."

After that Polybius goes on explaining (6.15,1 ss.) "how each of the three parts is enabled, if they wish, to counteract or co-operate with the others". The consul "requires the support of the people and the senate; and is not able to bring his operations to a conclusion without them." The senate (6.16,1 ss.) "is obliged in the first place to pay attention to any changes in public affairs and respect the wishes of the
people..." and (6.17,1), "similarly, again, the people must be submissive to the senate and respect its members both in public and in private...Similarly everyone is reluctant to oppose the projects of the consuls as long as generally and individually under their authority when in the field."

That is the system of checks and balances in operation. The similarities and dissimilarities in detail between the American Constitution and the Roman, as Polybius presents it, are much too obvious to need any further comment. Let us just add Polybius' evaluation of its virtues in times of war and peace: (6.18,1 ss.): "Whenever the menace of some common danger from abroad compels them to act in concord and support each other, ...all are zealously competing in devising means of meeting the need of the hour... When again they are freed from external menace, and reap the harvest of good fortune and affluence which is the result of their success, and in the enjoyment of this prosperity are corrupted by flattery and idleness, and wax insolent and overbearing... it is then especially that we see the state providing itself a remedy for the evil from which it suffers. For when one part having grown out of proportion to the others, aims at supremacy and tends to become too predominant, it is evident that, as... none of the three is absolute, but the purpose of the one can be counteracted and thwarted by the others, none of them will excessively outgrow the others or treat them with contempt."

As Guicciardini justly remarks, "the framers of the document did not merely echo or imitate the ancient materials: they applied them to the task at hand and transmuted them into workable form." In their Constitution the monarchical element is represented by only one man, the president; the democratic not by the people itself, but by their representatives. The most original contribution was the American senate, and this became afterwards one of the main links of similarity between the American and the Swiss Constitutions. Although it has a Roman name, the American senate does not exactly correspond with the Roman institution. The senate does not represent an aristocratic element, neither by requirements of birth nor wealth of its members. It derives its authority from a different source. To consider the problems connected with the struggle between federal and state rights, ancient leagues and especially Polybius' description of the Achaean Confederation were taken as examples. But the final solution which created the American senate was a new kind of compromise between the aspirations of the central and the individual state powers. It represents the single states by an equal number of two senators in order to protect all of them from the danger of an overwhelming central force, and the smaller states in particular from the unmatched supremacy of the bigger ones. So it checks the strength of the more populous and rich by the right of equal representation of all, even the smallest and poorest ones.

Polybius praises as one of the main qualities of the "mixed constitution" its stability, its power to last under different extreme conditions. In the case of the Constitution of the United States his prediction proved to be true in every regard. Although amended several times, the original document is still in force, and it became the example for numerous other constitutions, which are themselves granting stability to nations strong and disciplined enough to hold in honor its principles.

Although Switzerland had gone through a long history as a Confederation of separate states, acting as a more or less closely united body, she...
was much slower than the United States in developing and adopting a constitution which made her a state in the modern sense of the term. The Confederation of the Middle Ages which lasted up to the French Revolution, was a framework containing different parts of unequal law. There were the thirteen sovereign states, later called cantons, joined by treaties with attached townships and subject regions, which were common properties of several of the states in various combinations. This Confederation, had no common government, only a common Diet (in German: Tagstizung), where the representatives acted on instructions received from their different authorities. But they became finally from a federation of states one united federal state, according to the lines drawn by the pattern of the American Constitution. The Swiss Constitution of 1848 has further in common with that of the United States, that it was based on a freely and democratically accepted compromise between powers each of which had undergone a historical development of its own in conscious discussion of the American example. But it was much less bold in its conceptions and made much more allowance for the preservation of the traditional order, so that, after it had become familiar enough, it had to be revised in a thorough-going reform in order to match the requirements of a modern state in 1874.

An organic development of the Confederation was hindered by the fact that the first modern constitution was forced upon her by the French foreign army which "liberated" the country in 1798. This constitution was aimed at making her a unitary state, a "république une et indivisible" following, like all the constitutions of the surrounding French vassal states, the example of the French Directorial system based on rational execution of the law of nature. The complete lack of stability under this construction made soon for strong feelings of the need for a revision. Since 1800 proposals were issued for an adaptation of the constitution to the historical conditions of the country, following the American example. It was Napoléon Bonaparte himself, then First Consul, who produced already in 1801 a first draft which was very close to it, but never could be enforced owing not least to the resistance of the Swiss adherents of the new doctrine. In 1803 he then dictated the so-called Act of Mediation, which went a big step away from unitarianism toward federalism. After his fall the "Long Diet" in 1815 fell back on something similar to the pre-revolutionary treaties, this time between all equal, but utterly disagreeing cantons, a "Federal Treaty" which was accepted after painfully long and fruitless discussions and only under strong pressure of several benevolent foreign ambassadors.

Only after 1820 and on a broader level after the revolution of July in 1830 the movement of Regeneration tended towards a strengthening of the federal power by creating a federal state of the American type. First there went, as in the United States, new constitutions of the single cantons. The political division between radical, mostly protestant and conservative catholic cantons barred the way for a decisive step. But the discussion among the leading political scientists prepared the final political settlement. It started from the ideas of Alexander Hamilton and the Federalists. His "national theory", more precisely worked out by Jay and James Wilson, declared the People of the whole Union as Sovereign. The single states were not to be mere provinces, but they had to preserve their own personality whilst contributing to the formation of the state as a whole. The rights of the Union had to be clearly defined against the rights of the single states in order to enable them to form a federal state. This federal state was meant to be a "multiple sovereignty". Along with it the fathers of the Constitution had created their specific bicameral system, which no longer...
represented the medieval social states, nobility and commons, but the single member states of the new Union.

The political disagreement between the majority of radical cantons and the separatist league of the conservatives burst out in a civil war. Owing to the statesmanly leadership and strategic skill of General Guillaume Henry Dufour of Geneva it was ended in about one month in November 1847. After that, in a surprisingly short time, the principles of the new constitution were accepted in 1849, just because leading politicians of all the political parties were by then agreed on a system which followed consciously but judiciously the American example.

Already on the 6th and 7th of March 1848 the bi-cameral system was proposed. The main reasons for this choice were: that the historical basis of the cantons had to be taken into consideration, that the small cantons had to be preserved from the larger ones, and that concessions had to be made to the defeated separatist league. In the discussion also the unicameral system (Benjamin Franklin's preference), found its supporters. It was pointed out that two houses were a hindrance to quick and effective decisions. But that was precisely what the defenders of the system wanted it to be. Rash decisions and pressure from outside had to be prevented by this institutional check. By the opponents it was called a "Hemmschouh", a "brake-shoe" slowing down expedient action. To that the radical Bruyé of Vauf replied: "Oui, Messieurs, nous voulons un Hemmschouh; il nous faut absolument un Hemmschouh!" So already on May 17, the form of the bicameral legislative was accepted by the votes of seventeen cantons. Terms recalling the bad experiences with the unitarian constitution of 1798 had to be avoided. So the new legislative bodies were baptized "Council of the States", corresponding to the American Senate, and "National Council", corresponding to the House of Representatives, the whole legislative "Joint Assembly of the Confederation".

In some other regards the Swiss constitution was different from the American. Both Swiss chambers have exactly identical rights, and as a whole the legislative is much stronger than the executive which consists not in one president but in another Council of seven Councillors of the Confederation. Later, in 1874, a Referendum was added, which gives the Sovereign People a superior right of deciding on federal laws and non-urgent federal resolutions.

The acceptance of the American system of a federal state and bi-cameral representation was by no means the product of mere casual adoption of a foreign legal form, but it was deeply founded in spiritual congeniality and mutual sympathy between the two nations. During the whole period of the Holy Alliance and her reactionary policy, Switzerland had been the only republic all over Europe. Already in 1850 the new Federal Council proudly received an American Envoy Extraordinary, Ambrose Dudley Mann, who concluded on November 25 a treaty of friendship, domiciliation, trade and extradition between the two countries. This was the first treaty of that kind concluded by Switzerland with any foreign power.

Although references to the classical sources played no comparable part in the discussions of the Swiss Constitution, indirectly, through the example of the American Constitution, they became effective in it. The basic idea that the structure of the Constitution has to make up for the deficiencies of Human Nature, as it had been most pertinently expressed
in Cicero's De Republica and was deeply rooted in the puritan Anglo-Saxon conception of the state, prevailed over the Gallic constructions based on Reason, the Law of Nature, and on the conception of the Natural Goodness of Man. It tries to promote security and stability by avoiding dangerous illusions.

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