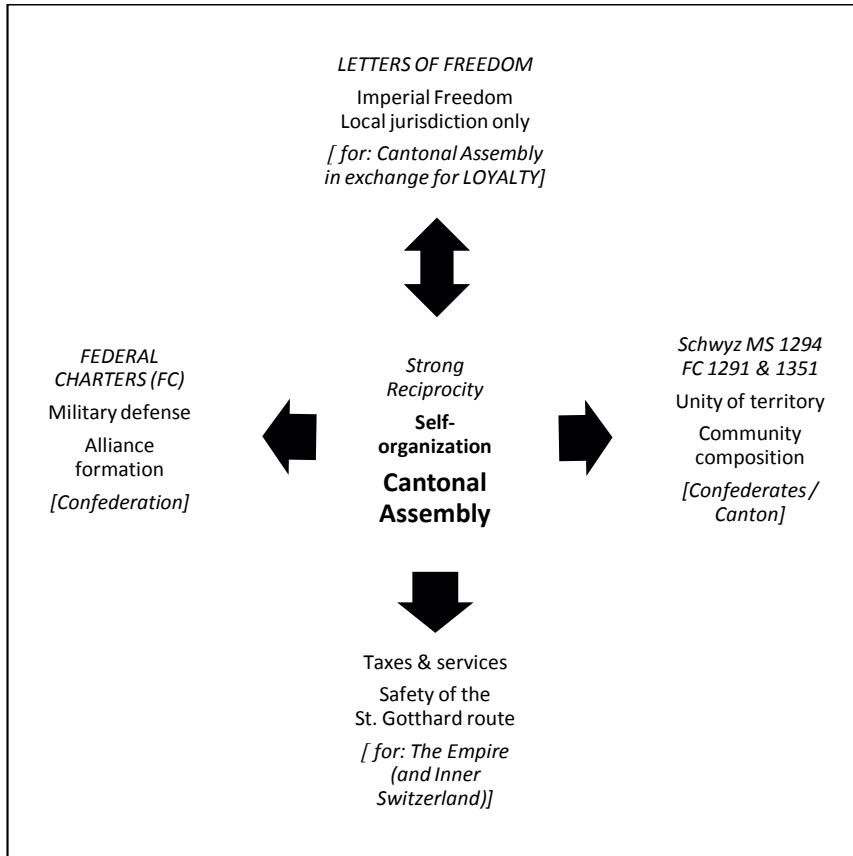


Eike Hinz

The Political Anthropology  
of Inner Switzerland  
in the 13<sup>th</sup> and 14<sup>th</sup> Centuries

The Struggle for Freedom  
and Mutuality



### DIAGRAM: CAUSALITY AND FUNCTIONAL EFFECTS

“Letters of Freedom” (double arrow towards the center; cf Ch 1.5; 2) are issued by the King or the Emperor in exchange for the *loyalty* of the Cantonal Assemblies (cf Ch 31.1). They are considered to be the antecedent condition of, or rather the constitutional context for goals and actions of the Cantonal Assembly. Such goals and actions make up the functional effects of the Cantonal Assembly (arrows away from the center) and are interpreted as tasks and their resolution (cf Ch 19; 20). The self-organizing principle of *strong reciprocity* governs (1) the relations between the Empire and the Cantonal Assembly [*imperial freedom* for the Cantonal Assembly in exchange for *loyalty* and *taxes and services* for the Empire (benefitting also Inner Switzerland, e.g. trade)] as well as (2) among the citizens within the Canton or Community (*community composition*) (cf Ch 17; 22) and (3) the different Cantonal Assemblies within the Confederation (*alliance formation*) (cf Ch 8ff). The Cantonal Assembly and the alliance are formed on the basis of swearing-in the total adult male population (that swear loyalty to the King and the Empire). In general, strong reciprocity is a principle of *fairness* (justice, mutuality or even loyalty), membership (social inclusion), participation and can govern the processes of social exchange, institutionalization, complexation or even universalization (cf Ch 31.2).— CA = Cantonal Assembly. FC = Federal Charter(s), constituting the alliance. Schwyz MS 1294 = Land Tenure Rights adopted by the CA of Schwyz in 1294 (see Ch 22.1).

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PATTAYA 2017

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*Problem: What is a scientific explanation? Which are the underlying principles and conditioning parameters (or mechanisms)? Which laws or law-like statements are employed?*



## PREFACE

I wrote the present book *The Political Anthropology of Inner Switzerland* as a social anthropologist and ethnohistorian. I focus on the analysis of the standardized terminology, concept formation and routines in the Letters of Freedom (exemplified by the key Letter of 1240), in the Concessions of Local Jurisdiction (highlighted by the Concession of 1309 for Unterwalden) and in the Federal Charters covering the treaties of the Swiss Confederation (exemplified by the Federal Charter of 1315). My analysis of the organization and function of the Cantonal Assembly is primarily based upon the 'Landbook of Schwyz'. I deal with the social composition of the Cantonal Assembly on the basis of 'direct' and 'indirect' evidence. The more documents I read in context the more I developed doubts on the authenticity of some of these documents. Source criticism became, thus, a topic I took up in the spirit of my teachers in Ancient American Studies and Ethnology, Günter Zimmermann and Peter Tschohl. Analyzing features of the struggle for freedom and mutuality in early Inner Switzerland leads me to consider explanatory mechanisms and structural contexts of the operation of the Cantonal Assembly.

I consider the Cantonal Assembly to represent an institutional case of strong reciprocity. In terms of state formation and nation building, we are dealing with a fascinating, historically unique and theoretically still inspiring case. At the basis is the swearing-in of the whole (adult male) population mutually on each other, in cyclical repetition, to defend, to help and to give advice to each other. As an anthropologist I admit that the topics of the Cantonal Assembly, the Letters of Freedom and Local Jurisdiction and the Federal Charters are rewarding.

In my more comprehensive and documented book *Landsgemeinde und Bundesbriefe* (Cantonal Assembly and Federal Charters) some problems or questions were partially left open. I consider the information obtained and analyzed from the documents of ecclesiastical action against the Cantonal Assemblies of Waldstätten, especially Unterwalden, as a basis to assess their composition. I here reconsider and streamline my arguments.

I would like to thank all those persons who encouraged and supported me, especially Jon Zürcher, the Swiss ex-consul in Denpasar, Bali, Indonesia; Dr. Herbert Ammann, Schweizerische Gemeinnützige Gesellschaft; Dr. Wuerz (Akademie der Wissenschaften, Mainz [kind permission to quote from *Regesta Imperii*]); Dr. R. Wecker und Dr. E. Flückiger, Schweizerische Gesellschaft für Geschichte [kind permission to quote from *Quellenwerke zur Entstehung der Schweizerischen Eidgenossenschaft*]; P. Delpin (Genève, Dept of Education). In the outset Sablonier's monograph (2008<sup>3</sup>) introduced me to the topic. I liked his work and came up with a completely different analysis.

My thanks to my old friend Range Cloyd Jr who corrected my text into readable English.

Dr. Eike Hinz, Pattaya, August 2017.

## Abbreviations

Abl. = Ablative case	MHG. = Middle High German
Acc. = Accusative case	n = note(s)
Am. = American	Nom. = Nominative case
App. = Appendix (,Anhang‘)	NW = Nidwalden
CA; Cant. Ass. = Cantonal Assembly	OW = Obwalden
Ch = Chapter	Pl. = Plural
Dat. = Dative case	QW = “Quellenwerk zur Entstehung der Schweizerischen Eidgenossenschaft“
Doc. = Document	RI = “Regesta Imperii“
E. = English	Sg = Singular
Ed(s.), ed(s.) = Editor(s)	SZ = Schwyz
E.H. = Eike Hinz	Tsch. = Tschudi
F. = French	UR = Uri
FC; Fed Ch = Federal Charter	UW = Unterwalden
G. = German	WB = “Weißes Buch zu Sarnen“
Gen. = Genitive case	WvH = Wern(h)er von Homberg
L(at). = Latin	

### Note on quoting sources

Throughout this book the L. & MHG. texts are taken from eds. QW if not marked otherwise. This holds also for the “archival/bibliographical notes” which may include *site of quotation* (QW or RI), *archive, transmission* (e.g. *original vs copy, parchment; size; seal*), *print (or edition), registry, photography; special information by the eds. QW*. Some abbreviations have to be looked up in the QW. The headlines of the quoted documents are often rephrased by me.

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## INTRODUCTORY CHAPTERS

### A. EXPLICATION OF SOME POLITICAL BASIC STRUCTURES

**1. Imperial institutions. Feudal tenures (of patrimony)**<sup>1</sup> are conceded in principle by the king or the emperor to *counts, dukes, abbots*, etc., in exchange for personal fealty, or, rather, political and/or military support. These tenured persons (high-ranking *vassals*) themselves can make tenure-like concessions (of rights, properties and incomes or taxes) to their own vassals. *Imperial institutions*: The 7 (later 8) *electors* (G. *Kurfürsten*) who elect the king hold a special status of stabilizing the empire. In general, no member of their lineages can be elected as king. The *imperial court* represents the royal institution of discussion, deliberation and decision-making. In terms of the balance of power, the king or emperor has to conserve the loyalty of his highest-ranking vassals. The so-called *Imperial Days* to which the unmediated cities and, probably, unmediated rural areas were invited, formed a political and legal forum.

**2. Direct (or unmediated) dependency upon the empire** of the nobility, cities or, rarely, rural areas (G. *Reichsfreiheit*). The ‘unmediated’ free persons or the respective free urban and rural populations were only obliged to render services to the king (or emperor), or, rather, to the empire. Unmediated dependency upon the empire is preferred to be conceded eternally and irrevocably, under the presupposition of fealty. The corresponding documents are called **‘Letters of Freedom’** (G. *Freiheitsbriefe*). Written and documented rights (‘privileges’, MHG. *handveste*) are authenticated documents concerning special rights, e.g. rights of minting coins, holding markets and collecting customs, etc.

**3. Cantonal Assembly** (G. *Landsgemeinde*): The concession of unmediated dependency upon the empire (G. *Reichsfreiheit*, *Reichsunmittelbarkeit*) is made to the organization of the population as free citizens or countrymen<sup>2</sup>, re-

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<sup>1</sup> The reader might find some helpful information in the following articles in *Historisches Lexikon der Schweiz* (HLS, ([www.hls-dhs-dss.ch](http://www.hls-dhs-dss.ch))): A.-M. Dubler, ‘Feudalismus’; G. Castelnuovo, ‘Feudalgesellschaft’; A. Zangger u.a. ‘Grundherrschaft’; P. Niederhäuser, ‘Vasallität’; P. Walliser, ‘Allod’. B. Andenmatten, ‘Lehen’; F. Hälgi-Steffen, ‘Lehenswesen’; S. Grüniger, ‘Fronhof’; A. Holenstein, ‘Vogteien’. The discussion, especially on feudalism, is often term-oriented but a distinction is made between universal categories, particular historic phenomena and value-loaded ideology. I would like to see a convergence in terms of the elaboration of law-like social science statements, analytical concept formation, and the semantic analysis of the ‘native’ or documentary terminology. **Obviously, the historic regional system as a social perspective got rejected by the people of early Inner Switzerland.** Cf here Ch 1, Ch 28 (1311) and Ch 7.3 and 7.4. Cf my notes here in Ch 28 (1210). Cf here Ch 32.2.1.

<sup>2</sup> Terminology: Chairman of the Cantonal Assembly (L. *minister*, MHG. *Ammann*); Cantonal Assembly of the countrymen or men (L. *communitas hominum* or *universitas*, MHG. *die landlute gemeinlich*), e.g. in the Waldstätten or in the Valley of Hasli; mayor (L. *scultetus*, G. *Schultheiss*), councilors (or judges; L. *consules*) and the assembly of (urban) citizens (L. *universitas burgensium*, MHG. *burger gemeinlich*), e.g. in the city of Bern. L. *homo* means ‘man’, ‘countryman’, ‘serf’, ‘subject’ [Niermeyer 1976] but not ‘nobleman’.

spectively. In Switzerland this is the assembly of urban citizens (community of citizens, with mayor and councilors) or rural countrymen (cantonal assembly, with chairman [and councilors]). This assembly is made up of the whole (adult male) population of the territory in question.

**4. Dynastic property:** The *inheritability of the patrimony of the nobility* is based upon power and its balance. The Habsburgian attempts to make the monarchy (i.e. the empire) inheritable to Habsburg (since the end of the “interregnum” [i.e. period without a king] 1273 by King Rudolf I of Habsburg) is to be contrasted with the tradition of an *elective monarchy* of the Holy Roman Empire as exemplified by the non-Habsburgian kings.

**5. Coalition praxis:** Cities, rural regions and aristocratic domains used to form (*temporally limited*) *federations*. Emperor Charles (Karl) IV of Bohemia (Luxembourg) conceded preferential rights and special protection to the Swiss confederation of the eight territories (MHG. ‘*länder*’) in 1362.

**6. Treaties of the Swiss confederation as alliances:** They are not to be reduced to mere ‘rural peace orders’ (G. ‘*Landfrieden*’) in analogy to decrees issued by local lords as some historians have claimed but are documents sworn on periodically by the whole (adult male) population. These documents represent “eternal” legal and sociopolitical orders, treaties of consultation and (mutual) protection which regulate rights and, especially, obligations. These treaties or *constitutions* of sociopolitical order are called **Federal Charters** (FC; G. ‘*Bundesbriefe*’; MHG. ‘*briefe*’) in the corresponding scientific literature. –

Normally, the last version which nevertheless shows the date of the first issue of the corresponding document is valid. An exception is the non-dated lost version of the confederation of Schwyz, Uri, Unterwalden from the 13<sup>th</sup> century which is replaced by the FC of 1291 August 1, the latter *defacto* by the FC of 1315 December 9. The latter’s radical political innovations are grounded in the Battle of Morgarten (1315) won by Schwyz. In 1454 (/1455) the Austrian privileges in the city of Luzern (FCs of 1332, 1351 with Zürich, 1353 with Bern) as well as in the city of Zug (Federal Charter 1352) are deleted. In 1473 Glarus (Federal Charter of 1352) becomes acknowledged as equal to the other territories.

**7. Long-term perspective of rule:** The *unmediated (direct) dependency upon the empire* is the basis of a permanent or long-term *program* of Inner Switzerland for the liberation from the threat by totalitarian noble rule, thus implying, for example, the claim of autonomous local jurisdiction. Dynastic inheriting nobility is the program for the deprivation of rights and its concomitant economic exploitation of the population.

**8. Coronation as emperor:** The *coronation as emperor* (of the Holy Roman Empire) was normally brought about *by the pope*. This fact explains the conspiracy connection between Habsburgian Austria and pontifical rule. Ecclesiastical excommunication is to be avoided. Papal power is sometimes constrained by the existence of several popes at the same time.

## B. OVERVIEW: THE STRUGGLE FOR FREEDOM AND MUTUALITY – CANTONAL ASSEMBLY, FEDERAL CHARTERS AND LETTERS OF FREEDOM

0. The elucidation of the founding phase of the Inner Swiss Confederation as local self-organization\* and its relationship to supraregional rule is the subject matter of the investigations as presented in this monograph. Cf Hinz 2016.

### UNMEDIATED DEPENDENCY UPON THE EMPIRE AS RELATIONSHIP TO SUPRAREGIONAL RULE

1. Uri, Schwyz and Unterwalden are **directly dependent upon the empire**, i.e. they are directly under the rule of the king, or, rather, the emperor, or his representative, the *Imperial Bailiff* (G ‘*Reichsvogt*’, MHG. ‘*phleger*’). An imperial bailiffship became established in Stans, Unterwalden, in 1309. Unmediated dependency upon the empire derives primarily from the so-called ‘*Letters of Freedom*’ or ‘*Letters of Privileges*’ which are issued by the different kings or, rather, emperors, and are later confirmed or also newly extended. First issues are: Uri in 1231 (and 1240), Schwyz in 1240, Unterwalden also in 1240 and documented for 1309 (see Part I).

### CANTONAL ASSEMBLY

2. The **cantonal assembly** comprises *all* the adult male persons on the territory of a valley (probably endowed with voting rights from age 16 onwards). The first Letters of Freedom or Privileges which were issued by the different kings or emperors<sup>3</sup> are already addressed to the Cantonal Assembly. **Self-organization\* and participation of the adult male population** – with regard to making laws, ensuring their application as well as to political decision-making – are institutionalized by means of the Cantonal Assembly. The exact features are described, for the first time, in the **Federal Charter 1351 with Zürich** (cf *here* Ch 15 the swearing-in of all the adult male population every 10 years).

### ‘[FELLOW] SWORN-INS’ OR CONFEDERATES

3. **No names or titles of noble persons** are mentioned in both sworn proclamations, the Federal Charters of 1291 and 1315, as would otherwise be the

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\* See Frontispiece (p. II) and Ch 31.1 *here*: Self-organization is defined on the basis of local participation and its dimensions. ‘Inner Switzerland’ is made up by the *Old Confederation of the 8 Cantons*: the urban polities Luzern, Zürich, Zug, Bern); and the rural polities Uri, Schwyz, Unterwalden [= Nidwalden & Obwalden], Glarus.

<sup>3</sup> For Uri 1231 addressed to L. *universis hominibus in valle Uraniae* [‘to all the men in the valley of Uri’], L. *vestram universitatem* [‘your community’ or ‘**cantonal assembly**’]; for Schwyz 1240 addressed to L. *universis hominibus vallis des Swites* [‘to all the men in the valley of Schwyz’], L. *tamquam homines liberi* [‘(so to speak) as free men’]; for Unterwalden 1309 addressed to L. *yniversis hominibus in Valle Underwalt* [‘to all the men in the valley of Unterwalden’]; cf. Hinz 2016, App. 6.1 – 6.2: Oechsli’s and my translations. The use of the universal quantifier points to the general voting right of all the adult male population over age 16 as specified in later documents. Cf. *here* Ch 17, Letters of Prohibition.

custom in documents when referring to noblemen. As an example, cf. the treaty between Bern and the Valley of Hasli (1275); furthermore, the permit for the merchants from Luzern in 1309. Cf. Hinz 2016.

3.a. **The Federal Charters<sup>4</sup> of 1291 and 1315 are documents sworn by the Cantonal Assembly.** This holds also for the Federal Charter of 1332.

The Federal Charter of 1291 written in Latin speaks of [L.] *'homines'* ('the [adult] men') and of [L.] *'coniurati'*/*'conspirati'*/*'iurati'* ('the [fellow] sworn-ins', 'jurors' or 'confederates'; G. 'Eidgenossen'). Note the definite article (*the*) in the translations. The Federal Charter of 1315 speaks of MHG. *'die lantlute und eitgenoze'* (= 'the countrymen and fellow sworn-ins' as sealing persons) as authors. The Federal Charters of 1291 and 1315 contain a section on **hypothetical legal norms** („if one [does]—“). They mention 'fellow sworn-ins' i.e. 'confederates' or, rather, 'countrymen' (1291: L. *'conspirati'*, *'(con)iurati'*; 1315: MHG. *'eitgenoze'*, *'landl(i)ute'*) as wrongdoers, as quarrelling persons, as victims, as intermediators, as lifters of exile, as protectors of justice (the last 3 categories referring to a collective body or even the Cantonal Assembly; cf. the Federal Charter of 1291, §27: L. *'iurati... universi'* ['all the fellow sworn-ins or confederates'] similar to the addressees in the Letters of Freedom). Thus, it is proven that *the norms hold for all the fellow sworn-ins, i.e. confederates*, or countrymen in the sense of [all] the [adult male] inhabitants, or, rather, the Cantonal Assembly (Federal Charter 1291, §20: 'we have decided [for all of us the following regulations]').

#### FEDERAL CHARTERS AS CONSTITUTIONS OF ALLIANCES

4. *The Federal Charters of 1291 and 1315 constitute predominantly internal (military) alliances of protection and legal orders which aim at the unification of the legal system within the range of the valleys, communities and alliances.* The expression 'order of public or regional peace' (G. *'Landfriedensordnung'*) is a conceptual simplification and does not cover the central argument completely. As a rule, 'orders of public or regional peace' are mostly short-term in the 13<sup>th</sup> and 14<sup>th</sup> centuries and not of eternal validity as the Federal Charters are; they are mostly issued by a lord. It is the *eternal validity* which *conveys constitutional quality* to them. The Federal Charters demonstrate a new concept of sovereignty: 'We decide and determine [for us]'; 'we do not accept bribed judges'. In juridical terms, an *order of rights* inclusive of the *control of legal proceeding* by means of the Cantonal Assembly and its members is created. The *alliance* [L. *'confoederatio'* (1291); MHG. *'buntniuss'* (1315)] created by the Federal Charters extends the Cantonal Assembly on a supra-regional level.

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<sup>4</sup> FC or Fed. Ch. in the following: Fed. Ch. 1291: L. *'pacta quietis et pacis'* = 'pacts of tranquility and peace'; *'confoederatio'* = 'confederation', 'association', 'alliance of fellow sworn-ins' or 'sworn-in associates' = G. 'Eidgenossenschaft'). Fed. Ch. 1315: MHG. 'brief' = 'document'.

## VALUE ORIENTATION

5.a. The Federal Charters of 1291 and 1315 (as well as 1332) show a **new order of values**:

L. *'honestati... et utilitati public(a)e'* = '(in favor of) esteem (or, rather, respect) and public utility, or, rather, well-being' to which 'tranquility and peace' are assigned (L. *'dum pacta quietis et pacis'*). 1315: MHG. *'den l(i)uten ze fride und ze gemache (und) ze nutze und ze eren'* = 'for the people's peace and tranquility and for their utility and respect (*or* esteem)'. The latter four values are of equal rank. 'For the people' in the Fed. Ch. of 1315 and 1332 corresponds to 'public [utility]' in the Fed. Ch. of 1291. In contrast, assumed arrangements between the Habsburgs and King Ludwig IV of Bavaria refer to MHG. *'das vnser herschaft da recht hat'* and MHG. *'allen iren rechten'* = 'that our rule / sovereignty is right (or legitimate)' and 'all its rights' (cf. Hinz 2016, App. 6.6, Regest 111; App. 6.9, Reg. 302, 1332 Sept 4). These particular interests of the nobility form the Habsburgian value orientation which seems to be primarily characterized by arbitrary debt cancellation, or, rather, bond-slavery [cf Hinz 2016, Ch IV.1.3(5)]. The confederate value orientation towards the general interest, or rather, common well-being, is explicitly deepened in the Federal Charter of 1351 (§§2-3).

5.b. In the "**Letter of Wisserlen of 1470**" we read, in the sense of legally anchored solidarity and self-determination, of:

(a) MHG. *'das wir all einandern behülffen und beraten sin söllent mit gütten tr(i)uwen und einandern schützen und schirmen... (b) 'by allem dem, darzü wir Recht hand'*

= '(a) that we all shall help and advise each other in good sincerity, and protect and defend each other... (b) in every respect we have the right to' (Hinz 2016, Ch I.1.5 (b.)).

The idea of legally anchored solidarity and self-determination [*as active help, advice*] is already contained in the **FC of 1332** (§6):

(a) MHG. *'einandren ze helffen und ze raten... (b) in allem dem rechten und mit allen den gedingen, als hienach geschriben stat'*

= '(a) to help each other and to give advice to each other... (b) in everything that is just (*or* in justice) and with all the agreements as they are here written down', i.e., help, discussion or advice and legality as components of self-determination. Are these old formulae?

## TERRITORIALITY

6. It is shown that the *Cantonal Assembly is constituted by means of the swearing-in its members – i.e. the whole adult male population – and that its decisions focus on the regulation of land tenure/property within the community, the unification of systems of legal order on its territory as well as the territorialization of the community in general (communal land and rights of its collective usufruct and communal taxation)*: these items can be inferred from the disputes concerning the **territorial landmarks** in Schwyz since the 12<sup>th</sup> century,

the defense against the arbitrary cancellation of debts by law courts **outside** of the territory (cf. Bern / Haslital 1275; Fed. Ch. 1291; Fed. Ch. 1315; Fed. Ch. 1332; cf. the ‘Letter of Wisserlen/Obwalden’ 1470 in Hinz 2016 Ch I.1.5(d) and *here* Ch 21(d): mutual renunciation of the arbitrary cancellation of debts, under oath) and the election and installation of exclusively native **local** judges.

#### THE REGULATION OF RULE IN THE FEDERAL CHARTERS

7. The **Federal Charter of 1315** regulates and determines the concept of rule and its exercise for the territory of the alliance (confederation):

the obligation of obtaining consent, or, rather, *permission*, from the different Cantonal Assemblies, or, rather, *Confederates* if a specific confederate or a specific canton (MHG. ‘lant’) of the alliance wants *to give an oath to a ‘lord’* (= king?, imperial bailiff?) or just merely wants to *start negotiations* for that. Giving services in the case of unjust and violent rule became prohibited; the services had to be adequate in terms of health and moral standards. The **FC 1291** uses the term L. ‘*convenienter*’ (‘[services] in adequate/convenient form’). The **FC 1315** has MHG. ‘*glimphliche und cimeliche dienste*’ = ‘[only] physically light (i.e. health respecting) and morally acceptable services’.

8. The FCs 1291 and 1315 show the *invention of fundamental sociopolitical acts, customs (standardized action schemas) and institutions* (cf Social primitives, Ch 18) and represent a *legal, social and political protophilosophy* (cf *here* Ch 34).

9. Political-legal regulations in the **Federal Charters of 1332 and 1351**:

9.a. The **FC 1332** between Waldstätten and Luzern (Luzern) contains a series of conceptual elucidations and innovations. Political and legal regulations are clarified in terms of the scope of their validity. *Luzern* acknowledges the Austrian legal claims, the services for Austria and the juridical courts of Habsburg (with regard to MHG. ‘*den hocherbornen (i)unsern herren dien hertzogen von O(e)sterrich*’ = ‘*our highly born lords, the Dukes of Austria*’). Furthermore, *Luzern* acknowledges its own political and juridical order. The *Waldstätten cantons* (MHG. ‘*länder*’), i.e. Uri, Schwyz, Unterwalden, only acknowledge legal and service claims of the emperor and the [Holy Roman] Empire. Otherwise, the *Waldstätten cantons* acknowledge their own political and legal order only. Possible legal claims of *external third parties* against the partners of this charter appear to be excluded. The partners of this charter restrict themselves to the *validity* of their respective legal orders *within the limits of their own respective territory*; i.e. *plurality: the different orders of rights and rule are mutually respected*. A peculiarity is the specification of the offices G. ‘*Schultheiss*’ (*mayor who takes part in the cancellation of debts*) and ‘*council*’ in the case of the city of *Luzern*, i.e. ‘*councilors*’ and ‘*Assembly of Citizens*’ are distinguished.

9.b. The mutually binding *case of defense* is to be assessed by *vote of majority* of the cantonal population in question, *under oath* (a fact that probably implies the Cantonal Assembly and its meeting). The help foreseen by the charter is di-



rected against *rule by the nobility* (MHG. '*wider herren*' = 'against lords', § 11) and any other attacker. This is a noteworthy early and politologically interesting conception. Otherwise, shared legal norms apply (§§ 14-18). The oath of the confederates to each other takes precedence over anything else. Accepting other obligations under oath (MHG. '*Sondereide*' = '*special oaths*') *needs approval* by the Assembly of Citizens (Luzern) and each Cantonal Assembly of Waldstätten, i.e. Uri, Schwyz, Unterwalden, separately.

9.c. From the documentation of the so-called Upheaval of Luzern (1343) the *diagnosis of Habsburgian tyranny* is derived: dissolution of the local legal order and self-determination by means of false rumors, agitation of the population and so-called special oaths, the transformation of citizens into *bondsmen* or *bond-slaves* (G. '*Eigenleute*' <pl>; '*Eigenmann*' <sg>). Cf Hinz 2016, Ch. IV.1.2.

9.d. The FC 1351 between the Waldstätte, Luzern and Zürich shows further conceptual precisions with respect to the *general sociopolitical goals* (§2: peace and protection of human beings, cities and cantons (MHG. '*länder*'); utility and well-being of the country as a *whole*). For the first time one speaks of a ***society united by swearing an oath to each other*** (§3), ***in an eternal alliance (confederation) and in eternal friendship*** (§2). Thus, the sociopolitical basis is marked and raised to consciousness: solemn volitional act, solidarity and friendship in contrast to the totalitarian rule of the nobility, exploitation and, possibly, "(community of) joint fate". The *territory* of the confederation/alliance becomes *marked in geographic terms*. The *case of attack and alliance activation* is described in detail (§§ 5-11). In case of disputes between Zürich and the other confederates, a committee of mediators is to be installed, if necessary, an *arbiter* is nominated (§§ 12-13). The FC 1351 regulates the proceeding in case of *financial debts and the seizure of possessions*: prohibition of appealing to a clerical court of justice (§§ 14-16). The different assignments to *domains of power* become confirmed (only the king and the empire in the case of unmediated dependency; in the case of Luzern, the Duke of Habsburg-Austria). The *affiliation* to the alliance or confederation and the *renewal of the oath* to the alliance (confederation) every 10 years by all men over the age of 16 years are specified. The FC 1353 with the City of Bern specifies the renewal of the oath every 5 years.

10. The *topics* of (1) land tenure rights, (2) swearing-in of the total adult male population, (3) unification of different legal orders incl the strict regulation of collecting debts in situ and (4) the representation of the whole population in the valley or on the communal territory lead to the *description and explanation of the disputes relating to landmarks, the formation of the alliances, the Battle at Morgarten and the following alliances*. These themes convey a programmatic long-term perspective that is effective throughout the 14<sup>th</sup> century and far longer and has its counterpart in the Habsburgian policy of territorial dominion: two programs in terms of political power and land ownership which are antagonistic. In this sense Schwyz abolishes feudal land tenure, *based on the decision of its*

*Cantonal Assembly in 1389*, and prescribes the sale of estates of foreign (or external) feudal lords to people from Schwyz. Cf. Blickle 1990:81 and *here* 22.2.

## TWO PROGRAMS

11. Swiss history is said to have been interpreted erroneously as goal-determined leading directly to the Swiss Confederation of the end of the 15<sup>th</sup> century or even to the Helvetian (Swiss) Confederation as of 1848. *The presumably teleological historical view by the 'older' science of history can be rationally reconstructed to a large degree, without demonology. We are thus dealing with the programmatic validity claim of two antagonistic goal-directed political systems with actors of goal- and program-conscious motivation:*

11.a. The **House of Habsburg** as the *power domain of the king and/or the dukes who are not bound any longer as royal feudal tenants ("vassals"), i.e. as counts*. Thus, king Rudolf I strives for territorial and sociopolitical homogeneity of the regions, in favor of the House of Habsburg, between Alsace-Lothringia and Wien (Vienna) and the *dynastic inheritable monarchy* (in contrast to the *elective monarchy*) since the end of the interregnum 1273. The Habsburgs try increasingly to reduce the unmediated political entities which depend directly upon the empire and increase the number of unfree bondsmen (attempts at submitting free persons left to bond-slavery). Power is abused recklessly to the advantage of one's own dynasty. Obviously, the Habsburgs become disputed among the electors of the king in the empire.

11.b. The **Waldstätte** (Uri, Schwyz, Unterwalden; later *incl.* Luzern) strive for an unmediated, direct dependency upon the Holy Roman Empire and for communal unity (autonomy, self-organization, land tenure rights) in terms of social, political, territorial and juridical structure. They realize these goals provisionally by means of the Cantonal Assembly (G. *Landsgemeinde*) as a program and praxis of participation. The chain of Swiss alliances as a consequence of the existential pressure exerted by the Habsburgs: the Swiss people try to counter the threat for their freedom and political autonomy in terms of the confirmation of their unmediated status. For the Holy Roman Empire, Waldstätten acquires a "multilateral" and therefore "neutral" significance for the security of the Alpine transit route, especially of the St. Gotthard Pass, to Italy.

## C. CONTROVERSIAL INTERPRETATIONS AND THE DEVELOPMENT OF THE SCOPE OF HISTORIC INVESTIGATION

The interpretation of the *Letters of Freedom* of 1231 (Uri), 1240 (Schwyz, Unterwalden, Sarnen), 1274 (Uri), 1309 (Unterwalden, Schwyz, Uri), 1316 (Schwyz, Unterwalden, Uri) and the *Federal Charters* of 1291 and 1315 (and also 1332) did not pass without controversies. An 'older' science of history has viewed the historical sources as documents of separation from, and fight against, a Habsburgian dominance, or, rather, as fight for freedom and independence.

That vision has been rigorously denied by some ‘modern’ historians. They perceive the Federal Charters (of 1291 and 1315) as documents consolidating the claims of rule of the lower local nobility which use the unmerited grace after the death of King Rudolf I in 1291 or, respectively, after the assassination of King Albrecht of Habsburg 1308 against the higher nobility (and the hardly mentioned common countrymen). Sablonier (Interview with Markus Schär in: *SonntagsZeitung*, 29.6.2008; Hinz 2016:279): ‘Das Volk war nicht dabei’ = ‘The common people were not present [in 1291]’. To shift the writing-down of the Federal Charter of 1291 to the year 1309, follows from **Sablonier’s premise** to assume Wern(h)er von Homberg (II) as (co-)author of this document. He would have been only 8 years old in 1291!

According to Sablonier and some of his colleagues, documents such as the Federal Charter of 1291 would show *the presumed ‘positive’ role of the nobility when founding the Swiss Confederation*. In doing so it is assumed that political organizations like the Cantonal Assembly (G. ‘Landsgemeinde’) do not play any role at that point in time. These recent publications were intended as being, or, rather, conveyed the sentiment of, inter alia, an ‘ideology critique’ of an old-fashioned image of history and politics of Switzerland. But note that *no names and no noblemen* are mentioned in the Federal Charters, with the exception of Rudolf Brun, Mayor of the City of Zürich, in the Federal Charter of 1351.

The controversial interpretation of the constitutional documents also led to the question if they were not after all frauds or ‘productions *ex post facto* (imitations or retroactive stipulations’).

In my opinion the Federal Charters have to be seen in the context with the ‘Letters of Freedom’ issued by the kings or emperors with regard to Imperial “Unmediatedness” as well as with documents on tasks and activities of the Cantonal Assemblies (G. ‘Landsgemeinden’, pl.). *This thematic context determines the segment of time* to be considered here. Thus, we are not only dealing with the foundation phase of Inner Switzerland as marked by the Letters of Freedom but also with that period of time which allows for the identification of central topics: rights of land tenure and land use (usufruct of community land), general jurisdiction and participation of the population as well as political functions of the Cantonal Assembly. Documentary evidence referring to the Cantonal Assemblies in the 13<sup>th</sup> and 14<sup>th</sup> centuries is emphasized. Special attention is paid to the analysis of the systematic terminology employed in the documents.

The documentation of land tenure rights shows an astonishing continuity from 1294 to 1389 and ends with the abolition of feudal tenure in Schwyz, 400 years before the French Revolution. Thus, the sale of estates of foreign (or external) feudal lords to people from Schwyz is prescribed. Cf Blickle 1990:81 and *here, Part IV (Ch 22)*, and Hinz 2016, Ch I.2.3.

Legislation in general and ecological terms in Schwyz relate to the very narrow period of time between 1338 and 1343. The formation of the old confedera-

tion (G. ‘Alte Eidgenossenschaft’) of the 8 territories<sup>5</sup> comes to a provisional end with the FC 1353 (Waldstätten; Zürich, Bern). Norms in the FC 1332 (with Luzern) and 1351 (with Zürich) as well as documents covering the so-called Upheaval of Luzern (1343) and the Zürich Murder Night (1350) elucidate the composition and the rules for the meetings of the Cantonal Assembly or the Urban Assembly of the Citizens. Both these FCs are, thus, of central import. With the Swiss victories over Habsburg at Sempach (1386) and Näfels (1388) a phase of military uncertainty ends. The recognition of *Amman(n)* (= ‘Mayor and Judge’; ‘Chairman of the Cantonal Assembly’) and Cantonal Assembly of Uri by King Vaclav (Pol. ‘Wenceslaw’; G. ‘Wenzel’) in 1389 marks the end of a political development for the time being: the Amman(n) is elected by the Cantonal Assembly and represents the king in his function as judge-executioner ([blood] judge’). Here, the traits of political and legal relations are clearly fixed in the sense of autonomy (Hinz 2016, Ch I.5; *here* Ch 7.5). They are referred to as ‘ancient traditions’ (G. ‘von Alters her’ = ‘since times of old’).

The consolidation of the Cantonal and Urban Citizens’ Assemblies in terms of comprehensive participation dates clearly earlier than maintained by Sablonier<sup>6</sup> who thus assumes the formation of the so-called liberation tradition as its condition, or, rather, cause as late as the 2<sup>nd</sup> half of the 15<sup>th</sup> century, e.g. with the White Book of Sarnen (approx. 1470-74). Factual capital jurisdiction is mentioned in the Federal Charters as well as in other decrees by the Cantonal Assembly by means of a legal norm (of capital punishment for murder). Capital jurisdiction, though, seems to have been formally conceded much later (e.g. for Uri in 1389, for Schwyz – according to Weisz – and Unterwalden in 1415).

I consider the *interpretative (according to Blickle) or, rather, explanatory constructs* which the science of history has to offer as being the result of documentary analysis and, consequently, the comprehension of history. Such a comprehension involves the behavior of social systems in time or the emergence of new systems, i.e. sociopolitical inventions (innovations). An example is Peter Blickle’s outline that I accept without restriction.

*PETER BLICKLE, ‘THE LAW OF THE CONFEDERATES’*

[‘Das Gesetz der Eidgenossen’ *in*: Historische Zeitschrift, Band 255 (1992), “VIII. Das ‘Gesetz der Eidgenossen’ als Paradigma”]

“The metaphorical expression of ‘Law of the Confederates’ shall refer ... to a form of political organization whose

- (1) legal realization (or: self-organization) is brought about by the *law* in the elaboration of which *all* those *subjugated* to the law participate. The loca-

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<sup>5</sup> Uri, Schwyz, Unterwalden, Luzern, Zürich, Glarus, Zug, Bern.

<sup>6</sup> In this sense, I understand the statement in the Letter of Freedom of 1231 for Uri (App. 6.1): “therefore we admonish your community [assembly] (*universitatem vestram*) ... that you ... believe and do...” This phrasing points to an autonomous and resistant formation of volition within the Cantonal Assembly to be expected as usual.

lity of issuing the law is the *Assembly of the Community* characterized by *periodicity*. From the legal order set willfully follows that

- (2) those who make the law and, thus want it, are also responsible for its effective use in the threefold form of the *duty of reporting* (MHG. ‘leiden’), of the *duty of serving in the office* (especially in terms of finding a judgment in court) and in the *duty of acting* (to arrest and to order peace under the risk of one’s life). This form of political order finds
- (3) its *legitimization in the public utility (interest)* as the purpose of the law and receives
- (4) a transcendental anchoring by means of the *oath* sworn by *all the confederates* mutually to each other, thus conceiving of all social relations as being ordered in correspondence to divine will.

Confederations can do *without rule* in the proper meaning of the word. They disregard ... the opinion in Europe that power is reserved legitimately for the noble (and, thereof derived, spiritual) lords only and is innate...”

Blickle assumes that the sociopolitical structures under consideration emerged between 1200 and 1400.

#### STETTLER’S INTERPRETATIVE OUTLINE

In contrast to Blickle, a counter-position is taken by B. Stettler. Stettler’s ideas exemplify a relatively explicit and informative description of the position taken by aristocratic or, rather, royalist historians specializing in Swiss history.

Cf B. Stettler (ed.), Tschudi [nbdig\_57171\_3.pdf:14\*f.; notes omitted]:

“One cannot determine exactly which circle of persons belonged to those inhabitants of Uri, Schwyz and Unterwalden who were living around 1300 conscious of old Imperial Freedom (i.e. under direct imperial control). The recipients of the Letters of Freedom are called «universi homines», e.g. in «valle Switz», or «universitas», e.g. «vallis Uranie» [...]. In the older literature in [the science of] history «universi homines in valle Switz» was translated as «all the people of the Valley of Schwyz» and «universitas» as «community» in the sense of cantonal assembly (or community assembly, G. *Landsgemeinde*) and interpreted correspondingly in the description of social and political features [...]. Nowadays, one is not convinced of these equivalences any longer. At any rate, it is certain that there was no unity in terms of social strata, and legal and territorial order (*or* rights and territory) in the three valley polities around 1300 because of the still extant, largely foreign, manorial control (authority) or *desmesnes* [*Grundherrschaften*]. Not much concrete information about the function and, especially, the composition and organization of the community of the valley can be learned from the sources before the middle of the 14<sup>th</sup> century. It is clear only that it was under the control of a few mighty families [...].

Thus, whenever the expression «the people from Uri [UR], Schwyz [SZ] or Unterwalden [UW]» or «the cantons (G. *Länder, pl.*) [of UR, SZ or UW]» or «the three Waldstätte [cantons]» is used one should not think of democratically

governed inhabitants of the valleys but of not further determined groups of countrymen in the correspondingly mentioned regions under the leadership of a few influential families or ‘houses’ (i.e. dynastic [?] lineages) (*G. Geschlechter, pl.*).”

Here is an outline of *Stettler’s proceedings in terms of rhetorics*<sup>7</sup>:

(a) *Doubting* the meaning of ‘all the people / subjects / countrymen / males’.

(b) *Maintaining the absence of unity of the polities* in terms of social strata, legal and territorial order.

(c) *Maintaining ‘a still largely foreign control in terms of desmesnes’*. This control [of land by the foreign nobility] is considered as being *original* and not as a recent or even current power push, or rather, threat towards change by the nobility. Are we dealing with a *petitio principii*? (What is to be proven is already forming the condition of the inquiry). Note: absolutism is a rather late development in Europe and might have an early ecclesiastical co-origin, e.g. Pope Innocent IV, residing in Avignon, France. Behavioral, especially legal, norms for bailiffs (*G. Vogt, sg.*) remain unclear. But cf Hinz 2016:347f (App. 6.7).

(d) *Maintaining* that no *specific* information on function, composition and organization of the community is available ‘before the middle of the 14<sup>th</sup> century’. One can only infer mighty families. How come? These are the (sometimes) repetitive *family names of Chairmen* of the Cantonal Assemblies in the few documents. Cf Unterwalden, Schwyz, Uri *in*: Hinz 2016a & 2016b: 1247, 1261, Before 1282, 1291, 1299, 1324-1350.

(e) *Assuming not democratically governed* people in the valleys but *unspecified groups under the leadership* (= antidemocratic or authoritarian rule) of a few influential families or dynastic houses or lineages of descent.

In contrast, cf my analyses *here* in Ch 10, Pt IV (Ch 17), Ch 22.2, Ch 7.5 and my article 2016a. Here is an outline of my arguments.

(1) The existence of opinion leaders and “leading families or lineages” does not contradict any *comprehensive participation of the whole adult male population in the Cantonal Assemblies*. Who is included in ‘universis hominibus’ (= ‘all the countrymen/subjects’)? Answer: everybody in support of Friedrich II in the regions under consideration. Cf *here* Ch 1.1 and Ch 17 (Tab 5). At issue are the *meaning intended by F. II* and its internal consistency, not necessarily *undisputed (universal) legal validity* as implied by Stettler. We have to distinguish between Emperor Friedrich II’s intentions, Habsburgian claims and Papal interferences. The latter two points are at stake when considering Imperial property.

(2) The Federal Charters, starting at least with 1291 (the text refers to an undated earlier version), demonstrate the strife for a *territorial and legal integra-*

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<sup>7</sup> Incidentally, a similar rhetorical strategy of the U.S. American State Department was to be noted with regard to arguments critical of U.S. American political and military action as well as the corresponding state propaganda against Central America, e.g. the Sandinistas in Nicaragua: in discussions with university colleagues do not attack the position of the opponent directly but try to weaken the arguments indirectly or soften the stance.

tion (in the sense of unification), after the decision of the Imperial Court of Justice (1316 March 26) also *in terms of social strata* (E.H.). Cf the Letters of Prohibition of 1234 (Uri) and 1299 (Schwyz), both on the right of unified taxation within the canton, and the legal decisions concerning pasture rights of the Cantonal Assembly of Uri and the Monastery of Engelberg in 1275 (in: Hinz 2016, Anh. 7.3; *here* Pt I Ch 1.2).

(3) Note the shift in Stettler's arguments from a *possible demographic integration in terms of the unifying sociopolitical organization or institution*, the Cantonal Assembly, and the participation therein, to the question of the *unity of the polities in terms of social strata, legal and territorial order*.

(4) The contrast between *local vs. external influence* remains to be outstanding (cf the decision by the Cantonal Assembly of Schwyz in 1294 on land tenure rights; Model Letter *Before 1282* to Schwyz, cf *here* Ch 4).

(5) In any case, a *formation of military factions* was largely avoided by integrating different population segments within the Cantonal Assembly.

(6) Can the *mutuality of swearing* be considered as the *basis of democracy*? Mutual help and defense are an obligation and a right *for everybody*. Cf the emphasis of public utility and (self)respect as high-level values, inter alia, in the Federal Charters of 1291 and 1315. Cf the highly critical and explicit concept of recognizing superordinated rule from outside, bound to the fulfillment of certain conditions as, e.g., absence of injustice, violence, trespassing of health and moral standards in the Federal Charter of 1315 §11-12 (in: Hinz 2016; *here* Pt III).

(7) According to the Federal Charter of 1332 with Luzern, the Cantonal Assembly decides upon *peace and war*. Its *majority vote* is necessary in the formal procedure of 'calling upon (the individual cantons)' for military support (G. *mahnen*). The text (§11) contains the phrase 'against noblemen' (MHG. '*wider herren*').

(8) Evidence of the composition of, participation in, and responsibility for the polity in terms of the communities and their respective assemblies and population segments is presented for the second half of the 13<sup>th</sup> and the whole of the 14<sup>th</sup> centuries (cf Hinz 2016 [Unterwalden]). Evidence is direct though dependent on the careful analysis of *native terminology*. Cf *here* Ch 17.

(9) The "Landbook of Schwyz" (ed. Kothing), a collection of [legal] decrees by the Cantonal Assembly, document the function of the Cantonal Assembly in the outgoing 13<sup>th</sup> and, comprehensively, in the 14<sup>th</sup> centuries. Other documents evidence intercommunal functions and the participation of other Cantonal Assemblies. The Federal Charters of 1291 and 1315 document, inter alia, penal codes and legal control by the Cantonal Assemblies.

#### SABLONIER'S POSITION

*"To view the alliance partners (the confederation) of 1291 as clearly circumscribed territories and institutionally structured 'länder' (countries or polities) is wrong.* This would not be adequate in terms of the weak consolidation of

institutions for the time period in question. In all sectors the political integration into the polity (country, G. ‘land’), or, rather, more *comprehensive participation* of different social strata of the population remains to be completely unclear, according to the sources, and was, as one is allowed to assume without reservation, still very modest” (Sablonier 2008<sup>3</sup>:166; italics by E.H.).

Here is an outline of my arguments (cf Hinz 2016 for the texts referred to):

(1) Sablonier presents a *petitio principii* (what is to be proven forms already part of his premises; see the pts 2-6 below): ‘no circumscribed territory’ [pt (2)]; ‘institutionally structured *länder*s (polities, countries) do not yet exist’ [pt (3)]; ‘institutions are weak’ [pt (4)]; ‘comprehensive participation of the population is very modest’ [pt (5) & (6)].

(2) The decision taken by the Cantonal Assembly of Schwyz 1342 May 15 (cf *here* Ch 20) shows a clear marking of subterritories. The Federal Charter of 1291 speaks already of “the men of the valleys”, protective measures “inside and outside of the valleys”, “banning [from the valleys]” and lifting that ban, and confiscating stolen goods “in the valleys”, refusing the acceptance of judges “from outside (of the valleys)”. Cf 1309 June 25 (QWI/2, Doc. 485: MHG. *mit zeichen usgescheiden* = ‘specified by signs’ in the sense of territorial markings).

(3) The central and integrating institution of decision-making is called L. *universitas* (= G. ‘Landsgemeinde’, Am. ‘community (assembly)’ or ‘Cantonal Assembly’) in the Federal Charter of 1291. See the Letters of Freedom of 1231 and 1274 for Uri referring to that institution and the corresponding term.

(4) The ‘institutions’, i.e. the Cantonal Assemblies, must have been so strong as to be able to mobilize the population in favor of Emperor Friedrich II (cf Pope Innocent’s Bull of 1247) and the resistance against bribed and non-local judges according to the Federal Charter of 1291.

(5) You can argue that ‘comprehensive participation of the population’ is implied according to Pope Innocent’s decree of excommunication and interdict against *the* people and *the* localities of Schwyz and Sarnen (Unterwalden).

(6) Different social strata, i.e. at least a comprehensive participation of the adult male population, are implied in Queen Elisabeth’s Letter of Prohibition of 1299, address: ‘directed to the adult male persons, the officials or Chairmen (i.e. the community administration) and the *whole* Cantonal Assembly of Schwyz’. Cf *here* Ch 17 Tab 2.

(7) The rhetorical qualifications ‘completely unclear’ and ‘as one is allowed to assume without reservation’ characterize Sablonier’s style of thought and terminate any further consideration of his rhetoric. See Hinz 2016, App. 3, for detailed critiques of Sablonier.



## CORE CHAPTERS

### *PART I:* *THE LETTER OF FREEDOM (1240)*

In this part, I will reanalyze: a. Pope Innocent IV's Bull of 1247 and the legal decision of a trial in 1275 between the Monastery of Engelberg and the Community of Uri concerning the rights of pasture; b. King Ludwig IV's legal warning in his reconfirmations of 1316 (*'paginam infringere'* = 'tear apart or destroy the document'); c. King Heinrich VII's Summary Confirmation of 1309 for Unterwalden; d. the fact of missing documents in Unterwalden which, otherwise, are proven to have existed, together with the arson of the Archive of Uri in 1799, mostly concealed by historians.

#### **1. LETTERS OF FREEDOM FOR SARNEN (UNTERWALDEN) AND URI BY EMPEROR FRIEDRICH II (1240) PROVEN BY PRO-HABSBURGIAN DOCUMENTS.**

##### 1.1 DECREE BY POPE INNOCENT IV CONCERNING 'THE PEOPLE OF THE LOCALITIES OF SCHWYZ AND SARNEN' OF 1247: A LETTER OF FREEDOM FOR SARNEN/UNTERWALDEN (1240) IS PROBABLE

QWI/1:254 [= Doc. 552, Latin text]. Archival notes: eds QW. Transl.: E.H.  
*1247 August 28. Lyon.*

The people of Schwyz and Sarnen were libeled by Count Rudolf III, Seigneur of Habsburg, by means of information given to Pope Innocent IV that they would obey and follow the former Emperor Friedrich II<sup>8</sup>, after the latter's excommunication, instead of him, the Count. He claims to be their legitimate Lord according to law of inheritance. Pope Innocent threatened to excommunicate the people of Schwyz and Sarnen (and put the communities under the interdict) if they would not return to the Count's rule within a certain limit of time.

Reg. Vat., T. 21, f. 456, ep. 161. — Print: MG. Epist. II, 308; Acta pontif. Helv. I, Nr. 395; Eidg. Absch. I<sup>2</sup>, 1. — Registry: Reg. imp. V<sub>3</sub>, 7865; Oe. 121. — With regard to this document cf Kopp, *Gesch.* II<sub>1</sub>, 327; Blumer, *Staats- und Rechtsgesch.* I, 123, 125; Bresslau, *Jahrbuch* 20, 8ff. Oechsli, *Anfänge*, 260f. Durrer, *Jahrbuch* 35, 32 ff... [*abridged E.H.*].

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<sup>8</sup> Cf R. Durrer 1910, Ch 1, on the general history of Unterwalden in the 13<sup>th</sup> century. I show that the evidence to be concluded from this document is completely independent of Tschudi. Cf Bluntschli 1849/I:31f., who comes to the same conclusion as I do and sees Pope Innocent IV's Bull as evidence for the issue of a Letter of Freedom for Unterwalden in 1240.

<p>(1) Innocencius episcopus, servus servorum dei, dilecto filio.. preposito ecclesie de Olimberc<sup>[1]</sup>, ordinis sancti Augustini, Basiliensis diocesis. Dilecto filio nobili viro Radulfo seniore<sup>9</sup> comite de Habsturc, devoto nostro, accepimus intimante, quod de Suberits<sup>[2]</sup> et de Sarnon locorum homines, Constantiensis diocesis, qui ad ipsum hereditario iure<sup>[3]</sup> spectant, a fidelitate ac dominio eiusdem temere recedentes F(riderico) quondam imperatori post latam in ipsum et fautores suos excommunicationis sententiam<sup>[4]</sup> nequiter adheserunt.</p>	<p>= (1) Innocent, Bishop [of Rome], Servant of God's Servants, to the beloved son, the Provost of the Church of Ölenberg, of the Order of St. Augustine, [in] the Diocese of Basel [Bâle]. We have learned from the beloved son, the nobleman Rudolf, the Lord (Seigneur) Count of Habsburg who is devoted to us and has informed us that the people of Schwyz and Sarnen, in the Diocese of Konstanz, who belong to him according to law of inheritance, [after] inconsiderately deserting loyalty [as subjects] and rule (authority) of the same, adhere frivolously to Friedrich, the former Emperor, after the sentence of excommunication against him and against his followers had been passed.</p>
<p>(2) Et licet postmodum ducti consilio saniori prestito iuramento firmarint, quod sub dicti comitis dominio de cetero persistentes ipsi F(riderico) vel alicui alteri contra ipsum minime obedirent, iidem tamen iuramenti religione ac lata in adherentes et faventes predicto F(riderico) sententia excommunicationis da(m)pnabiliter vilipensis et fidelitate temere relegata se ab eius dominio subducentes prefato F(riderico) assistunt contra ipsum et ecclesiam pro viribus et patenter.</p>	<p>= (2) And though they had promised soon afterwards, led by more reasonable advice, under oath that they would stay henceforth under the rule of the said Count [and] would not obey the same [former Emperor] Friedrich nor anybody else against him [i.e. Rudolf], the same serve – despite of binding by oath and the judgment of excommunication passed against the followers and those who favor the aforementioned Friedrich – the aforementioned Friedrich against him (i.e. Rudolf) and the Church forcefully and openly withdrawing from his (i.e. Rudolf's) rule with condemnable contempt and rejecting any loyalty as subjects frivolously.</p>
<p>(3) Quia vero dignum est, ut, qui diligunt maledictionem, veniat eis et, qui nolunt benedictionem, prolongetur ab illis, mandamus, quatinus, si res ita se habet, prenomatos homines, nisi ab eodem F(riderico) infra competentem terminum a te prefigendum eisdem recedant eique tamquam imperatori non obedient<sup>10</sup> nec intendant ac ad unitatem ecclesie revertantur ipsique comiti velud suo domino in devotione huiusmodi persistenti studeant obsequi, ut tenentur, necnon et homines [S. 255] ville Lucernensis, si tibi eos illis communicare ac favere prefato F(rideri-</p>	<p>= (3) But because it is fitting that the curse may come over them since they like it and blessings may be taken from them because they do not want this, we order you – if the situation is like that – to threaten the aforementioned people so that they will be submitted to the judgment of excommunication if they will not desert the same Friedrich within a fitting deadline that is to be fixed by you and [cease] to obey him as an Emperor and to attend to him, and [if they will not] return to the unity of the Church and do not want to obey the Count himself – who per-</p>

<sup>9</sup> *Seniore (Abl.) = inter alia*, G. 'Feudalherr', F. 'Seigneur' (*document issued in Lyon!*), Am. 'Lord' (Niermeyer 1976). Oechsle: 'R. der Ältere'.

<sup>10</sup> Negated forms *nisi + non*: cf PONS 2007:591, *non (1): non obedient nec intendant = G. 'den Gehorsam aufkündigen u. sich abwenden' = Am. 'to disobey and to turn away from'.*

co) constiterit in premissis, denunties excommunicationis sententiae subiaceret ac ipsa loca et villam Lucernensem supponas sententiae interdicti faciens utramque sententiam auctoritate nostra sublato appellationis obstaculo usque ad satisfactionem condignam inviolabiliter observari processurus super hiis alias, prout videris expedire. Dat. Lugduni V. kal. Sept. anno V°.

sists in devotion [*sc.* to us, the Pope] – as their Lord as they are obliged [to do], and moreover the people of the City of Luzern if you are sure with regard to the aforementioned [points] that they make common cause with them and are inclined towards the aforementioned Friedrich. And [we order you] that you shall subject the localities themselves [i.e. Schwyz and Sarnen] and the City of Luzern to the judgment of the interdict, thus imposing each of both judgments, after the obstacle of [the right of] appeal is lifted with our authority. And [we order you that] you shall proceed otherwise in undisturbed observance of the judgments until adequate satisfaction as it seems fit to you in order to terminate [the issue]. Issued in Lyon, on the 5<sup>th</sup> Kal. of September, in the 5<sup>th</sup> year (= 1247 August 28).

Notes by eds. *QW I/1:254 [=Doc. 552]*: <sup>[1]</sup> Ölenberg, former Augustinian Monastery, Community Reiningen, District of Mülhausen, East Alsace. <sup>[2]</sup> “Sub’its” [in the MS.?, E.H.] for misunderstood “Swits”. <sup>[3]</sup> Cf Nr. 157 A. 1 and Nr. 252. <sup>[4]</sup> Does this refer to the excommunication of 1239 Nov 23 and not the later one, of 1245 July 17? (*I think the latter date is correct, see below Argument [4].c, E.H.*).

The following phrasings can serve as proof that Friedrich II has decreed the Imperial Freedom (i.e., direct dependency on the Holy Roman Empire) not only for Schwyz but for Sarnen, too:

1. *de Sub[er]jits et de Sarnon locorum homines, Constantiensis diocesis, qui ... F(rideric) quondam imperatori ... nequiter adhererunt.*  
= ‘the people of the localities of Schwyz **and** Sarnen, [in the] Diocesis of Konstanz... who **adhere to** (or: **follow**) **the ex-Emperor Friedrich... frivolously.**

2. *Et licet postmodum ... prestito iuramento firmarint, quod sub dicti comitis dominio de cetero persistentes ipsi F(rideric) vel alicui alteri contra ipsum minime obedirent, iidem... prefato F(rideric) assistunt contra ipsum et ecclesiam pro viribus et patenter.*

= ‘And though they had promised later on... under oath that they would stay henceforth under the rule of the said Count [and] **would not obey, in any way, the said Friedrich or anybody else against him [i.e. Count Rudolf III]... the said ones do serve the aforementioned Friedrich against him (i.e. Rudolf) and the Church to the best of their ability and openly...**

3. *nisi ab eodem F(rideric) ...recedant eique tamquam imperatori non obediunt nec intendunt ...*

= **if they would not recede... from the same Friedrich and [cease] to obey him as Emperor and to turn towards (or, rather, attend to) him.**

#### IMPLICATION OF IMPERIAL “UNMEDIATEDNESS” OR FREEDOM:

- (a) ‘to obey the Emperor’ (...*minime obedirent*... = ‘they cease to obey’),
- (b) ‘to serve him’ (...*prefato F(rideric) assistant*... = ‘to serve the aforementioned Friedrich’),
- (c) ‘to turn towards (or, rather, attend to) him’ (...*nec intendant* = ‘and [cease] to turn towards him’),
- (d) ‘to adhere (or: follow)’ (*nequiter adheserunt* = adhere to (or: follow) the ex-Emperor Friedrich (II)... *frivolously*).

#### IMPLICATION OF GIVING UP IMPERIAL “UNMEDIATEDNESS” OR FREEDOM (TREASON AGAINST THE EMPIRE):

- (e) ‘to recede... from the same Friedrich’ (*nisi ab eodem F(rideric)...* *recedant* = ‘if they would not recede from the same [Emperor] Friedrich’).
- (f) ‘to obey the Count...as their Lord’ (*ipsique comiti velud suo domino in devotione huiusmodi persistenti studeant obsequi, ut tenentur* = ‘and do not want to obey the Count himself – who persists in devotion [sc. to us, the Pope] – as their Lord as they are obliged [to do]’).
- (g) ‘to stay under the rule of the Count’ (*quod sub dicti comitis dominio de cetero persistentes* = ‘that they would stay henceforth under the rule of the said Count’).

‘To obey the Emperor’, ‘to serve him’, ‘to turn towards (or, attend) him’ implies *Imperial Freedom* (*unmediated dependency upon the Empire*), in terms of political behavior and legal regulation. Correspondingly, abolishing Imperial Freedom is implied in the statements or rather phrasings ‘receding from (or: deserting) the Emperor’, ‘ceasing to obey and to serve him’ as well as ‘to remain under the rule of the said count [as feudal Lord]’. The quoted statement that the people would have given an oath to the count *soon afterwards* (or: *later on*) is without importance for the time being and is probably a confabulation in order to underline the argument that the inhabitants concerned would have broken the papal ban [against Friedrich II] even, in addition, in terms of a broken oath given to Count Rudolf III of Habsburg. In deliberating the issue, the Waldstätten people will certainly have favored *Imperial Freedom* over loyalty as followers of Count Rudolf of Habsburg. Otherwise, it obviously is sufficient to identify oneself as a loyal follower of the Pope. Or else, the Count is known to him and both participate in a conspiracy. Innocent IV on the denunciation by Count Rudolf concerning the City of Luzern: ‘if things are that way’.

#### LOCALITIES

The localities or, rather, their inhabitants are called *de Sub[er]jits et de Sarnon locorum homines* = ‘men / people of Schwyz and Sarnen’. We are dealing with the inhabitants and not with some inhabitants of the corresponding localities.

That points to their *political organization*. The term ‘Unterwalden’ might have been avoided since it refers to the joint Cantonal Assembly of Nidwalden and Obwalden.

Approximating the morphophonological pattern of Latin: *sch-w* [= #CC → #C-V-C] and *sch* → s, w → b (→ = ‘becomes/changes to’; C = consonant, V = vowel, # = beginning of a word. Bluntschli (1849/I:54, Anm. 51) has transcribed *Subrits*. We are probably dealing with a special (?) **ligature** in the Ms.

The Letter of Freedom by Emperor Friedrich II (1240; cf *here* Ch 1.5) contains the address ‘*universis hominibus vallis de Swites*’ = ‘to all the people/men of the Valley of Schwyz’.

The phrasing in the Federal Charter of 1291 reads: ‘*homines vallis Uranie universitasque vallis de Switz ac communitas hominum Intramontanorum Vallis Inferioris*’ = ‘the people (*or*: men) of the Valley of Uri and the Cantonal Assembly of the Valley of Schwyz and the community (assembly) of the people (*or*: men) of the Kernswald (lit. ‘central forest’) of the Lower Valley’.

The later Letter of Freedom issued by King Heinrich VII (1309) contains the address: ‘*universis hominibus vallis de Underwalt*’ = ‘[to] all the men (*or*, people) in the Valley of Unterwalden’ referring to the joint Cantonal Assembly.

The selection of phrasings in the Bull of Pope Innocent IV makes clear that we are dealing with the Imperial Freedom (Unmediated or Direct Dependency on the Empire) of the whole or, rather, total population. That *fact is documented* for Schwyz for the year of 1240 [cf the original ms. in the state archive of SZ] and for Sarnen or, rather, Unterwalden *proven* to have existed by means of the present document but disputed in juridical terms (probably also issued in 1240: cf the mentioning of both Schwyz *and* Sarnen or Unterwalden and the corresponding canonical challenge against both localities). ‘The people of the localities –’ seems to imply: the whole [adult?] population. The interdict is inflicted on the total community as an organization with its population, in accord with canonical law. The point of reference is the community, i.e. the central place. The details of the Cantonal Assembly as a social organization are probably irrelevant to the Pope. He orients himself in terms of the inclusion in a specific diocese. Cf *here* Ch 13 (and Ch 17, Tab. 5).

Innocent IV who has introduced inquisitory torture (cf his Bull *Ad extirpanda* 1252 May 15) cancels or invalidates all concessions issued by Emperor Friedrich II in favor of the people of Schwyz and Sarnen in a letter of rude tone. *As a matter of fact*, the population of Sarnen and Schwyz follows the loyalty to the Emperor associated with the norm of *Imperial Freedom*. Without this benefit conceded by Friedrich II, political support for the Emperor by the population is not to be assumed because of the one-sided disadvantages to be expected for the population of the cantons. Innocent IV extends his Papal rights to decide in favor of Count Rudolf III and (re)installs him into his claimed possession, changing or, rather, reinterpreting Imperial Right and right of fief or, rather, feudal

law. Obviously, Luzern is also denounced by Count Rudolf III as following Emperor Friedrich II and seems, *thus*, to be *claimed directly* (though brought about, in reality, as late as 1291 by King Rudolf I of Habsburg in terms of buying from the Monastery of Murbach). Pope Innocent IV also constrains the inhabitants of Luzern to obedience, under the condition ‘if things are (really) such’. A Letter of Freedom for Luzern is probable. Cf Hinz 2016a [App.: Luzern reichsfrei?].

#### OUTLINE OF MY ARGUMENTS:

[Excommunication. Denunciation. Question of oaths. Imperial freedom. Its later validations. Law of inheritance. The conspiracy of the Pope and Austria.]

#### **Excommunication.**

[1.] *The excommunication of Friedrich II in 1245*: In a decree dating from 1245 July 17 (Lyon) [QWI/1:248.pdf = Doc 492], Pope Innocent IV excommunicates Emperor Friedrich II and removes him from office, invalidating any oath to him and prohibiting any obedience to him as Emperor. This decree marks the turning point for Count Rudolf III to enter into joint action with the Pope as shown in the Pope’s Bull of 1247. The Count is obviously known to the Pope.

[2.] *Count Rudolf III, a vassal of Friedrich II*: It has been assumed in the literature on this point that Rudolf III had sworn loyalty as a vassal to Emperor Friedrich II. In this sense, see QWI/1:226.pdf = Doc. 447 [1242 May, Capua]: “[R. III] reappears (*sic*, E.H.) as a loyal follower of the Emperor” (Commentary by the eds of QW). Count Rudolf III is mentioned as a witness in this document of Emperor Friedrich II in favor of the City of Cologne. Cf R. Durrer 1910:32 incl Note 2. *The date would imply that we are dealing with the excommunication in 1245 and not in 1239.*

Doc 447 [1242 May; see *above*] together with the phrasing in the Letter of Freedom (cf Ch 1.5: ‘as free people’) supports the assumption that ***the Count was not in possession of Schwyz and probably not of Unterwalden either*** (in addition, cf my note on Sarnen 1210 *here* Ch 28 [1210]).

[3.] *The Pope’s Bull (1247) motivates the twist of arguments*: Who had sworn to whom? First, the Count is said to have sworn to the Emperor. Then, the people (*homines*) of Schwyz and Sarnen (Unterwalden) are said to have sworn to the Count: it weakens a possible argument that the Count had broken *his* oath by introducing the argument that the people had broken a ***later oath*** (any *earlier* oath is not mentioned). The Pope accepts the Count’s argument that the people ‘belong to him (i.e. the Count) according to law of inheritance’ (instead of the ‘law of loyal vassalage in favor of the king’).

The Pope expresses a cautious caveat with regard to Count Rudolf III: ‘if the situation is [really] such’ (*L. si res ita se habet*).

### Denunciation.

[4.] *The denunciation by Count Rudolf III:*

(a) The inhabitants of Schwyz and Sarnen are *denounced* by Count Rudolf III as “followers of Emperor Friedrich II” despite of the latter’s and his followers’ excommunication.

(b) Count Rudolf *claims* that “the people of Schwyz and Sarnen belong to him according to law of inheritance”. Pope Innocent IV seems to accept this claim on the basis of the Count’s devotion to him and the Catholic Church.

(c) *An oath against Friedrich II or any other person:* Count Rudolf III must have claimed that the said inhabitants would have sworn to him loyalty as followers *soon afterwards* or *later on* (*L. postmodum*), i.e. after the excommunication [in 1245 and not in 1239, E.H.]. ‘Soon afterwards’: see text and [5.] below. The ‘specialty’ of this oath: it is personally directed against Emperor Friedrich or against any other person adverse to Count Rudolf III. An oath like that is nearly to be ruled out (unless invented by the Count or by the Pope himself)!

(d) The Count and the Pope expound the argument that the people mentioned “follow Friedrich (II) against the count *and the Church*”. Thus, a bond of unity between Count Rudolf III and the Pope is claimed and fostered. This seems to be the key.

(e) The *oath* of loyalty claimed to have been sworn forms the *basis of binding the people*.

### Question of oaths.

Probably only one oath to Friedrich II and not to Count Rudolf III.

[5.a] *No (earlier) oath:* In correspondence to the wording, no oath to Count Rudolf III is to be assumed *before* the excommunication (cf the expression ‘soon afterwards’). Cf the original Letter of Freedom for Schwyz of 1240 (State Archive SZ) supporting the idea of *continued* loyalty of Schwyz (and Unterwalden) for the Empire:

‘devotionem et fidem vestram... zelum quem *semper* ad nos et imperium habuistis’ = ‘your devotion and faithfulness... the eagerness you *always* had with regard to us and the empire’.

[5.b] *Presuppositional analysis:* Note the structure of events to be reconstructed as premises of the statements:

*Event(s) 0:* To be assumed and reconstructed: the Count sworn in to Friedrich II (cf 1242 May), the Waldstätten too = Imperial Freedom (Letter of Freedom 1240 Dec).

*Event 1:* Excommunication of Emperor Friedrich II and his followers in 1245 July 17.

*Event 2:* An alleged oath to the count, **after** events 0 and 1: ‘To stay henceforth (under the rule of the Count)’ indicates a counteraction, either by the Count and / or by the Pope, either real (that I doubt) or invented (as I think, by the Count and accepted by the Pope), to counter the actual swearing to Emperor Friedrich II (event 0). ‘*Stay*’ and ‘*henceforth*’ and ‘*led by more reasonable advice*’ are the indicators of a *recently changed situation* (as mentioned by the Pope himself) and not of traditional continuity (i.e. in the sense of a traditional dependency from Habsburg). The presuppositions in detail: ‘soon afterwards (i.e. after the excommunication = event 1) led by more reasonable advice [**than before**]’ = comparison and temporal

order; 'to stay **henceforth** under the control of the Count' [but, **before**, adhering to Friedrich II (= event 0)] = temporal order. In reality, no oath to the Count can be assumed before the excommunication, at least not mentioned. The alleged oath to the Count is probably *a con-fabulation by the Count and the Pope*.

*Event 3: Again "back" to Friedrich II in loyalty = having sworn to him (before and – in between the oath to the Count – again)?*

### **Imperial Freedom.**

[6.] *Imperial Freedom cancelled by the Pope*: The Pope argues: The Count is devoted 'to us', a formula repeated. The Pope accepts the Count's opinion that the inhabitants of the said localities had acted illegally against their obligations towards Count Rudolf III of Habsburg. Pope Innocent gives the order to force Schwyz and Sarnen or, rather, Unterwalden out of their respective *Imperial Freedom* and to force them under Austrian rule.

[7.] *Evidence for the facticity of Imperial Freedom conceded by Friedrich II*: The wording for 'Imperial Freedom' is circumscriptive but precise. My argument is based upon the terminological analysis of the Pope's bull (decree) only. See above:

'nisi [1] ab eodem F(riederico) ... recedant [2] eique tamquam imperatori non obedient [3] nec intendant [4] ac ad unitatem ecclesie revertantur' = 'and [1] if they would not recede from this same Friedrich (i.e. *defect from him*)... and [2] *cease to obey him as Emperor* and [3] *turn away from him* and [4] *return to the unity of the Church*.'

'[1] If they would not *recede* from this same Friedrich (i.e. *defect from him*): cf the *corresponding* identical normative expression (§1) with regard to the Austrian count: 'a *fidelitate* ac dominio eiusdem temere *recedentes*' = '(who) *receded (or, rather, defected)* from loyalty towards and rule of him deceptively'.

'*Fidelitate*' (*loyalty*): The Pope's Bull highlights this concept by means of the oath alleged to have been given by the people of Sarnen (and Schwyz). Cf the expression in the Letter of Freedom for Schwyz 1240 (and in the Letter of Freedom for Unterwalden 1309):

'dummodo in nostra *fidelitate* et *serviciis* maneatis' = 'as long as you stay in loyalty to us and in services (for us)'; L. 'in... *serviciis*' (Am. 'in services') *corresponds to* (§2) 'prefato F. *assistant*' = 'they serve the aforementioned Friedrich'.

This is, at least, an *indicator* of the formal concession of Imperial Freedom to Unterwalden, too.

'*Dominio*' (*rule*): This seems to be the Papal-Austrian counter-concept to Imperial loyalty.

'[2] Cease to obey him as Emperor': 'obey him as Emperor' refers to the oath of adherence. Cf the oath to the Count referred to in the Bull:

'Prestito iuramento firmanint, quod sub dicti comitis dominio de cetero persistentes' = 'they had promised... under oath that they would stay henceforth under the rule of the said Count'. 'To stay henceforth (under the rule of the Count)' indicates a counteraction, either by the Count or by the Pope, to counter the actual swearing to Emperor Friedrich II. 'Stay' and 'henceforth' are the indicators of a recently changed situation (as mentioned by the Pope himself) and not of traditional continuity (i.e. in the sense of any continuous dependency upon the Habsburgians). Cf L. '*persistere*' = 'stay / remain; belong for ever' [Niermeyer 1976:790]. Note the Pope's expression '*nec... ipsique comiti velud suo domino... studeant obsequi*' = 'and do not want to obey the Count himself just as their lord' (L. 'obsequi' = Am. 'to be submissive, to obey').



[3] Turn away from him' (negated form): L. 'intendere' = 'to attend, serve (somebody = dative), listen to, devote oneself to' [Niermeyer 1976:548]. Cf 'in serviciis' = 'in services' (Letter of Freedom 1240).

[4] Returning to the unity of the Church': that corresponds probably to the phrasing in the Letter of Freedom (*here* Ch 1.5): 'vestra ad nos conversione et devotione assumpta' = 'your conversion to us (i.e. the Emperor) and the devotion assumed by you'. Thus, the Pope's Bull emphasizes the fact of 'Imperial Freedom' conceded to Schwyz and Sarnen (Unterwalden) on the basis of their support for the Empire incl the attitude towards the ecclesiastical hierarchy (§2: 'and (against) the Church').

[8.] *'Imperial Freedom' for the polities*: The fact of submitting the *localities* to the papal interdict points possibly to *'Imperial Freedom' conceded to them as sociopolitical organizations* (in contrast to the more individualized excommunications of Friedrich's followers):

'ac ipsa loca et villam Lucernensem supponas sententie interdicti' = 'And you shall submit the same localities and the city of Luzern to the judgment of the interdict'.

Note the expressions 'locum' (cf. Niermeyer 1976:619) and 'villa' probably referring to non-Imperial (ecclesiastical?) units in conscious contrast to Imperial ones.

[9.] *External and comparative evidence: Sarnen and Schwyz* (the latter *original* Letter of Freedom is *conserved*) are mentioned on the same level and together. In my opinion, this means explicitly that also the people of Sarnen [L. *de Sub'itz et Sarnon locorum homines*], i.e. the corresponding Cantonal Assembly, had been privileged with a document of *Imperial Freedom*. In that case, the document must be considered to be lost.

#### **Later validations of Imperial Freedom.**

[10.] *Heinrich VII's validations are circumspect*: Pope Innocent IV's Bull seems to have been desired by Habsburg at the point in time but seems to have become undesirable later if this should have been evidence for the existence of a Letter of Freedom by Friedrich II and for the installation or establishment of Papal legal prerogatives against Royal or Imperial power. In 1309 King, later Emperor, Heinrich VII does acknowledge the Letter of Freedom issued by Emperor Friedrich II for Schwyz [QWI/2:232 = Doc. 481a]:

'...Tenore presencium recognoscimus publice profitentes nos vidisse litteras dive recordacionis domini Friderici Romanorum imperatoris, predecessoris nostri, *non cancellatas, non abrasas, sed omni vicio et suspicione carentes*, quarum tenor ad verbum dinoscitur esse talis: «Fridericus, dei gratia... -- indictione». Nos itaque tenorem et formam litterarum earundem approbamus et presentibus consignatis sigillo nostre regalis excellencie confirmamus...'

= 'With the wording of the present [document] we do recognize in public declaration that we have seen (!) the writing of the eternalized legal testimony of Lord Friedrich, Emperor of the Romans, our predecessor, as being not cancelled [and] without abrasions but lacking any fault or suspicion, the wording of which is literally understood as being such: «Friedrich, by God's grace ...-- tax year» We thus approve the wording and the form of this writing (document) and reconfirm it, through (*or*: on the basis of) the present evidence, with the seal of our Royal excellence.'

Cf similar expressions in Heinrich VII's confirmation of King Adolf's (von Nassau, 1297) Letter of Freedom [QWI/2:232f = Doc. 481b].

*Thus, with this scrupulous information, a simple fraudulent "imitation" or documentary fake for Unterwalden by Heinrich VII as assumed by the editors of QW is not very likely.* The expression might point to a loss of comparable documentation for Unterwalden at the time of Heinrich VII in terms of invalidation or destruction of authentication (actually cancelled or erased *arbitrarily and unlawfully*). Cf Ch 2 *here*. In contrast to the documentation for Unterwalden, King Heinrich VII emphasizes that he had seen the *authenticated* documentation for Schwyz himself. *Note the qualification of the legal testimony (!) as 'eternalized'.*

*Commentary:* As marked in King Ludwig's confirmations of 1316 we are probably dealing with the destruction of part of the documentation (for Unterwalden?) in Habsburgian interest.

#### **Law of Inheritance.**

[11.] *'Law of Inheritance'*: Innocent IV arrogates the right to determine or, rather, to redistribute the Imperial estates or goods arbitrarily or, better, unauthorized and to fixate them also for legal successors (*in terms of 'law of inheritance' vs. 'law of tenure in exchange for loyalty'*). This cannot have remained to be desirable. Innocent IV uses the opportunity to determine the (economic, social and political) power and its distribution within the Holy Roman Empire by means of the Papacy, i.e. to change the character of the government of the Holy Roman Empire in its fundamentals and to reserve the right of distribution of imperial estates or goods to the Pope as agent. This goes far beyond the so-called dispute of investiture (of religious or mundane [!] office-holders) and interferes deeply with the sociopolitical order including the legitimization of local noble rule. Cf the promised support by the French King for Duke (and not King!) Friedrich the Beautiful and the latter's possessions in terms of 'law of inheritance' (!) in 1324 July 27: the Austrian fight is for *change of the imperial law*.

*Commentary E.H.:* We are probably dealing with an attempt to change the Imperial law of loyalty for the King and Empire, see Ch 28 [1311]: *'property of the Empire' vs 'private inherited property'*.

[12.] *'Restitution'*: Correspondingly, the so-called restitution of Count Rudolf III's possession and the inhabitants' dependency upon him or, rather, their obedience towards him is ordered by the Pope and serves the subversion of power in the relation of Empire, Catholic Church and people's traditions of autonomy.

#### **The conspiracy of the Pope and Austria.**

[13.] *The conspiracy and its goal:* Count Rudolf III's denunciation proves the conspiracy and collaboration of Habsburg with the Papacy. Cf the formula *'vel alicui alteri contra ipsum'* = 'nor anybody else against him [i.e. Rudolf]' i.e. *fa-*

voring Count R. III under any circumstances and conditions. Are we dealing with *the very origin of absolutism proposed and/or supported by the Pope*, i.e. with the legitimization of a newly defined legal and tyrannical power for Habsburg in exchange for its support of the Church and the Papacy against the Emperor's political viewpoints? The Pope emphasizes the Count's devotion to him twice! Cf *here* Ch 32.2.1.

[14.] *A different reconstruction*: This document – obviously conserved in the Archives of the Vatican only – permits the reconstruction of the Letters of Freedom and, thus, the tradition of liberation in Switzerland clearly differs from what some historians want us to believe. *We are even confronted with the possibility of massive documentary forgery in favor of Habsburg as a (repeated) policy*. Cf *here* Ch 28 [1210 (and 1240), 1240, 1311].

## 1.2 IN A TRIAL BETWEEN ENGELBERG AND URI IN 1275

BOTH LEGAL PARTIES WERE PROVEN TO BE IN POSSESSION OF PRIVILEGES OF FREEDOM BY EMPEROR FRIEDRICH II AND KING RUDOLF I:  
A LETTER OF FREEDOM FOR URI OF 1240 IS PROBABLE.

QW I/1:530 [=Doc. 1176]. Archival notes: eds. QW. Translation: E.H.

*1275 August 11. Altdorf.*

*Markwart von Wolhusen, Judge of King Rudolf I (of Habsburg) in Aargau and Zürichgau, decides a long-lasting fight between the Monastery of Engelberg and the Community of Uri concerning the alps [= 'pastures'] and the right to use them [with their cows], in a friendly agreement.*

State Archive Uri, Nr. 11. — Copy (Translation). Parchment 27/34 cm. — Print: Gfr. 7, 162. — Registry: Urk. Zürich IV, Nr. 1608; Gfr. 51, 111; Oe. 234; Redlich 419. —

[From eds. QW: This is not (simply) a copy but a translation (from a Latin original) by the notary public documented in a legal dispute of the secular parochy of Luzern in 1454, July 30.].

= '(1) In the name of [God], the Lord, amen. We, Marquart von Wolhusen [1], Judge in the Counties of Argau and Zürichgau of the highly enlightened Lord, Lord Rudolf, by God's grace Roman King, communicate to all those who see this letter, blessing and decision of these things described as follows. The continuous change of human things, the passing of times and the deadly forgetfulness of humans advise, by means of conscious instruction [thereof], that things that pass in time will be laid down in eternal memory.'

= '(2) Therefore, they let know all [people] that because of the quarrel and legal action that is pending before the above-mentioned Lord of us, the King, between the Honorables in God, the Abbot and the Convention of the Church and Monastery of Engelberg on one hand and the Community of the people of the Valley of Uri on the other hand, and originates from the alps in the Valley of Engelberg, *i.e. from above the locality [named] Stäubi*<sup>[2]</sup> down to the creek that is named *Tütschbach*<sup>[3]</sup> (italics, E.H.), the same quarrel and legal action have

been recommended to us by the above-mentioned Lord of us, the King, for legal decision after long dissensions (discords).’

= ‘(3) As we then have taken up (before ourselves) the matter and issue in accord with the recommendation mentioned and have listened to both legal parties’ [decrees or explanations of] freedoms that were given to them by the highly enlightened Lord, Lord Friedrich, Roman Emperor, and also by the above-mentioned Lord Rudolf, Roman King, as well as to witnesses and information which had been brought before us in order to instruct [us] in the factual matter, and – on the basis of such freedoms and information – the aforementioned abbot and the convention (monastery) have proven in substance that estate and property of the aforementioned alps belong to them, we have, thus, finally arranged and settled the issue of the mentioned dispute and quarrel between them – because of which both sides have come to us in agreement and in friendship – with counsel and aid of the honest and patient (devout) people, by means of their well-mindedness’

= ‘(4) in such a way that the above-mentioned Abbot and the convention (monastery) shall and might possess and inhabit the protected side of the alps, in freedom and tranquility, with all their rights, with all their friendship and custom and as is their tradition so far. And in the same way, the said community (assembly?) of the people of Uri shall have the pleasure of and enjoy their rights and friendships in unbroken form such as they belonged to them in the same alps so far but with the following stipulations and measures: if the aforementioned people of Uri would have and suffer from neediness and affliction, because of bad weather in their alps, they shall have refuge (*or* shelter) in the alps of the Church of Engelberg, in such a way, however, that they keep and conserve fences and meadows there with their entrances unbroken. And as soon as the dangers of the bad weather described disappeared from their alps then the [people from] Uri shall leave without delay and immediately and go [back] to their alps.’

= ‘(5) It has also been determined: if one of both these [legal] parties would do damage to the other one, against the form of this arrangement, or would act against it, if thus the aforementioned Church would be damaged, the Abbot shall bring his complaint before the Chairman [of the Cantonal Assembly] (MHG. *amman*) of Uri. And if complete justice is not conceded to the [Abbot] before the [Chairman of Uri], then the Abbot of the same Church shall and can consider and conclude his claim – without angriness of the people from Uri – as he thinks it would fit and be just. But if those from Uri became molested and inflicted they shall bring their claim before the Abbot of Engelberg who would be in office at that time and shall get their right there.’

= ‘(6) And in evidence of this issue, these things (items) have been written down and sealed publicly. And these things happened in Altdorf, in the year of our Lord, 1275, in the morning after the day of St. Laurencius, in the third Ro-

man number, called *indictio* (i.e. in the third indiction). The [following] honorable persons have been here and present:

Herr (*lord*) Walter, Abbot in Engelberg; Walter, his predecessor; Arnold, Chamberlain there; Walther I(i)utpriester zu(o) (*secular priest in*) Ruswil, Nicolaus kilcherr zu (*curate / rector in*) Eich, die edlen (*noblemen*) Hans von Wartense, Hans von Bu(o)chs, Walther von A, Otto vom Turn, Ru(o)dolff von Tun ritter (*knight*), Wernher von Attingenhusen und Wernher sin sun (*his son*), edell(i)ut, amman von Ure (*noblemen, Chairman of Uri*) Burkart Sch(i)upffer und Cu(o)nrat sin sun (*his son*), Arnolt an der Matten, Chu(o)no von Bertzingen, Ingold sin sun (*his son*), Walther von Spiringen, Hans uff der R(i)usß, . . . der Zingg, H. von Malters, Chu(o)n von Bruggental, [S.532] Walther amman zu(o) (*Chairman in*) Wolfenschieß, Cu(o)nrat sin bru(o)der (*his brother*), Cu(o)nrat von Riede, Cu(o)nrat meyer (= *administrator?*) von O(e)rthsveld, Chu(o)n Schumuli, Ru(o)dolff von Rieden, Walther Langmeister von Spiringen, Ru(o)dolff von To(e)rlen, Walther am Lutzz, Arnolt Eichorn, H. Hunthar, Ru(o)dolff von Bu(o)chs, Ru(o)dolff von Swensberg, Eglolff sin bru(o)der (*his brother*), U(o)lrich von S(i)ubach, der Tr(i)uler (*the 'player'?*), Ru(o)dolff von Olten, Peter von Rotenburg, Cu(o)nrat von Eichorn, Cu(o)nrat von Emu(e)ten [26], der Winstein, Hans Zant and other faithful people.

[*Lat.*] Iohannes Kaltschmid, notarius publicus, scripsit ab originalibus literis sigillatis = *Am.* Johannes Kaltschmid, notary public who copied it from the sealed original document.'

*Notes by the editors of QW strongly abbreviated:*

[<sup>1</sup>] Cf Nr. 139 A. 1. [<sup>2</sup>] Stäubi, waterfall of the Aa between Blackenalp and Surenalp, cf Heß, Jahrb. 25, 8 f. [<sup>3</sup>] Tütsch-(Tutsch-)bach, below the Fürenalp. [<sup>26</sup>] On Emmuoten cf No. 684 A. 8, but, rather, Emmeten, Nidwalden, seems to be intended.

#### OUTLINE OF MY ARGUMENTS

(1) **Letters of Freedom for Uri and Engelberg by both monarchs:** Both Uri [Dec 1240(?); 1274 Jan 8, QWI/1:502 = Doc. 1112] and Engelberg [1213 Jan 2, QW I/1:115 = Doc. 245 with *topographic* marking (!); 1274 Jan 25, QW I/1:503 = Doc. 1115] had *Privileges of Freedom* (i.e. *Concessions of Imperial Freedom*) by Emperor Friedrich II and King Rudolf I. These are not disputed: thus, the recognition of Emperor Friedrich II's decrees is implied. This means: the concession of Imperial Freedom to Uri in 1240 is highly probable. Decisive for this line of arguments is the terminology:

(a) "that because of the quarrel and the legal action that is pending before the above mentioned King, our Lord, between the Honorable ones in God, the Abbot and the Convention of the Church and Monastery of Engelberg on the one hand, and the Community of the people of Uri [MHG. 'gemeind der lüten'] on the other hand, [and] originates from the alps in the Valley of Engelberg, i.e. from above the locality of Stäubi down to the creek called Tütschbach".

[MHG. "(§2) ... das in der zwitracht und clag, vor dem obgenanten (i)unserm herren dem k(i)ung zw(i)uschent den erwirdigen in gott dem abbt und convent deß gotzhuß und closters zu(o) Engelberg an eim und der gemeind der l(i)uten deß tals zu(o) Ure am andern teil bewegt, von wegen der alppen in dem tal zu Engelberg ru(e)rrent als von oben der statt genant Sto(e)ben<sup>[...]</sup> herab untz an den bach genant T(i)uschembach<sup>[...]</sup>".]

This line of thought refers to the legal parties and to the legal issue (pasture rights in the alpine meadows in the Valley of Engelberg).

(b) "...the freedoms <pl.!> of both legal parties that were given to them by the highly enlightened Lord Friedrich (II), Roman Emperor, and also by the above mentioned Lord Rudolf, Roman King..."

[MHG. "beider teilen fryheiten, inen von dem allerdurl(i)chtigosten herren her Fridrichen, römischen keiser, und o(u)ch von dem obgenanten her Ru(o)dolffen, römischen k(i)unig, gegeben"].

This line of thought refers to the Privileges of Freedom for *both* legal parties by *both* monarchs. The syntactical connection cannot be understood differently: 'freedoms given to both of them <pl.> by Friedrich and in addition by R.'. Therefore, we can be certain of Emperor Friedrich's Letter of Freedom for Uri. King Heinrich VII von Staufen's (i.e. Friedrich's son's) concession to Uri in 1231 is not mentioned.

(2) **Territorial rights for both polities acknowledged:** The privileges of freedom are obviously acknowledged for both sides but are judged differentially with regard to the disputed boundaries of the alpine meadows. Thus, about Uri: "And, in the same way, the aforementioned Community of the people of Uri shall have pleasure with and enjoy their rights and friendships unbroken just as they have belonged to them in the same alps so far but with the following stipulations and measures..."

[MHG. "Und deßglich sol die genant gemeind der l(i)uten zu(o) Ure sich fröwen und niessen iro rechtungen und fr(i)untschafft unverbrochenlich, wie die inen in denselben alppen bißh(a)er zu(o)geho(e)rt ha(u)t, doch mit sölichen gedingen und massen"].

And: "and as soon as the unfavorable conditions of the bad weather referred to disappear from their alps, those from Uri shall leave without delay from that hour onwards and go [back] to their (i.e. the people of Uri) alps..."

[MHG. "und sobald die irrung deß gemälten ungewitters von iren alppen kumpt, a(u)n verziehen und von stunden an söllent dan die von Ure wider dannen und zu(o) iren alppen varen"].

Cf the formula in the Letter of Freedom 1240 for Schwyz (hypothesized to hold for Uri too): 'that you might *enjoy* the full degree of thankfulness and *favours* that a benign ruler must pour over the subjects and loyal followers'.

I exemplify the *rights* (MHG. 'iro rechtungen und fr(i)untschafft') of Uri in the same *territory* (alps or, rather, pastures) characterized by the judge as *belonging* to the *people* (MHG. 'inen... zuogehoert') up to now. Cf the address in the Letter of Freedom of 1240.

(3) **Peaceful legal settlement:** The quarrel is settled in mutual understanding. A difference between ‘protected’ vs. ‘unprotected or open side of the alps’ is introduced. The protected side of the alps is acknowledged as the legal property of Engelberg but a usufruct thereof is conceded to the Community of Uri during bad weather. MHG. ‘egeseite’ (= ‘Hege-seite’) = ‘fenced side of the alps or pastures’. Cf Point (7) below. The unprotected side is said and acknowledged to belong to Uri.

(4) **The Judge:** Marquart of Wolhusen takes decisions as Judge in the Argau and Zürichgau. He acts as judge of the enlightened Lord Rudolf, Roman King by God’s grace.

(5) **Preamble:** The introduction to the judgment resembles preambles in the Federal Charters (1315, 1332, 1351ff). The presence of witnesses and a corresponding list of names resemble the document concerning the sale of land to Chuonrat the Hun in Schwyz in 1282 (New Year).

(6) **Also proof of Uri’s Letter of Freedom by Rudolf I:** I interpret the document not only as evidence for the existence of a Letter of Freedom of 1240 for Uri but also as a hint to King Rudolf I’s Letter of Freedom of 1274 for Uri (‘beider teilen fryheiten etc.’ = ‘both legal parties’ freedoms etc.’). I.e., *both* legal parties had *legal privileges from both kings*.

(7) **Engelberg’s possession mentioned in 1213:** The legal property of the *protected* side of the alps is probably assigned to Engelberg because the boundary marking (rock or, rather, waterfall Stäubi) is mentioned in Emperor Friedrich II’s concession of 1213 for Engelberg. In case of doubt and dispute, legal privileges in favor of the Abbot of Engelberg are therefore specified in the present judgment.

### 1.3 COMPARISON OF THE DATA SETS

The two data sets of Points 1.1 and 1.2 are conceptually reduced and compared. The fact is to be emphasized that both documents are to be considered as *pro-Habsburgian* ones. This adds *credibility* to the analytical results.

Both documents refer to the respective localities: Pope Innocent’s Decree to *loca* (‘places’) or *villam* (‘town’, acc., in the case of Luzern) instead of communities or, rather, community assemblies, thus possibly negating Imperial Freedom to them, and *gemeind der l(i)uten* (‘community of the people’, in case of the legal judgment of 1275) and to their inhabitants as *homines* (‘countrymen’, ‘commoners’) and *l(i)uten* (‘people’, ‘commoners’). Even the Chairman of the Cantonal Assembly (MHG. ‘amman(n)’) is mentioned in the case of Uri.

Both documents issued are dated according to QWI/1&2.

*They prove that Letters of Freedom were extended for all the three cantons of Schwyz, Uri and Unterwalden (Sarnen) in 1240 [Dec or shortly afterwards]. This has to be understood in the vein of Tschudi, i.e. in the sense of a shared origin of autonomy for the three cantons in 1240.*

<i>Document</i> ▼ / <i>Localities</i> ►	Schwyz	Sarnen / UW	Luzern
<b>Letter of Freedom 1240</b> (by Friedrich II)	Original in SZ	Ms. lost / destroyed	Ms. <i>probably</i> issued but lost/destroyed?
<b>Ecclesiastical action 1247</b> (Threat of) excommunica- tion and interdict	+	+	+
<b>Justification (1247):</b> ‘to obey the Emperor [direct- ly]’, ‘to serve him’, ‘to attend him’	+	+	‘if acting in common’
<b>Demand (1247):</b> ‘receding from the Emperor’, ‘ceas- ing to obey and to serve him’, ‘to remain under the rule of the said [Habsbur- gian] count [as feudal Lord]’; ‘return to the unity of the Church’.	+	+	‘if acting in common’

*Data 1: Letters of Freedom (1240) for Schwyz, Sarnen/UW, Luzern*

<i>Document</i> ▼ / <i>Localities</i> ►	Uri	Engelberg
<b>Phrasing in document (1275)</b> ‘the freedoms of <u>both</u> legal parties <i>given to them by</i> the highly enlightened Lord Friedrich, Roman Emperor, <i>and also by</i> the Lord Rudolf, Roman King’	+	+
	+	+
	[Dec 1240?]	[1213 Jan 2]
	+	+
	[1274 Jan 8]	[1274 Jan 25]
<b>Decision:</b> ‘right & friendship’*	+	+
‘ <i>possess</i> and inhabit (the protected side of the alps)’	–	+
‘have the pleasure of and enjoy* <i>their</i> rights and friend- ships in unbroken form (as they <i>belonged</i> to them in the same alps)’	+	–

\* Cf the formula in the Letter of Freedom 1240 for Schwyz: ‘that you might *enjoy* the full degree of thankful-ness and *favours* that a benign ruler must pour over the subjects and loyal followers’

*Data 2: Letters of Freedom for Uri (1240; 1274) and Engelberg (1213; 1274)*



The City of Luzern was probably also directly dependent upon the Roman Empire (G. ‘reichsfrei’)<sup>11</sup>.

#### 1.4 WHO TORE DOCUMENTS APART (OR DESTROYED THEM)? ON KING LUDWIG’S CONFIRMATIONS OF 1316

King Ludwig extends confirmations of the following documents of his royal predecessors to the people of Schwyz who asked him therefor:

- (a) the Letter of Freedom by Emperor Friedrich II (1240 Dec);
- (b) the Document by King Rudolf I that free people can only be judged by free judges [not dated; the 1291 original in Schwyz has 1291 Feb 19];
- (c) the Privilege by King Heinrich VII on the liberation from courts of justice outside of the local community (1309 June 3);
- (d) the Document by King Heinrich VII on Imperial Freedom of people from Schwyz who bought themselves free from Count Eberhard of Habsburg (1310 May 5).

1316 March 29. At siege of Herrieden.

State Archive Schwyz, Nr. 64. — Orig.: Parchment. 20x37 cm. Throne seal Ø 100 mm. broken, otherwise [only] slightly damaged, Heffner 88, Taf. VIII, 70. — Print: Tschudi, Chronik I, 278; Wartmann, Archiv 13, 153 f. — Registry: Kopp, Gesch. IV<sub>2</sub>, 164; Eidg. Absch. I2, S. 8, Nr. 19; Oe. 558. — Concerning this Doc. and No. 832 (a) and (b) cf Wartmann, Archiv 13, 155 ff.

QWI/2:424 [=Doc. 831 with archival notes]. Cf Hinz 2016:375-376 (text and translation).

*Translation of the Latin written introductory note and postscript (E.H.):*

*[Introductory note:]* ‘Ludwig, by God’s grace King of the Romans, always Augmentor of the Empire, to all his loyal followers of the Holy Roman Empire in eternity. In humble form the petition has been brought forward to our dignity from the side of our estimated loyal followers, the people of the valley and of the country of Schwyz, that we would consider as worthy the confirmation of the privileges of our predecessors, the eternalized famous Roman Emperors and Kings, with royal favor (benignity). The text of [these documents] is acknowledged to read word for word:’

*[Postscript]:* ‘Based on the devout supplication of the said people of Schwyz as well as their tireless loyalty as vassals and [their] continued (*or*: constant) sincerity whereby they became so far clear with regard to us and the Empire as

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<sup>11</sup> Cf Hinz 2016a [Unterwalden, Anh.: Luzern reichsfrei?]; QWI/1:503 = Doc. 1113 [1274 Jan 9]: ‘that the [King] would take Luzern under his and the empire’s special protection’. But cf QWI/2:3 [nbdig-59267\_2pdf:9f] 1292 May 31: ‘the citizens of L. [swearing to Duke Albrecht von Habsburg immediately after the election of Adolf von Nassau as King, E.H.] to be kept in the same right... as before with the Abbots of Murbach’ (legal implication unclear; the monastery as a *pretext* for the Habsburgian takeover of *entire* Luzern [1291 April]?).

well known, inclined to their support in manifold form, do we, therefore, approve of and confirm the said privileges and their texts word for word in correspondence to their request and validate them by means of the legal protective function (*or*: power) of this document [*sc.* in the sense of Imperial Freedom, i.e. direct control under the Emperor or Empire incl. the Imperial Court of Justice, E.H.]. *Therefore, it shall not be permitted to any human (being) to tear apart this sheet of parchment of our approval, confirmation and certification, or to act against it in terms of fraud (or: audacious attack) [italics E.H.]*. If someone, however, dares to touch upon that he shall know that he will fall to the severity of our outlawing humiliation. Issued during the siege of the town of Herrieden, on March 29, A.D. 1316, i.e. in the second year of our reign.’

*Note by eds. QW*: [1] Tschudi (Chronik I, 277) says that the Waldstätte had sent the king 200 soldiers as auxiliary troops.

#### MY COMMENTARY:

*Note the confiscation of Habsburgian estates and goods and the placement of the whole population under the King and the Empire in the sense of Imperial Unmediatedness (or ‘Freedom’) issued by the Imperial Court of Justice 3 days before (1316 March 26). The justification for that action is high treason and Lese majesty (lèse-majesté). The newly decreed Imperial Freedom seems also to be the justification (‘ergo’ = therefore) for the prohibition of the destruction of the document or its abuse. Cf the discussion of the corresponding formula (further below) that forms also part of this decree of confiscation [of Habsburgian possessions] of March 26 [QWI/2:423, Doc 830] and becomes, thus, part of the decree of Imperial Unmediatedness.*

*It is unusual that King Ludwig’s confirmation of collected documents (1316 Mar 29) has both an introductory note and a postscript. That fact shows the extraordinary character of the document. The people of Schwyz ask for the confirmation of documents. This is brought out in the introductory note as well as in the postscript. In the introductory note, privileges are mentioned which are listed verbatim and are exemplified here for Schwyz and were originally issued by the elected predecessors of King Ludwig. The term for ‘elected’ is ‘divus’ (‘eternalized’), an old Roman emperor’s title, probably used consciously in contrast to the dynastic ambitions of the Habsburgians (thus, also used by King Heinrich VII of Luxembourg).*

*In the postscript, loyalty (as vassals) and sincerity of the people of Waldstätten are emphasized. The phrasing in the text is unusual:*

‘dicta privilegia et ipsorum tenorem de verbo ad verbum iuxta ipsorum petitionem approbamus, confirmamus et presentis scripti patrocinio communimus.’

= ‘we, therefore, approve of and confirm the said privileges and their texts word for word in correspondence to their request, and validate them by means of the legal protective function (*or*: power) of this document [in the sense of Imperial Freedom, i.e. direct control under the Emperor or Empire incl. the Imperial Court of Justice, E.H.]’.

*The old Roman expression 'patrocinium' is used (Niermeyer 1976: 'protective power'). In explication of the old Roman and medieval use of this term, I point out the protective function, especially in legal terms, between a master and his clients who fulfill some tasks in exchange for this legal protection. With this mutual relationship, Imperial Freedom and services directly in favor of the Empire are meant, in my opinion. This legal effect and legally protective quality is attributed to this document directly. It shows the character of a "charter". The different political-juridical acts are: 'we approve', 'we confirm', 'we validate'.*

*The continuance of the postscript contains a surprise: Has somebody torn apart or destroyed documents by demand of Habsburg, i.e. in Sarnen, possibly in other localities in the primary cantons, too? We can only speculate on the basis of some non-conclusive clues: e.g. the destruction of the decree of 1291 Feb 19 in Sarnen, because of the new re-interpretation as proposed in Hinz 2016, Ch. 0.1; Emperor Friedrich II's Letter of Freedom for Unterwalden [and Uri (1240), the latter having been proven independently of Tschudi and Schmid]? Otherwise the explicit phrasing,*

*'Therefore, it shall not be permitted to any human (being) to tear apart this sheet of parchment of our approval, confirmation and certification, or to act against it in terms of fraud (or: audacious attack). If someone, however, dares to touch upon that he shall know that he will fall to the severity of our outlawing humiliation'*

*is hardly understandable.*

*It seems to mean that exactly that had happened. This does not contradict the fact that we are dealing with a formula which is usual in ecclesiastical as well as in mundane documents in medieval times in order to prevent their destruction, theft, forgery [cf Niermeyer 1976, temeratio = inter alia: 'forgery'] or fraudulent change or abuse. Recurring to this formula is not common at all in confirmations for the primary Cantons up to that time and comes completely unexpectedly.*

*Cf "Celestinus III, Papal Bull addressed to the Chapter of Saint Peter in Mainz; Rome, March 29, 1197", U Rochester, [www.lib.rochester.edu/index.cfm](http://www.lib.rochester.edu/index.cfm) (seal forged?, E.H.). Internet search: 'Paginam infringere'.*

*Cf eds. QWI/2:423 [Doc. 830]: "1316 March 26. At the siege of Herrieden. King Ludwig informs us that he – with the counsel of the principals and other loyal followers of the Empire who were recently called to Nürnberg – had confiscated and declared as imperial [goods] all the courts, rights and estates of the Dukes of Austria and of his and the Empire's other enemies in the valleys of Schwyz, Uri and Unterwalden or adjacent areas, together with all the people, rights and other pertinent items because the Dukes were guilty of lèse majesté and persist in that state by means of their resistance".*

*Commentary E.H.: The issue of collective confirmations is thus certain, not only for Schwyz (SZ) and Unterwalden (UW) but, contrary to the editors of QW, for Uri (UR), too, because UR is mentioned. For UW, cf the original of 1316 in*

the State Archive of Sarnen and, as a copy, the 'Weisses Buch zu Sarnen', MS. p. 217-218.

Note E.H.: King Ludwig: 'paginam infringere' = 'tear apart the parchment' 'vel ei in aliquo ausu temerario contraire' = 'or to act against it in terms of any fraud (or: audacious attack)'. King Heinrich VII: 'litteras non cancellatas non abrasas' = 'the document is not cancelled (and) has no abrasions'. My thought: 1 or 2 actions [against the UW originals: cancelled and later torn apart]?

## 1.5 LETTER OF FREEDOM FOR SCHWYZ (1240)

[QW I/1:197 = Doc. 422, Lat. text & archival notes]

1240 December during the siege of Faenza.

State Archives Schwyz, Nr. 12. – Orig.: Parchment. 13,5x23,5 cm. Dorsal note: "Kaysser Friderichs fryhayt" = "Emperor Friedrich's freedom". Throne seal Ø 80 mm. Broken, hanging on red silk threads. Also contemporary parchment copy. – Print: Tschudi, Chron. I, 134. Cf. nbdig-57171\_2.pdf [B122] = Reinschrift; nbdig-57171\_15.pdf [B105-107] = Urschrift.

Stettler, *Ed QW, on versions for Uri and Unterwalden (1240)*:

Cf Stettler [nbdig-57171\_3pdf] S.143\*: "It is nevertheless completely improbable that Emperor Friedrich issued a Letter of Freedom for the countrymen of Uri in 1240 corresponding to the text for Schwyz (...)". No justification for this opinion is offered!

S. 144\*: "A Letter of Freedom issued for Unterwalden in 1240 corresponding to the Schwyz text is to be completely ruled out. Nevertheless the countrymen of Unterwalden got a document of this wording confirmed by King Ludwig." No justification for this opinion is offered! Cf Hinz 2016, Appendix 7.2 & 7.3.

I have tried to show in my analyses in the foregoing chapters that this Letter of Freedom of 1240 conceded by Emperor Friedrich II was in fact also issued for Uri and Unterwalden. A copy of this Letter for Unterwalden authorized by King Ludwig von Wittelsbach in 1316 is conserved (as an original) in the State Archives of Sarnen, OW. A corresponding copy for Uri evidenced in Tschudi (1550 and 1570) was probably burnt in 1799.

*Latin text (QW I/1:197) / Translation by Eike Hinz:*

(1) Fridericus, dei gratia Romanorum imperator semper augustus, Ierusalem et Sicilie rex, universis hominibus vallis in Swites, fidelibus suis, gratiam suam et omne bonum. Literis et nunciis ex parte vestra receptis et vestra ad nos conversatione et devotione assumpta expositis et cognitis per eosdem, vestre pure voluntati affectu favorabili concurrimus et benigno, devotionem et fidem vestram commendantes non modicum de eo, quod zelum, quem semper ad nos et imperium habuistis, per effectum operis ostendistis sub alas nostras et imperii, sicut tenebamini, confug(i)endo tamquam homines liberi, qui solum ad nos et imperii<sup>12</sup> respectum debebatis habere.

'(1) Friedrich, Emperor of the Romans by God's grace, always Augmentor of the Empire, King of Jerusalem and Sicily, to all the men of the Valley of

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<sup>12</sup> Read: "imperium" (Note Eds. QW).

Schwyz, his faithful [vassals], his grace and all good! After receiving your letters and messengers and after explaining and informing about your conversion to us and the devotion assumed by you [as reported] by the same [messengers] we agree to your clear willingness with good-willed and benign inclination. We, thereby, mention and praise your devotion and faithfulness, not to any low degree because of the reason that you showed the eagerness you always had with regard to us and the empire by means of achievements in military service, seeking refuge (*or*: ...service. You [thus] sought refuge) under our and the empire's wings, according [to your position in which] you were conserved, as free men, who only had to respect us and the empire.'

(2) Ex quo igitur sponte nostrum et imperii dominium elegistis, fidem vestram patulis brachiis amplexamur favoris et benevolentie puritatem vestris sinceris affectibus exhibemus recipientes vos sub nostra speciali et imperii protectione ita, quod nullo tempore vos a nostris et imperii dominio et manibus alienari vel extrahi permit(t)emus, dantes vobis certitudinem, quod plenitudinem gratie et favoris, quam benignus dominus effundere debet ad subditos et fideles, vos gaudeatis in omnibus assecutos, dummodo in nostra fidelitate et serviciis maneatis. Datum in obsidione Faventie anno domini M<sup>o</sup>CC<sup>o</sup> quadragesimo mense Decembri, xiiija, indictionis.

'(2) Therefore, you have of free will chosen the rule by us and by the empire. We accept your loyalty with widely open arms; we openly show our unrestricted favor and benignity for your sincere affection receiving you under our special, and the empire's protection, so that we [shall] never allow you to become alienated or extracted from our or the empire's rule and hands. We (thus) give you the certainty that you might enjoy the full degree of thankfulness and favors – that a benign ruler must pour over the subjects and loyal followers – in everything you have achieved as long as you remain loyal to us and in our service. Issued during the siege of Faenza, AD 1240, in the month of December, in the 14<sup>th</sup> tax year (L. *indictio*).'

*Commentary (E.H.): 'Literis... per eosdem': two nested ablative constructions (temporal and relational). 'Devotio': cf Niermeyer 1976:328 = Am. (1) 'obedience', (2) 'vow'; (5) 'compliance'. 'Commendare' = 'laudare', 'notare' [Vademecum 1976; Internet], 'recommend' [Gaffiot 1934]. 'Per effectum operis' = 'by means of achievement in military service', a clearly interpreting translation. This seems to be the reason for granting the privilege of freedom. The historical status as "free men" is emphasized (cf. 'debebatis' = 2<sup>nd</sup> pl. imperfect). This statement is to be seen in connection with the address "to all the men in the Valley of Schwyz". I take this address as including every local (adult male) person in the sense of the Cantonal Assembly (Lat. 'universitas').*

*According to Emperor Friedrich's intention this must be understood as a general privilege of freedom. Cf Gaffiot 'Teneri' (IV 2) = 'conserver', 'maintenir'.*

On the contents of the Letter of Freedom of 1240:

1. Address: To you, our faithful vassals. *All* the adult male persons of the Valley of Schwyz who form the Cantonal Assembly of Schwyz.
2. A fact as the basis for this letter: Your conversion to us, the Emperor.
3. You showed the eagerness you always had with regard to us and the empire by means of achievements in military service.
4. You seek refuge under our and the empire's wings.
5. [This is] in accord [with your position in which] you were conserved, as free men, who only had to respect us and the empire.  
A translation as "*as you were (also) obliged to do*" (*sicut tenebamini*) would probably be incompatible with the next thought (*of free will and chosen the rule*).
6. Therefore, you have of free will chosen the rule by us and by the empire.
7. Your faithfulness is welcome.
8. (We) receive you under our special, and the empire's, protection so that we will never allow you to become alienated or extracted from our or the empire's rule and power.
9. You will enjoy the Emperor's thankfulness and favors in exchange for loyalty and Imperial service: 'We (thus) give you the certainty that you might enjoy the full degree of thankfulness and favors that a benign ruler must pour over his subjects and loyal followers in everything you have achieved as long as you remain loyal to us and in our service'. Note the attribution of "achievement" to the people of Schwyz (as reconstructed, this also holds for Uri and Unterwalden).

## 2. CONFIRMATION OF FREEDOMS, RIGHTS, PRIVILEGES FOR UNTERWALDEN BY KING HEINRICH VII [1309, KONSTANZ]

QWI/2:230 [= Doc. 479 w archival notes RI][ = nbdig-59267\_2.pdf]

Also: Heinrich VII. / Fundstelle/Zitat: Regesta Imperii VI 4,1 n. 171 (Uri)

1309 June 3 Konstanz

*Transmission:* Original (Parchment, royal seal slightly damaged, hanging on a strip of parchment), Sarnen State Archive Obwalden, Ms U 3, with contemporary dorsal inscription *VnderWalt*; copy of 1470 in the WB (White Book of Sarnen) p.218; copy of ca. 1570 in *Chronicon Helveticum* by Aegidius Tschudi († 1572), 'Reinschrift', acc. to original. –

*Prints:* Businger, *Geschichte* 1 (1827) S.442 Nr.21; Hisely, *Essai* (1839-1843) S.414 Nr.13; Wartmann, *Freibriefe* (...1862) S.147; Rilliet, *Origines* (2 1869) S.421 Nr.15c from the original; Oechsli, *Anfänge* (1891) S.385 Nr.5; Schiess/Meyer, *Quellenwerk* I/2 (1937) S.230f. Nr.479; Stettler, Tschudi, *Chronicon Helveticum* 3 (1980) S.258 with Early New High German translation S.258f. [nbdig-57171\_3.pdf]. –

*Regestries:* Böhmer (1831) Nr.5218; same, Heinrich VII. (...1844) Nr.91; Oechsli loc cit. S.159\* Nr.487; Schiess/Meyer loc.cit. 3 I (1947) S.97 Nr.34 from the White Book (Weißes Buch); Stettler loc.cit. S.147\* Nr.6c.

*Photography* of the document in Widmer, *Illustrierte Geschichte der Schweiz* (1977) S.109.

*Latin Text:*

Heinricus, dei gracia Romanorum rex semper augustus, universis hominibus in valle Underwalt, fidelibus suis, graciam suam et omne bonum. Devotis vestris supplicacionibus graciosius annuentes universas libertates, iura, privilegia graci- arumque largiciones a divorum Romanorum imperatorum et regum, predeces- sorum nostrorum, liberalitate vobis donatas et concessas approbamus favorabi- liter et presentis scripti patrocini- o consignato sigillo nostre regalis excellencie confirmamus, dummodo in nostra et imperii fidelitate et serviciis maneat. Datum Constancie anno domini M<sup>o</sup>CCC<sup>o</sup>viii<sup>o</sup> tercio non. Iunii, indictione sep- tima, regni vero nostri anno primo.

*Translation by E.H.:*

‘Heinrich, King of the Romans by God’s grace, always Augmentor of the Empire, [to] all the male persons (or people) in the Valley of Unterwalden, his faithful vassals, [wishing them] his grace and everything good! Quite favorable (good-willed) to(wards) your humble petition, we do agree to and recognize all freedoms, rights, privileges and gracious concessions which had been given and conceded to you through the magnanimity of the eternalized Roman Emperors and Kings who were our predecessors (in office), and confirm them by means of the legal protective power of the present document that is authenticated by the seal of our royal raised position as long as you remain in faithfulness and in service to us and to the Empire. Issued at Konstanz, Anno Domini 1309, June 3, in the 7<sup>th</sup> tax year (Lat. ‘indictio’), as a matter of fact in the first year of our regency.’

*Commentary E.H.:*

(1) I emphasize the fact that this letter of confirmation by King Heinrich VII is directed to ‘universis hominibus in valle de Vnderwalt’ = ‘to all the male persons (or: people / countrymen / commoners) in the Valley of Unterwald(en)’. I take this address as including every local (adult male) person (Lat. ‘homo’) in the meaning of the Cantonal Assembly (Lat. ‘universitas’).

(2) In my opinion we are dealing with the concession of a general privilege of freedom.

(3) The decree consists in the reconfirmation of concessions of King Henry’s VII predecessors. The wording in Latin: ‘vniuersas libertates, iura, priuilegia graci- arumque largiciones... approbamus fauorabiliter’ = ‘we agree to and recognize all freedoms, rights, privileges and gracious concessions...’. We are re- ferred to declarations of freedom, legal rights, [namely in the form of, E.H.] written evidence (privilegia = documents) and gracious concessions.

Approbamus fauorabiliter = translated as ‘agree to and recognize’

(4) Note the use of the old Roman (posthumous) imperial title [Lat.] ‘Divus’ = ‘received among the Gods / deified’ that is, of course, to be reinterpreted within a Christian framework (‘eternalized’). This title points to the claim of renewing

*the Roman Empire and the legitimization by means of electing the King in contrast to dynastic succession.*

(5) *Is King Heinrich VII replacing destroyed documents? Loss or intended destruction of the document [for example, of 1240] follows from the corroborated fact that it was actually issued but is missing in the archive. Cf here Ch 1.1, 'My arguments', Points (7)-(9) and Hinz 2016, App 7.*

(6) *Note the expression 'patrocinio' = '(by) the legal protective function or power'. Cf here Ch 1.4 [Comm] and Hinz 2016, App 7.4 [= QWI/2:424, Doc. 831, Postscript].*

Cf the "Concession of local jurisdiction (1309)" in Part II.

*Note:* The Letters of Freedom for Uri of 1231 (transl. Oechsli) and 1274 (transl. E.H.): cf Hinz 2016, App 6.1/6.2, and QW I / 1 & 2. The seal of the Letter of 1231 is conserved and described in the Tschudi editions of 1734 and Stettler 1974 [nbdig-57171\_2.pdf, B87\*] only. The Letter of Freedom of 1297 by King Adolf of Nassau: cf Hinz 2016, App. 6.2, and QW I/2.

### 3. THE ARCHIVAL SITUATION IN UNTERWALDEN AND URI

(1) The *Imperial bailiffship of Waldstätten* becomes inaugurated in 1309. Wernher von Homberg becomes Imperial Bailiff. He has his office in Stans (evidence: permit for the merchants of Luzern in 1309, in collaboration with the Cantonal Assembly of Schwyz and its Chairman). *Unterwalden* becomes declared to be under unmediated control of the Empire (*G. reichsfrei*) in a Letter of Confirmation by King Heinrich VII of Luxembourg (in 1309). But this document is not to be found in the Archives of Nidwalden in Stans but in the *Archives of Obwalden in Sarnen*. The document confirms supposedly "older" documents the existence and potential authenticity of which are disputed by most historians.

(2) This Document of Confirmation of 1309 has the No. "U3" in the Archive of Sarnen, the Concession of the liberation of all the people of Unterwalden from courts of justice outside of the said valley (also of 1309) is registered as "U2" in Sarnen.

(3) A document "U1", dating from 1210, is archived in Sarnen. This document deals with the exchange of an estate between Count Rudolf of Habsburg and his sons and the Monastery of Engelberg. Mentioning Engelberg appears to be significant. See Point (12) and Ch 28 (yr 1210) below. Cf Hinz 2016a [Unterwalden] in reference to the respective documents (yrs 1210, 1240).

(4) The question is raised if this registration and archivalization of documents in the Archive of Sarnen is old and original. Emil Weber, State Archive of Nidwalden, is inclined to believe that they are at least old (email sent to me).

(5) There is a document "D1" dating from 1218 in the Archive of Stans, Nidwalden. As in the case with Obwalden, there are gaps (e.g., the Federal Charter of 1316, copy in Nidwalden, is cataloged as "D5").



(6) The following observations *are to be explained*:

(a) The *hiatus* of approx. 100 years in the case of Sarnen [and perhaps Stans] with regard to existing documents is to be explained. Cf *here* Point (2) and (3).

(b) The fact of the *discrepancy* between the probable locality of the office of the Imperial Bailiff in Stans (1309) and the Archive of Unterwalden in Sarnen (e.g. containing the Document of Unmediated Dependency upon the Roman Empire and corresponding Legal Court Privileges, both issued in 1309), *at the same time*, is to be explained.

(7) My questions:

(a) Has somebody, i.e. Wern(h)er von Homberg<sup>13</sup> or another person, perhaps already under King Albrecht of Habsburg or only later, in connection with the ‘double’ election of both Ludwig von Wittelsbach and Friedrich the Beautiful von Habsburg as Kings, removed earlier documents? E.g., a Letter of Freedom, authored by Emperor Friedrich II in 1240 and/or re-authored or, rather, confirmed by King Adolf von Nassau in 1297?

(b) Did Sarnen become the “place of safety” for the documents for Unterwalden? And is, for example, the ‘White Book of Sarnen’ to be interpreted as a ‘security copy’?

(c) The foundation of the Swiss Confederation is normally assumed to correspond to the date in the Federal Charter, i.e. 1291 August 1. Is the key for the “**revised**” **chronology** of the confederation (G. ‘Eidgenossenschaft’, L. *confœderatio*, FedCh 1291) perhaps to be sought in (a) and (b): shifting the foundation of the Swiss Confederation to 1307 (as reported in the ‘Weisses Buch zu Sarnen’, Ms 1470 and for example by Tschudi) and the Federal Charter of 1315 as being a comprehensive replacement for the Federal Charter of 1291? I.e., after the potential destruction of documents, no documentary evidence [for 1291 or earlier, for example in terms of the Federal Charter of 1291] in Obwalden any longer. The MHG. version of the Federal Charter of 1291 in Stans, Nidwalden had been written *clearly later* (dated by the editors of the QW as originating from the turn of the 14<sup>th</sup> / 15<sup>th</sup> centuries). We are definitely not dealing with the original decision (in MHG.) but with a translation from Latin. The treaty between Fribourg (Freiburg i.Ü.) and Bern of 1271 with different precursors (e.g. in 1243) is a possible model for the study of such replacements.

(8) The Federal Charter of 1291 and the membership of Nidwalden and Obwalden as Unterwalden: I have translated *L. intramontanus* as ‘from the Kernswald’ (a toponym in Unterwalden) and hypothesized that we are dealing with entire Unterwalden with the joint Cantonal Assembly in Wisserlen (Kernswald).

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<sup>13</sup> Concerning WvH and his possible interest: The installation of an Imperial Bailiffdom (proven by WvH’s permit for the boat merchants of Luzern) in 1309, together with the concession of revocable Legal Court Privileges for Unterwalden in 1309, forms the basis for the fief or, rather, feudal tenure, conceded to WvH and his legal and political role as Imperial Bailiff. If WvH participated in a pro-Austrian conspiracy this document in Unterwalden would probably remain untouched.

Cf my derivation in Hinz 2016, Abstract, Point 6 (cf MHG. ‘kern’ = Am. ‘kernel; the most interior part’. R. Durrer 1910:41 quotes a document of 1432 in which the assembly as the entire Cantonal Assembly of Nidwalden and Obwalden in Wisserlen is described as an old traditional behavioral custom (transl. E.H.):

“Message of the Chairman and the countrymen in Unterwalden ob dem Kernwald to Luzern. St. Jacob’s Day (July 25) 1432 (St.-A. Luzern, Akten Engelberg. F). ...

«Wir hant o(v)ch unsern lantlütten nid dem Wald fürgeben zu(o) inen ze ka(e)ren uf ein acher, als dz von alter dahar komen ist, wenn gemein lantsachen mit einandren uszurichten hant... und wz denn ze Wisserlen uf dem acher von einer gemeind dz mer wirt, ob es yoch uf uns fiel, daby wellen wir belieben.»

= ‘We have also asked our fellow countrymen from Nidwalden to come together with them (?) on a field [of assembly] as handed down [to us] since olden times when we have to arrange issues of the entire country... And what then turns out to become the majority vote of the Cantonal Assembly on the field in Wisserlen, to that we want to adhere even if it turns out against us’.

(9) The **archive of Uri in Altdorf** burnt down in 1799. Hardly any documents were saved. Some historians (e.g. Gallati) consider copies that survived only in Tschudi (1550 or 1570) or Schmid (*Allgemeine Geschichte des Freystaats Uri 1788-1790*) as forged and as originally nonexistent. Cf the differentiated discussion in the supplements of the *Regesta Imperii* (cf internet). Especially, the monarchistically-minded historians are silent on the fire, or, rather, arson of the archive in Uri and its possible consequence for the survival of the manuscripts (relative exception: Sablonier). It appears to be an *outright conspiracy* if the information on this arson which is otherwise concealed or remains unaccounted for in the presentation of arguments, becomes hidden in an annotation within the edition of Tschudi’s “Chronicon Helveticum” (nbdig-57171\_2.pdf:114\*, *Ann. 5 = Note 5*): “Concerning the destruction of nearly all documents archived in the Cantonal Archive of Uri in connection with the fire of Altdorf in the year 1799. Cf Gallati, Die königlichen Freibriefe S. 481...”

(10) The validity of the documents:

(a) King Rudolf I attempted to introduce the dynastic (heritable) monarchy of Habsburg and removed the dependency of Habsburgian Counts as royal vassals, with fiefs conceded, by changing the status of [Habsburgian] Counties to Duchies. Documents of preceding kings are not valid with the Habsburgians any longer but are to be extended anew (cf the new version, of King Heinrich VII von Staufen’s Letter of Freedom as of 1231, or, rather, Emperor Friedrich II von Staufen’s Letter of Freedom as of 1240, by King Rudolf I in 1274 for Uri).

(b) Especially, the documents issued by Emperor Friedrich II von Staufen who was excommunicated (in 1239 by Pope Gregory IX, and again in 1245 by

Pope Innocent IV) and later (in 1245) removed by the Electors (G. ‘Kurfürsten’) are considered to be not binding by the Habsburgians<sup>14</sup>.

(c) The documents of 1316 issued by King or, rather, Emperor Ludwig von Wittelsbach seem to have been in need of being replaced since Emperor Ludwig von Wittelsbach was excommunicated by the Pope in Avignon, obviously on the basis of a comprehensive conspiracy by the Habsburgs. The documents revoking Emperor Ludwig’s concessions for the Waldstätten cantons are probably counterfeits. But Ludwig was removed from his position shortly before his death (by the Imperial Court of Justice or, rather, the Electors). Furthermore, King, or, later Emperor Karl IV [of Luxembourg and Bohemia] is said to have declared Emperor Ludwig IV’s concessions for the Waldstätter cantons as being invalid (QWI:3, Doc. 787, 1348 Juli 31). This remains doubtful.

(d) The decrees of Heinrich VII of Luxembourg of 1309 seem to have been respected in the peace conventions between the Waldstätten cantons and the Habsburgian Dukes (or, rather, Wernher von Homberg by their order) in 1318. Cf Sablonier 2008<sup>3</sup>:150-51. I.e. Habsburgian legal claims going back *before* the time of 1309 are not considered. That seems to invalidate Count Leopold’s claims documented for 1311.

(11) The Waldstätten cantons continue to seek the confirmation of their “freedom, privileges and rights” and, thus, demonstrate that they have realized the existential advantages of *Imperial Freedom (Unmediatedness)*, strive for and try to succeed with regard to it. Cf also the demand of new, corrected versions of the Federal Charters (starting with the Federal Charter of 1332), in the case of the only later conceded *Imperial Freedom to Luzern (and Zug)*, i.e. the deletion of political and economic advantages of Habsburg in the original texts in comparison with the other Cantons or Cities.

(12) Studying the early documentation for Sarnen, I noted that nearly everything that is conserved is located in archives outside of Sarnen. Even the exchange of terrains between the Monastery of Engelberg and Habsburgians of Sarnen in 1210 (U1 in the State Archive of OW) appears to be obscure in the light of Emperor Friedrich’s role in 1240, the dating of Habsburgian documents related to U1 (cf *here* Ch 28, *under 1210*: the date 1240 without day, thus possibly coinciding with the dating of Emperor Friedrich’s Letter of Freedom), the legal and political support by Pope Innocent IV who might have sold the idea of an early version of absolutism to the Habsburgian Count, and the Engelberg documentation of 1210<sup>15</sup> (‘[Ms] in Buchschrift’ = ‘[manuscript] in *book-writing* [?]’; supposed to match the calligraphy of Emperor Friedrich’s Letter of Freedom of 1240 for Schwyz or suggesting an authoritative evangel-like MS?). Doc-

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<sup>14</sup> The Imperial Court of Justice decided (1274 Nov 19; 1281 Aug 9; both decisions published in QW as summaries only) to consider documents issued *after* the removal of the Emperor from office by the Electors (in 1245) as invalid. The Pope does not seem to be mentioned.

<sup>15</sup> Cf Hinz 2016a [Unterwalden / Luzern], (2a\*), my observations on the strange terminology in the Engelsberg MS of 1210.

uments referring to Luzern and possibly proving its ‘Imperial Freedom’ conceded by Emperor Friedrich II make me think that a purge of (various) archives formed part of Habsburgian policy. Cf for example the letters on behalf of Luzern’s *old* rights sent by Queen Elisabet and Duke Leopold von Habsburg to Duke Friedrich the Beautiful von Habsburg after King Albrecht von Habsburg’s assassination in 1308 (Hinz 2016a). Cf *here* Ch 28 (yr 1308) Habsburgian raids on archives might have happened repeatedly in Swiss history. Furthermore, cf Ch 32.2.1 (‘A mechanistic explanation...’): The confrontation between Pope Innocent IV and Emperor Friedrich II and the Pope’s conspiracy with the Habsburgians result in *legal changes amounting to an early form of absolutism*. The papal invalidation of Imperial actions and therefore decrees (in favor of Swiss cantons) would back their *destruction or cancellation* by the Habsburgians.

*PART II:*  
*THE STRUGGLE FOR LOCAL JURISDICTION*

The method of ecclesiastical and aristocratic subjugation seems to be the seizing or confiscating of property, piling debts and service obligations upon people by perhaps wrong or otherwise questionable evidence before judges and courts *outside* of the local valleys. Therefore, we encounter the legal tenet upheld by the Early Swiss Confederation: Legal claims are to be presented before judges or courts in the locality in which the defendant lives. Thus, the demand for local judges and local courts, i.e., local jurisdiction only, follows. We find the clues in the early treaties between Fribourg (Freiburg i.Ü.) and Bern of 1243 or 1271, Bern and the Hasli Valley of 1275, in the Model Letter of King Rudolf I of Habsburg before 1282 and in the various Federal Charters of the Old Confederation of the 14<sup>th</sup> century. This question might be pertinent for the interpretation of King Rudolf's decree of 1291 February 19 (free persons confronting free judges only).

**4. PEOPLE FROM SCHWYZ CAN ONLY BE ACCUSED BEFORE KING RUDOLF I, HIS SONS, OR THE JUDGE OF THE VALLEY OF SCHWYZ [BEFORE 1282].**

QW I/1:622 = Doc. 1360 (w archival notes).

*Before 1282 [Model Letter].*

Eds. QW: King Rudolf I informs an unknown administrator that he concedes the favor to his faithful vassals, all the inhabitants of Schwyz, that they cannot be summoned because of any legal claim, before any other judge except he himself, his sons or the judge of the Valley. He orders him not to permit that they could be summoned before judges outside of the Valley.

Formelbuch T (Trevirensis 1875) aus König Rudolfs Kanzlei [Book of Model Letters T (Trevirensis 1875) from King Rudolf's Chancellery]. — Print: Bodmann, Codex epistolaris Rudolphi I (1806), 168 Nr. 22; Kopp, Urk. I, S. 30. — Registry: Oe. 323; Redlich 1541. —

With regard to the dating of the document, one can only say that the book of letter formulas in which the document is conserved belongs to the time before 1282. It is not to be held as a mere 'exercise of writing of the Imperial Chancellery' as Kopp assumes for it but probably as an actually sent writing which became recorded as a model for similar decrees. Thus, the date and the addressee are missing. As to the latter one, the vice country count of Aargau can be hypothesized (or the country judge for Zürichgau and Aargau in accord with Doc. No. 1366).

*Latin text:*

Fidelitati tuae tenore praesentium declaramus, quod nos fidelibus nostris universis vallis de Swyz incolis hanc indulgemus et facimus gratiam, quod super questionibus eisdem incolis a quocunque motis vel movendis, quocunque nomine censeantur, coram nullo nisi coram nobis vel filiis nostris aut vallis iudice possint vel debeant conveniri. Tu igitur, quod iidem nostri fideles contra indulti nostri tenorem coram aliquibus aliis extra vallem ipsam iudicibus iure stare compellantur, nullatenus patiaris.

*American translation by Eike Hinz:*

= ‘In your quality as a vassal we do explain to you with the wording of the present writing that we concede and do this favor to our faithful followers, all the inhabitants of the Valley of Schwyz, namely that with regard to pleas (*or* legal action) – initiated or to be initiated by whomsoever – against the same inhabitants which social class so ever they might be assigned to, they cannot and must not be summoned [to appear] before anybody except before us, our sons or the judge of the valley. Thus, you shall not allow that these faithful followers of ours will be forced to face any other judge in court outside the valley itself against the wording of our concession.’

*Commentary (E.H.):*

*Elaborating on the commentary given by the editors of QW we have to state:*

(1) *As a matter of fact, the decree seems to have been issued as can be inferred from the address (“Schwyz”). We are, thus, dealing with a collection of model letters that includes, at least partially, validated documents.*

(2) *The decree holds for all the inhabitants of Schwyz (‘universis... incolis’), independent of their social position (‘quocunque nomine censeantur’). It proves the social, political and legal unity of the canton of Schwyz and its inhabitants.*

(3) *It refers to court procedures which can only take place before the judge of the Valley (‘vallis iudex’), the King or his sons themselves.*

(4) *Other judges or, rather, localities of court outside of the Valley must not be imposed on the inhabitants of Schwyz.*

(5) *The recipient of the decree could have been an administrator of the King.*

(6) *The text hints towards legal problems which determine the relation between Schwyz (and other Waldstätten cantons) and the Habsburgs in the entire following century: only local judges and local courts (according to the demands by Schwyz), the Imperial Unmediatedness in terms of the King (in the beginning perhaps delegated to an Imperial Bailiff but not after Wernher von Homberg’s treacherous conspiracy with the Habsburgs as evidenced by the restricted oath given to Johann von Ahrberg in 1323; cf here Ch 7.2).*

(7) *Text and contents demonstrate a special relation between Schwyz and King Rudolf I that later becomes aborted because of a change in the Habsburgian “family (i.e. dynastic) politics”.*

(8) *Cf the terminology in the Federal Charter of 1291 §19 (‘conditio nominis’) u. §20 (‘iudex’), moreover the decree by King Rudolf I in 1291 Feb 19 (‘conditio’, ‘iudex’). Cf Hinz 2016, Ch V.7; B.2b. and 0.1 t). Cf here Ch 17, Table 2.*

## **5. LEGAL PRIVILEGE BY KING RUDOLF I FOR UNTERWALDEN (SCHWYZ, URI): FREE PEOPLE CANNOT BE CITED BEFORE UNFREE JUDGES**

*[Tschudi’s contextualization:] Free people and bondsmen form part of the Cantonal Assembly. They choose the Chairman (Judge).*

1291 (Baden). Sealed (without day and month). Archival notes ed. by E.H.

Tschudi, *Chronicon Helveticum* 1570 (nbdig-57171\_3.pdf [B104-106], *without notes*). Original lost. *Copy 1316 Ms. Obwalden* [=Original of the collection of confirmations by King Ludwig for Unterwalden in 1316, *without day and month*: State Archive of Sarnen].

*Ms. Schwyz (Orig., State Archive Schwyz) has the date: 1291 February 19 (Baden). Copies thereof:* The original of the collection of confirmations by King Ludwig for Schwyz in 1316 (in the State Archive of SZ) contains the text of 1291 and shows *no day or month* according to QW I/2:433. The transcription of this 1316 copy for Schwyz in Tschudi's *Reinschrift* (nbdig-57171\_4.pdf [B9]) has *no day or month* in the date, the same as in Tschudi's *Urschrift* (nbdig-57171\_15.pdf [B349.]).

A register of a corresponding Ms. in Uri is recorded in F. V. Schmid 1788:122. Date: Jänner (= January) 1291 (!). A possible original might have been burnt in 1799.

Tschudi informs us that the three Waldstätten cantons asked King Rudolf I for a change in their regulation (*unusual* if they would administer the law independently unless you want to translate 'iudex' as 'bailiff' and you do not question the parallel institutions of Chairman of the Cantonal Assembly [legal control from inside] and Imperial Bailiff [legal control from outside]): free people, noblemen and commoners, and unfree bondsmen or servants would be members of the respective Cantonal Assemblies with voting rights. Thus, a bondsman could be elected as Chairman and Judge of the Cantonal Assembly. King Rudolf I decides that only a free person can become a Judge (or Chairman) and that all the people of the Waldstätten cantons are free.

It is unclear which source of information Tschudi's contextualization is based on, or if it just his own comprehension of the situation.

*Tschudi's introductory commentary on King Rudolf's Decree:* [p104] "As all countrymen, be they noblemen or commoners, free persons or bondsmen, [pertain to] their Cantonal Assemblies [and] would jointly – without any difference [with regard to their socioeconomic status] – appoint a Chairman [of the Cantonal Assembly] who would thus become the Judge of the country as long as his [period in] office would last, the noblemen and commoners who were free countrymen thought that one of theirs should be appointed as Chairman (*MHG. 'landammann'*) who would become their Judge, and not a bondsman. Then the bondsmen said: as their countries were free one should therefore determine the Judge by the majority of [raised] hands in free election. The King issued a Letter of Freedom for each locality that the Judge should not be a bondsman and confessed (*or expressed his opinion*) in this letter that the people of these countries were (*or be*) free, just as I myself did copy all these three Letters from the original[s]." (Translation of the Early High German text by Hinz).

*I now believe*

(1) *that the commentary by Tschudi is correct in terms of voting rights for all [adult male] inhabitants,*

(2) *that it does not hold with regard to the cause for Rudolf's intervention or, else, is irrelevant,*

(3) *that the frame for understanding King Rudolf's document has to be reconstructed in a different way: (3.a) as a concession to a request of the Waldstätten cantons reacting to a (perceived) threat imposed by Rudolf's sons subverting local control, and*

(4) that a connection with the Model Letter issued before 1282 is probable: a change in consonance with Point (3.a).

*Latin text of Rudolf's Decree of 1291:*

[105] Rūdolffus dei gratia Romanorum rex semper augustus prudentibus viris universis hominibus vallis in Underwalden liberae conditionis existentibus dilectis suis fidelibus gratiam suam et omne bonum. Inconveniēns nostra reputat serenitas, quod aliquis servilis conditionis existens pro iudice vobis detur. Propter quod auctoritate regia volumus, ut nulli hominum qui servilis conditionis extiterit de vobis de caetero iudicia liceat aliquo modo exercere, praesentium testimonio literarum, quas nostrae maiestatis sigillo iussimus muniri. Datae Baden, anno domini M<sup>o</sup>CC<sup>o</sup> nonagesimo primo, regni vero XVIII<sup>o</sup>.

*Translation (E.H.):*

= ‘Rudolf, Roman King by God’s grace, always Augmentor [of the Empire], to the circumspective (*or*: brave) men (adult males), to all the (country)men (*or*: commoners) of the Valley of Unterwalden who are of free social standing, to his faithful vassals, his grace and everything good. It seems to be unfit to our clear mind that somebody who is a bondsman (*or* serf) is given to you as a judge. For that reason we, with royal authority, want that nobody who is a bondsman (*or* serf) be allowed, under any circumstances, to exercise the office of legal judgement with regard to you.

In evidence of the present letter that we ordered to be validated by means of the seal of our Majesty, issued in Baden Anno Domini (in the year of our Lord of) 1291, i.e. in the 18<sup>th</sup> year of [our] regency.’

I have a very detailed and complex discussion of this document, and its confirmation by King Ludwig IV of Wittelsbach in 1316, as well as Tschudi’s discussion or, rather, commentary (of 1550 and 1570) of both (series of) documents. Cf Hinz 2016, Ch 0.1.

In short:

- (a) The documents talk about “free countrymen (*or* commoners)” in Schwyz, Unterwalden etc.
- (b) The King considers judges of “unfree status (*or* serfs)” for free countrymen as unfit.
- (c) The document represents a prohibition: no unfree serfs allowed as judges “for you” (= “the free countrymen”).
- (d) The grammatical construction of “to all the (country)men of the Valley of Unterwalden who are of free social standing, to his faithful vassals” remains ambiguous. Are “unfree countrymen” possibly not faithful vassals?

I see three possible interpretations:

*Hypothesis 1:* Tschudi’s (formally possible) interpretation that all the men of the Valley of Unterwalden became acknowledged as “free persons” is probably



a legal and argumentative interpretation in the face of *other* kings later. It does not seem to correspond to Rudolf's intention. Because otherwise, according to Tschudi (but *not* to the *Latin* text), Rudolf would have conceded more to the Waldstätten cantons than they would have asked for.

*Hypothesis 2:* The intended meaning of Rudolf's decree seems to be *that free men are acknowledged, confirmed and protected as free* because Schwyz, Unterwalden, Uri perceived the freedom even of the free men to be *directly* threatened. Thus, they asked the king for the decree. The reason could have been the so-called *Mediatization of Luzern in the same year, April 1291* (Tschudi 1734: 204a, J. 1291). A rumor is probably enough to see oneself as being threatened and to act before the action itself is concluded. Cf Doc 1343 Nov 16, Point 5 [Ms 'Oldest Council Booklet of Luzern'], quoted in Hinz 2016, Ch IV.1.3.: the (pro-Austrian) rumor is spread that free citizens of Luzern are bond-slaves. The Luzern action by King Rudolf in 1291 is probably to be interpreted as a form of betrayal by him.

Cf also in detail Stettler, Aegidius Tschudi "Chronicon Helveticum, 1. Ergänzungsband (Urschrift von 1200 bis 1315)", 1970:14ff. [,Tschudis Darstellung des Kaufs von Luzern im Jahr 1291'; the purchase itself dates from 1291 April 16 but preceding negotiations are to be assumed (E.H.)] = nbdig-57171\_15.pdf.

*Hypothesis 3: Is an ambiguity intended by King Rudolf?* I.e., is the question of Imperial Freedom or Unmediatedness left open (at least for Schwyz and Unterwalden) in both directions, positive as well as negative? I ask the reader to consider the Federal Charter of 1291, §19, and the Treaty of 1291, §2, between Schwyz, Uri and Zürich (cf Hinz 2016, Ch II and App. 1.2).

I do see a direct connection with the decree as preserved in the 'Model Letter before 1282' that prescribes local judges only for people in Schwyz, independent of their socioeconomic status (!). And that would transfer some degree of truth onto Tschudi's opinion that *everybody independent of his social (and economic) standing* was a member of the Cantonal Assembly.

I would like to present the following arguments in favor of a (*later*) *reinterpretation* of King Rudolf's decree of 1291 Febr 19 (i.e. Hypothesis 1 above):

First, the fact that King Ludwig IV of Wittelsbach confirmed this decree for all the three cantons (originals of 1316 conserved for UW and SZ) points to its central value.

Second, Ludwig's confirmation of Imperial Freedom or Direct Dependency upon the Empire took place in 1316 March 29, three days after cancelling all rights of Austria in the three Waldstätten cantons and declaring all people dependent on Austria as being direct subjects of the Empire (1316 March 26).

Third, a confirmation of King Rudolf's decree makes sense only if reinterpreted in the sense as indicated because King Ludwig's concession does go well beyond the more narrow interpretation (*that would leave us with the additional existence of unfree people*). Otherwise, it probably would have been skipped altogether.

Fourth, Tschudi and his colleague Cervinus witness this *legal* (re)interpretation themselves as a comprehension of a historic document (in the 16<sup>th</sup> century).

Fifth, King Ludwig did not choose to confirm or produce “analog copies” of King Rudolf’s Letter of Freedom for Uri issued in 1274 Jan 9 (for Schwyz, Unterwalden or Uri itself). That, again, shows a straight forward (re)interpretation of the 1291 decree as indicated.

The reconfirmation of King Heinrich VII of Luxembourg’s decree permitting only local judges in the Waldstätten cantons (originally issued in 1309 June 3) by King Ludwig in 1316 points to the centrality of the issue of the local administration of law.

## 6. FEDERAL CHARTER OF 1291 AUGUST 1, §20

Remember that the Federal Charter of 1291 August 1, §20, contains a key piece of information (cf QWI/1:780; Hinz 2016:136f):

*(20) Rejection of foreign (non-local) and corrupt judges:*

*Latin text:*

Communi etiam consilio et favore unanimi promisimus, statuimus ac ordinavimus, ut in vallibus prenotatis nullum iudicem, qui ipsum officium aliquo precio vel peccunia aliquo modo comparaverit vel qui noster incola vel conprovincialis non fuerit, aliquatenus accipiamus vel acceptemus.

*Translation by Eike Hinz:*

= ‘By means of joint deliberation (*or* deliberation of the Cantonal Assembly) and a unanimous decision we have also promised, established and decreed that we will under no circumstances accept or receive any judge who has somehow bought this same position on the basis of a price or with money or who does not live among us or is not our fellow countryman.’

*Commentary E.H.:*

*This is a political norm (for Uri, Schwyz, Unterwalden). At this point, the style of the document changes into a protocol of decision-making using the form “we”. The actions described as speech acts and social acts conveying authority to, authorizing, and legitimizing the norm are:*

- Promising (under oath)
- Establishing as propositional contents
- Translating into public order

*These are conscious steps towards a constitution that concerns the order of jurisdiction. In my opinion, this text documents the session of a Cantonal Assembly: cf the formulas ‘by means of joint counsel’ in the same sense as MHG. ‘gemeinlich’, i.e. in terms of the ‘Cantonal Assembly meeting’. We might actually be dealing with the Latin translation of a decision originally phrased in German (‘einhelliglich’ = ‘unanimous’).*

‘To accept or to agree to’ are the actions by means of which the Cantonal Assemblies express their legal supervision and their sovereignty.

Probably Hypotheses 1 and 2 hold; i.e. as an **historical process**:

State *Before 1282* → State Change 1 → *Decree February 1291* →  
State Change 2 → *Federal Charter August 1291*

State Change 1 = Habsburgian Luzern plans? / State Change 2 = King Rudolf’s death?

In Rudolf I’s Decree (1291 Febr 19) and in Tschudi’s contextualization, different concepts of freedom are involved: The countries are free = *Imperial Freedom (Freedom<sub>1</sub>)*. There are free persons in all three countries = *Free Commoners (Freedom<sub>2</sub>)*. Free und unfree people form part of the Cantonal Assembly. They decide by means of free vote (according to Tschudi’s contextualization) = *Free Majority Vote (Freedom<sub>3</sub>)*. Imperial freedom leads to the *Freedom of the total population* (or even implies it), as a legal opinion or interpretation (according to Tschudi’s contextualization) or as a liberation program or, rather fight for freedom (certainly already existing before the issue of the Federal Charters of 1291 and 1315, the Battle at Morgarten, the confiscation of Habsburgian estates under Ludwig of Wittelsbach in 1316 and 1324 = *Freedom for all people in the country or canton (Freedom<sub>4</sub>)*.

Undoubtedly King Rudolf I’s Decree of 1291 is no confirmation or issue of Imperial Freedom in itself (cf the wording in the Letters of Freedom of 1231, 1240, 1274, 1309). It probably intends to say: free people are free and to be confronted with judges who are free themselves. The *implication* is: (a) either the confederates also had unfree judges – as in Tschudi’s contextualization – or (b) the Habsburgians had appointed unfree persons as judges or (c) had actually intended to do so, or the confederates anticipated such an intention (in terms of a *potential loss of their freedom*).

## 7. LOCAL JURISDICTION

### 7.1 CONCESSION OF LOCAL JURISDICTION BY KING HEINRICH VII IN 1309 (UNTERWALDEN)

QWI/2:230 [= Doc. 479 w archival notes][= nbdig-59267\_2.pdf]

*Also:* Heinrich VII. / Fundstelle/Zitat: RI VI 4, 1 n. 174 # (Uri)

1309 Juni 3 Konstanz

State Archive Obwalden, Nr. 2. — Orig.: Parchment. 12x26 cm. Throne seal Ø 95 mm. Heffner, Taf. X, 68. Dorsal note: „Underwalt“. — Print: Kopp, Urk. I, Nr. 51; Archiv 13, 150. — Registry: Kopp, Gesch. IV i, 54; Gfr. 20, 213; Oe. 487.

*Latin Text:*

Heinricus, dei gracia Romanorum rex semper augustus, universis hominibus in valle Unterwalden, fidelibus suis, gratiam suam et omne bonum. Vestris inquietudinibus obviare com-

moditatibusque prospicere favorabiliter cupientes, dum tamen de vobis querulantibus iusticie debitum non negetur, vobis per presentes concedimus graciose, quod ad nullius secularis iudicis tribunal nostre maiestatis consistorio dumtaxat excepto super quibuscumque causis seu negociis extra terminos vallis predicte pertrahi debeatis, dummodo coram . . . advocato nostro provinciali intra fines eiusdem vallis parati sitis stare iuri et facere, quod dictaverit ordo iuris, *presentibus usque ad voluntatis nostre beneplacitum tantummodo valituris*. Datum Constancie anno domini M<sup>o</sup>CCC<sup>o</sup>viii<sup>o</sup> tercio nonas Iunii, indictione vij<sup>a</sup> regni vero nostri anno primo.

*Translation by Eike Hinz:*

“Heinrich, King of the Romans by God’s grace, always Augmentor of the Empire, to all the men (*or* countrymen) in the Valley of Unterwalden, his loyal [followers/vassals], his favors and everything good! In the positive desire to meet your preoccupations, to provide comfort (*or* advantages) [for you], as long as, nevertheless, the moral obligation towards justice is not negated to those [persons] who take legal action against you<sup>16</sup>, we concede favorably to you, by means of the present [document], that you cannot be summoned to [attend] any court of a mundane judge outside of the borders of the aforementioned valley, with the exception of our Royal Court of Justice, for whatever reasons or matters as long as you are willing to justify yourselves legally before our provincial advocate (*or* bailiff) within the borders of the same valley and do what the legal order has stipulated. *The present document shall be valid as long as it seems good to our will*. Issued in Konstanz, AD 1309 June 3, in the 7<sup>th</sup> tax year, but in the 1<sup>st</sup> year of our reign.”

*[Italics = This sentence is missing in Weisses Buch zu Sarnen of ca 1470, p.218 (Copy of Doc. 1316 March 29 that itself was unavailable to me)].*

*Commentary:*

This document shows that:

(1) The people of Waldstätten are obliged to appear in the Royal Court of Justice only if summoned.

(2) This concession depends upon the willingness of the Waldstätten cantons (here: Unterwalden) to justify themselves before the Imperial Bailiff (Lat. *Advocato nostro provinciali, abl. or dat.*) within the cantonal territory.

(3) The king appeals to an existing legal order to be followed, the details of which are unknown. Note that the same phrasing ‘legal order’ and its normative content are used to refer the Habsburgian Duke Leopold of Habsburg, in 1311, to the framework of royal decision-making.

(4) In agreement with the confirmations by King Ludwig in 1316, an original decree ‘Privilege of Local Judges’ issued by King Heinrich VII is to be assumed for Schwyz and Uri (as indirectly implied in Duke Leopold’s complaint of 1311), in addition to the conserved document for Unterwalden.

(5) The fact that the Documents of 1309 [Privilege of Local Judges and Courts only] by King Heinrich VII of Luxembourg are missing in *Schwyz* is easily explained: King Ludwig von Wittelsbach’s confirmations of 1316 March 29 do

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<sup>16</sup> Cf. Gaffiot 1934:1296 (,querelae... de illo‘ = ,les plaintes ... contre lui‘).

not contain the restriction of validity (as evidenced by comparing the conserved copies of 1309 for Unterwalden in the State Archive OW, and 1316 for both Unterwalden in the State Archive of OW and Schwyz in the State Archive SZ) and are considered as being ‘new valid originals’. Actually, Tschudi notes the divergences in the text. The preservation of the Unterwalden copy (1309) may be attributed to the fact that it constitutes proof of the installation of the position of an Imperial Bailiff.

## 7.2 CONDITIONED OATH OF THE COUNTRYMEN TO COUNT JOHANN VON AHRBERG IN REPRESENTATION OF KING LUDWIG (1323)

*In 1323 October 7, the Waldstätten cantons swear to Johann von Ahrberg, in representation of King Ludwig, restricting their oath by two conditions: (a) that they shall not be alienated from the Empire (i.e. become sold to a third agent), (b) that they shall be confronted with local judges only in case of accusation. This shows a spirit of legal, political and economic resistance.*

*1323 October 7. Beckenried.*

[QWI/2:593 = Doc. 1175 w archival notes]

State Archive Obwalden, Nr. 8. — Orig.: Parchment. 14x22 cm. Seal, formerly hanging, now fallen down. The text is damaged in 8 lines. — Print: Tschudi, Chronik I, 299; Kopp, Urk. I, Nr. 68; MG. Constitut. V, Nr. 791; Gfr. 20, 216; Eidg. Abschiede I2, 253 Nr. 14; Matile I, Nr. 363. — Registry: Kopp, Gesch. V<sub>1</sub>, 47; Oe. 643. — On the contents cf Durrer, Kriegsgesch. I, 94 f. Jahrbuch 35, 125; K. Meyer, Zeitschrift X, 457 ff.; T. S c h i e ß, Zeitschrift XI, 184 ff.

*Middle High German Text:*

(1) Wir graf Jo. von Arberg<sup>[1]</sup>, herre ze Vallensis und lantvogt ze Underwalden, ze Switz und ze Uren, tu(o)n kunt allen dien, die dissen brief sehent older ho(e)rent lesen, das die vorgeschriben Waltstette unz an unserz hoherbornen herren k(i)unig Ludviges stat gumei(n)lich huld(i)u hant getan und gesworn ze des riches handen<sup>[2]</sup> mit dien gedingen und mit dem rechte, alz si je daher k(i)ungen und keisern hant getan, jeklicher in dien lendern nach sinem recte.

(2) Und mit solichen gedingen han wir den eit von inen genomen, das si unser herr[e] der... k(i)unig dem heiligen riche behaben sol noch von dem riche nimer sol denkein[en] weg ver-lazen. Wer aber, des wir gotte nicht getruwen, das si dekeinen [weg von d]em riche w(u)rden verlassen, das sol dien vorgeschribenen Waltstetten an ir eit n[it gan noch] r[ueren deke]inen weg.

(3) Wir vergehen o(u)ch, das si mit dien gedingen [huld(i)u hant g]eta[n, das si] von ir lendern nieman sol v(i)urtegedingen an keinen lanttag [noch an de]kein gerichte uz ir lendern noch enkeinen richter u(i)ber si setzen wan einen [lantman,] ane geverde.

(4) Und das wir dissen eit mit disen gedingen an des riches s[tat] han enphangen, darumbe so geben wir unser ingesigel an disen offennen brief zeinem geweren Urkunde alles, des hievorgeschriben stat. Der wart gegeben ze Beggenriet<sup>[3]</sup> an dem nehsten vritage nach sant Leodegarien tage in dem jare, do man zalte von gottes gub(i)urte drizehnhundert jar und dr(i)u-undzwenzig jar.

*Translation E.H.:*

(1) We, Count Johann von Arberg, Lord of Valengin and Country Bailiff in Unterwalden, Schwyz and Uri, inform all those who read this letter or listen to its reading that the Waldstätte, as Cantonal Assemblies, did swear loyalty to us

in representation of our highly born Lord, King Ludwig, and did swear as subjects (*or*: under the protection) of the Empire, with the conditions and in the rights as they always were used to with regard to Kings and Emperors, everybody in the countries in accord with his rights (i.e. legal tradition).

(2) And with such conditions we took their oath that our Lord, the King, shall keep them in the Holy Empire and that they shall never be deserted by the Empire, under any circumstances. But if we would not remain faithful with God, in the sense that they would become deserted by the Empire in any form that shall not contradict their oath nor touch upon them under any circumstances.

(3) We furthermore declare that they have given their oath under the condition that no person of their countries<sup>17</sup> shall summon them in a Day of Court or in any Court outside of their countries nor shall set any judge above them except a compatriot, without any restriction.

(4) And in [confirmation] that we received this oath with these conditions in representation of the Empire, we seal this open letter in the sense of a true document of all that aforementioned. Issued in Beckenried, on Friday October 7, in the year of 1323.

*Abbreviated Notes eds QW:*

[<sup>1</sup>] Cf [QWI/2, Doc] 1164 A. 1. [<sup>2</sup>] [omitted]. [<sup>3</sup>] Beckenried, Nidwalden. *Note E.H.: Unterwalden mentioned in the first place as the Imperial Bailiff's office of administration?*

### 7.3 BASED ON THE DECISION OF THE IMPERIAL COURT OF JUSTICE KING LUDWIG DECREES ALL ESTATES AND BONDSMEN OF THE DUKES OF HABSBURG IN WALDSTÄTTEN AS BEING DIRECTLY UNDER THE EMPIRE (1316)

*Among the pertinent documents regulating local jurisdiction in Waldstätten are: King Ludwig von Wittelsbach's confiscation of all Habsburgian estates in Waldstätten, the liberation of all people thereof and their obligation to Imperial service only, decreed in 1316 March 26; the confirmation of relevant political and legal rights, 3 days later, i.e. 1316 March 29.*

*1316 March 26. During the siege of Herrieden.*

*Latin text: QW I/2:423 (=Doc. 830 w archival note).*

*Translation by E.H. Cf Hinz 2016<sup>1</sup>:337.*

State Archive Schwyz, Nr. 63. — Orig.: Parchment 19x31 cm. Throne seal Ø 100 mm. Hung on a strip of parchment, slightly damaged.

(1) Ludovicus, dei gratia Romanorum rex semper augustus, universis sacri Romani imperii fidelibus presentes litteras inspecturis vel audituris gratiam suam et omne bonum... maies-

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<sup>17</sup> *Or*: 'that no person shall summon them to a Day of Court outside of their countries'. MHG. *v(i)urtegedinge* = cf *vür[e]gedinge* (e.g. Köbel 2013, internet, v) [noun] = G. 'Gericht, im Voraus geschlossener Vertrag, im Voraus festgesetzte an einem bestimmten Tag zu leistende Abgabe' = Am. 'Court of justice; prefixed contract; prefixed fee or tax to be paid on a certain day (noun)'. The implied semantic features seem to be: (1) coercion, (2) forced money payment, (3) under noble control from outside. Cf [verb] *vüretage* (= G. 'vor Gericht laden' = Am. 'to summon in a court of justice'), *vüreteidingen* (= G. 'vorladen' = Am. 'to summon').

tas... persequi teneatur... illos... qui crimini inmaniori veluti perduellionis seu lese maiestatis non tam inprovidae quam temerarie implicantur.

= '(1) Ludwig, by God's grace King of the Romans, always Augmentor [of the Empire], to all loyal [vassals] of the Holy Roman Empire who will read this document or will listen to its reading, his grace and everything good! ...His Majesty... is obliged to persecute those [persons] involved in extraordinary... crimes such as high treason or lèse majesté not that much because of lack of circumspection but in terms of their acts of forgery (*or fraud or high risk*)<sup>18</sup> ...'

(2) ...quod nos communicato Consilio principum nostrorum et aliorum fidelium imperii, quos... apud Nuremberg duximus ...convocandos [<sup>19</sup>], unanimes decreto decrevimus et declaravimus

= '(2) ... After having informed the council of our princes and other [persons] loyal to the Empire ... whom we, in our opinion, were forced to summon to Nürnberg ... we have decreed and declared with unanimous decision:'

(3) omnes curtes, iura et bona ducum Austrie et aliorum adversariorum nostrorum et imperii sita et posita in vallibus [424] Switz, Ura et Udernwalde seu locis aliis contiguis et vicinis [<sup>19</sup>] cum hominibus, iuribus et pertinentiis et aliis universis ex eo, quod nobis et imperio temerarie et inprovidae adversantes crimen lese maiestatis iucidisse (incidisse?, E.H.)... tamquam ipso iure confiscata ad nos et imperium esse devoluta totaliter et addicta, ... sancientes et volentes omnimode, ut inantea ad nos et imperium tamquam dominos veros et poss(es)ores dictarum curtiarum, hominum et iurium et ad nullos alios respectus penitus habeatur ac census et iura ratione<sup>19</sup> dictarum curtiarum nobis et imperio absque impedimento quolibet persolvantur.

= '(3) All courts, rights and estates of the Dukes of Austria and other enemies of ours and the Empire situated and lying in the Valleys of Schwyz, Uri and Unterwalden or in other adjoining and neighboring localities, together with the people (*or human beings or subjects*), taxes and pertinent all other things – as confiscated by law – shall be completely given back and awarded to us and to the Empire in legal terms... because those blindly and without consideration harmful to us and the Empire became trapped in the crime of lèse majesté... therefore, we carry out the judgment and demand in every aspect that from now on respect shall be reserved for us and the Empire, as the true Lords and owners of the said courts, human beings and taxes, and for nobody else. And taxes and fees shall be paid to us and the Empire because of the legal claim to the said courts, without any hindrance.'

(4) Preterea censuimus et inviolabiliter decrevimus, quod dicte curtes cum hominibus, rebus et iuribus universis necnon hominibus dictarum vallium et dominiis earundem nullo umquam tempore a nobis et imperio quovis alienationis titulo alienari debeant vel aliquatenus separari,

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<sup>18</sup> *Temerarie* (Adv): cf *temeratio*: e.g. 'forgery' and *temerator*: 'falsifier' (Niermeyer 1976). *Ausu temerario* = 'actions of forging'; E.H.: G. 'Handstreich' = Am. '[surprising and insolent] seizure', e.g. in the sense of destroying documents?

<sup>19</sup> *Ratio*: according to the potential or capacity of the said courts? (PONS, p. 770, Nr. 9, 12, 22); but cf Niermeyer 1976:883, *ratio*: 'compliance with the law' (1); 'legal action' (12); 'legal title' (10).

et quod nobis licere non patimur, nostris successoribus indicamus. Nulli ergo omnino hominum liceat hanc nostrarum<sup>20</sup> declarationis, sanctionis et decreti paginam infringere vel ei in aliquo ausu temerario contraire, sicut indignacionis regie aculeum<sup>21</sup> voluerit evitare. Datum in obsidione oppidi Herrieden<sup>[3]</sup> septimo kalendas Aprilis anno domini M<sup>o</sup>CCC<sup>o</sup> sextodecimo, regni vero nostri anno secundo.

= '(4) Moreover, we think and decree invulnerably that the said courts with all human beings, things and taxes as well as the human beings of the said Valleys and feudal domains<sup>22</sup> therein must not be alienated or somehow separated from us and the Empire on the basis of any (legal claim *or*) title of alienation at any time. And what we do not allow ourselves, we enjoin to our successors [to heed]: as a principle, no human being might thus be allowed to tear apart this parchment of our [Royal Decree] of notification, punitive stipulation and legal decision, or to act against it in terms of inconsiderate action (*or* act of forgery) if he wants to avoid the acuity of humiliating exclusion (*or* official disregard) by the royal power. Issued during the siege of the town Herrieden in the year of 1316, March 26, but in the second year of our reign.

*Note by eds QW:* [3] Herrieden in central Franconia; the town belonged to Count Kraft von Hohenlohe, a follower of King Friedrich, and was conquered after a short siege...

#### 7.4 KING LUDWIG RECONFIRMS THE IMPERIAL FREEDOM OF 1316: ALL BONDSMEN IN WALDSTÄTTEN FREE AND PROTECTED UNDER THE IMPERIAL COURT OF JUSTICE / CONFISCATION OF ALL HABSBURGIAN ESTATES (1324)

1324 May 5

State Archiv of Uri, Nr. 34. Orig. Altdorf. *Print:* Tschudi 1, 300 [= Iselin, E.H.].

*Latin text [excerpt; QW I/2:604f. w archival n]. Translation: E.H. Cf Hinz 2016<sup>1</sup>:340*

*The text added to the document of 1316 March 26:*

...(1) et mancipia seu homines prefatis<sup>[15]</sup> ducibus pertinentes sub iurisdictione imperiali foveantur nec ipsi obsequia aliqua aliquibus prestare nisi sacro imperio permittantur nostre gratie sub obtentu, quia eosdem nobis et imperio libertamus. Ad hec volumus, ut nullus deinceps dictarum vallium inhabitator, incola aut homo quilibet coram ipso duce Leupoldo, suis fratribus, ducibus Austrie, vel ipsorum iudicibus, sed in nostro et sacri imperii iudicio et coram nostro iudice super quacumque causa debeat stare iuri.

= '(1) And the dependants or people who belong to the aforementioned Dukes shall be protected under the jurisdiction of the Empire, and they are not allowed to give labor services to any [persons] except to the Holy [Roman] Empire, out of our grace, since we liberate them to our advantage and that of the Empire. In that sense, we want no inhabitant, co-inhabitant or any countryman from the

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<sup>20</sup> *Nostrarum* (pl. fem.): sc. *litterarum* (Niermeyer 1976:616): *litterae* = E. 'deed'; 'royal charter', F. 'diplôme royale'.

<sup>21</sup> *Aculeum indignacionis*= 'force (*or* acuity) of exclusion' [social & political dimension] *or* 'contempt' *or* 'humiliation' [affective dimension], i.e. weaker than the official pronouncement of the Imperial Ban (G. 'Acht')?

<sup>22</sup> *Homines / dominia* <Nom>? *Dominium* = [Niermeyer 1976:] 'right of property *or* ownership'; 'estate of a feudal Lord'; 'feudal suzerainty (overlordship)'; 'demesne'.



said Valleys to be allowed from now on to stand in trial before Duke Leopold, his brothers, the Dukes of Austria, or their judges but in our and the Holy Empire's Court of Law and before our judge because of whatsoever reason.

(2) Nulli ergo hominum liceat hanc nostrarum declarationis, sanctionis et decreti paginam infringere vel ei in aliquo ausu temerario contraire, sicut indignationem regie potestatis voluerit evitare. ...

= '(2) Therefore, no human being is permitted to tear apart this page of parchment of our [Royal Decree] of notification, punitive stipulation and legal decision, or to act against it in terms of inconsiderate action (*or* act of forgery) if he wants to avoid official disregard by the royal power<sup>23</sup>. ...

...Issued in 1324, May 5...'

Note eds QW: <sup>[15]</sup>Doc.: "prefatos".

*Commentary E.H.:*

*The reconfirmation of the decree of 1316 March 26 in 1324 May 5 includes the additional decision to put all inhabitants of Waldstätten under the direct protection of the Imperial Court of Justice. They must not be put before the Dukes or their judges in any legal quarrel. See here Ch 16 (8). Services of the inhabitants of the Waldstätten are only to be rendered to the King or, rather, the Holy Roman Empire. It be explicitly prohibited that the inhabitants render services to the Habsburgian Dukes [cf. Niermeyer 1976: obsequia = (1) 'a client's service in behalf of his patron', (4) 'labour service', (5) F. 'service d'esclave, de serf' = E. 'service to which a serf is liable', (9) 'serfdom']. The document contains the recognized formula that it must not be torn apart: cf my Note above on 1316 March 26.*

#### 7.5 KING VAACLAV CONFIRMS THE RIGHT FOR THE PEOPLE OF URI TO ELECT THE CHAIRMAN OF THE CANTONAL ASSEMBLY OF URI AND TO EXERT THE DEATH PENALTY (1389)

*In 1389 July 26, King Vaclav (G. 'Wenzel', Pol. 'Wenceslaw') confirms the right for the people of Uri to elect the Chairman of the Cantonal Assembly of Uri and to exert the death penalty by that elected Chairman instead of the King himself. Thus, complete autonomy (just falling short of independence) becomes decreed. Am. translation following Oechsli 1893:326 (Modern G.). The MHG. text is conserved in F. V. Schmid 1788:253f. The same right is formally conceded to Schwyz and Unterwalden in 1415. Commentaries by E.H.*

'(1) We, Vaclav, Roman King by God's grace, at all times Augmentor of the Empire and King of Bohemia, confess and inform in public, by means of this

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<sup>23</sup> *Indignacionem regie potestatis* = 'social and political exclusion', i.e. 'official banning, contempt by the royal power'.

letter, all those who read it or listen to its reading as the serious petition has been presented to us by the Chairman of the Cantonal Assembly (MHG. ‘ammann’) and the countrymen as the Cantonal Assembly\* of the country (MHG. ‘land’) of Uri, our and the Empire’s dear faithful [vassals] that we should validate and confirm all their freedoms of the country, their good customs and rights which they have obtained and brought from us and our predecessors in the Empire since times of old up to the present, be it the toll of Flüelen or other rights of them as their letters show which they have concerning that.’

*Commentary: Chairman and Cantonal Assembly of Uri ask the King to confirm their rights. In detail, we are dealing with the rights conceded by King Vaclav’s predecessors, inter alia, the toll of Flüelen and, especially, the freedom of the country.*

‘(2) and especially that we concede the grace to them and give them the power to choose and elect a righteous man among themselves who will have the ban and full power to make judicious decisions instead of us (or in representation of us) in all issues as is the right and as is the custom since old times, therefore we have considered with good advice the serious petition of our and the Empire’s faithful vassals and the useful services which the aforementioned Chairman (MHG. ‘amman’) and the same countrymen of the country of Uri had done for us and our predecessors, Roman Emperors and Kings, in the Empire, and shall and can still do from now on and in future times.’

*Commentary: Especially, King Vaclav concedes the right that the Cantonal Assembly elects a judge (with all juridical rights – the ‘ban’) who assumes the judicious functions of the King. The empowerment (concession) is based on the recognition of services rendered so far by and still to be expected from the Chairman and the Countrymen of the Cantonal Assembly. The Chairman is obviously supposed to exercise the functions of such a judge.*

‘(3) And therefore, by means of this Document, we confirm and confer, validate and confirm to them all their Documents, Privileges and good customs (i.e. good Common Rights) which they have obtained from us and our predecessors in the Empire since old times in the same way as if such Documents and Letters would be included and written down word for word which shall stay [unchanged] eternally, undisturbed, by us and everybody [else], and [we] therefore order all princes, ecclesiastical and mundane, and all others of our and the Empire’s dear faithful vassals who are admonished thereof by means of this letter that [all of] you do not in any way hinder the aforementioned Chairman (MHG. ‘amman’) and the countrymen as the Cantonal Assembly (MHG. ‘landlüt gemeinlich’) of the country of Uri with regard to the aforementioned graces and freedoms but protect and cover them in order to avoid the grave disgrace from our or the Empire’s side.’

*Commentary: All the documents are confirmed for Uri as if they had been issued by King Vaclav (Wenceslaw) himself. The officials in power, i.e. spiritual and mundane princes, are ordered to protect the Chairman and the Cantonal Assembly in Uri, and not to impede them. Otherwise, 'grave disgrace'.*

‘(4) Certified by this Letter, sealed with the hanging seal of our Royal Court of Justice, issued in Burglein, on Monday after St. Jacob’s day, AD 1389, [and] within our reigns, in the 27<sup>th</sup> of the Bohemian, and in the 14<sup>th</sup> year of the Roman.’

*Commentary: Note the sealing by the Royal Court of Justice thus supporting the royal decision in legal terms of the Empire!*

\* *Note E.H.:* Schmid (1788/I:254) has: ‘die Lands Lüte gemeinlich des Landes ze Ure...’

*PART III:*  
*THE CONCEPT OF SOVEREIGNTY AND RULE:*  
*THE FEDERAL CHARTER OF 1315*

**8. THE FEDERAL CHARTER OF 1315<sup>24</sup>: TEXT AND TRANSLATION.**

QW I/2:411 (= Doc. 807 w archival n); Schwyz version of the MHG. text.  
1315 December 9. Brunnen.

State Archive Schwyz No. 62. – Orig.: Parchment. 19,5x40 cm. Seal hanging on parchment strip. 1) Uri, slightly, 2) Schwyz and 3) Unterwalden, badly damaged.

1315 December 9. Brunnen, Kt. Schwyz.

Print: Tschudi, Chronik I, 276.

Modern Translation: Oechsli, Quellenbuch, 1886:56ff.; Leo Weisz 1940:59-63 (Synopsis with Federal Charter of 1291).

*Supplement after QW I/2:440-441 (=Doc. 865):*

Copy: State Archive Nidwalden, D 5. – Orig.: Parchment. 27x34 cm. Seals are hanging badly damaged.

1316 [Locality omitted]. *E.H.*: cf *Tschudi 1734/I:277a, on that issue.*

Further copies: Second half of the 15th or beginning of the 16<sup>th</sup> century?

Copy Obwalden: State Archive Obwalden, No. 5. Similar dating to be assumed. Peculiarity:

Locality of issue is Uri [„Der ga(e)ben wart ze Ure“].

*Translation by E.H.*

<p>(1) In gottes namen, amen. (2) Wande menschlicher sin blo(e)de und zergänglich (ist), daz man der sachen und der dinge, diu langwirig und stete solden beliben, so lichte und so balde vergizzet, dur daz so ist ez n(i)utze und notd(i)urftig, daz man &lt;delete&gt; die sachen, die dien l(i)uten ze fride unde ze gemache (und) ze nutze und ze eren ufgesetzt werdent, mit schrift und mit briefen wizzentlich und kuntlich gemachet werden. (3) Darumbe so k(i)unden und offenen wir die lantl(i)ute von Ure, von Szwits und von Underwalden allen den, die disen brief lesent oder ho(e)rent lesen, (4) daz wir darumbe, daz wir versehen und f(i)urkemen die herte und die strenge dez cites und wir deste baz mit fride unde mit gnaden beliben mo(e)chten und wir unser lib und unser gu(e)t &lt;Nidw.: gu(o)t&gt; deste baz beschirmen und behalten mo(e)chten,</p>	<p>(1) In God's name. Amen. (2) Because human sense is weak and transient so that matters and things that are supposed to persist long and remain durable are forgotten easily and soon therefore it is useful and necessary that the state of affairs which were established in terms of peace and well-being, utility and (self)respect in favor of the people be made known and given as information in writing and as document.  (3) Therefore, we, the countrymen of Uri, Schwyz and Unterwalden, make known to, and inform, all those who read this letter or listen to its reading: (4) in order that we see the harshness and sternness of the time (being) and counter these and are thus able to remain in peace and in blessing and thus protect and conserve our lives and our goods;</p>
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<sup>24</sup> This Federal Charter is also called 'Morgartenbrief', 'Brief von Brunnen'.

<p>(5) so han wir uns mit tr(i)uwen und mit eiden ewekliche und stetekliche zesemene versichert und gebunden also,  (6) daz wir bi unseren tr(i)uwen und bi unseren eiden gelobt und gesworn han, einanderen ze helfenne und ze ratenne mit libe und mit gu(o)te in unsere koste  (7) inrent landes und uzerhalb  (8) wider alle die und wider einen jeglichen, der uns oder unser dekeinem gewalt oder unrecht tete older tu(o)n wolde an libe oder an gu(o)te,  (9) und beschehe daruber unser dekeinem dekein schade an sinem libe older an sinem gu(o)te, deme sullen wir behulfen sin dez besten, so wir mugen, daz es ime gebezzert oder widertan werde ze minnen oder ze rechte.</p>	<p>(5) therefore we have assured ourselves mutually under vows of loyalty and oaths eternally and permanently and thus bound ourselves (6) so that we have promised and sworn with our vows of loyalty and our oaths to help and give advice to each other at the risk of life and goods, at our own costs,  (7) within our land (territory) or outside of it  (8) against all those and against anybody [individually] who would do or would want to do violence or injustice against (our) lives or goods, of all or one of us.  (9) And if therefore somebody of us be damaged with regard to his body or good we shall help that person as well as we can (so) that restitution or replacement is made for him, in agreement or according to legal judgement.</p>
<p>(10) Wir han o(u)ch daz uf uns gesezset bi demselben eide, daz sich unser lender einkeines noch unser enkeiner beherrschen sol oder dekeinen herren nemen ane der ander willen und an ir rat. (11) Ez sol aber ein jeglich mensche, ez si wib oder man, sinem rechten herren oder siner rechten herschaft gelimphlicher und cimelicher dienste gehorsam sin  (12) ane die oder den herren, der der lender dekeins mit gewalt angrifen wolde oder unrechter dinge geno(e)ten wolde, deme oder dien sol man die wile enkeinen dienst tu(o)n, untz daz si mit dien lendern ungerichtet sint.  (13) Wir sin o(u)ch dez uberein komen, daz der lender einkeines noch der eitgenoze enkeiner dekeinen eit oder dekein sicherheit zu(o) dien uzeren tu(o)n ane der anderen lender oder eitgenozen rat.  (14) Ez sol o(u)ch enkein unser eitgenoz dekein gespreche mit dien uzeren han ane der ander eitgenoze rat oder an ir url(u)ob, die wile untz daz diu lender unbeherret sint.  (15) Were o(u)ch jeman, der der lender dekeins verriete older hingebte oder der vorgeschribenen dingen dekeins breche oder ubergienge, der sol tr(i)uwlos und meinede sin, und sol sin lip und sin gu(o)t dien lendern gevallen sin.</p>	<p>(10) We have also made the decision under the same oath that none of our countries and none of us shall oblige themselves (under oath) to accept a lord without the approval and advice of the others. (11) Every human being, woman or man, shall be obedient to his legitimate lord or his legitimate rule with regard to services which are compatible in terms of health and are morally acceptable,  (12) with the exception of those lords or that lord who wants to attack one of the countries with violence or wants to coerce it to [accept] unjust things, to him or to them, however, no service shall be given as long as they continue unpunished with regard to the countries.  (13) We have also reached the agreement that none of the countries and no confederate shall give an oath or shall enter into an agreement with the outsiders without counsel and decision by the other countries or confederates. (14) And no confederate shall enter into negotiation with these outsiders without deliberation, decision and permission by the other confederates even if the countries are without a lord.  (15) But if somebody would betray or give up (i.e. surrender to the enemy) one of the countries, or would break or omit one of the prescribed agreements, he shall be considered as committing treason and perjury and his life and his property shall fall to the countries.</p>

<p>(16) Darzu(o) sin wir ubereinkomen, daz wir enkeinen richter nemen noh haben suln, der daz ampt ko(u)fe mit phenningen oder mit anderme gu(o)te und der o(u)ch unser lantman nicht si.</p>	<p>(16) Furthermore, we have reached the agreement that we shall not take or have a judge who buys the office with money ('pennies') or with other property, and who is not a compatriot of ours.</p>
<p>(17) Were o(u)ch daz, daz sich dekein missehelli oder dekein krieg hu(e)be oder ufstu(e)nde under dien eitgenozen, darzu(o) suln die besten und die witzegesten komen und sullen dien krieg und die missehelli slichten und hinlegen nach minnen oder nah rechten, und sweder teil daz verspreche, so suln die andern eitgenoze dem andern minnen older rechtes beholfen sin uf jens schaden, der da ungehorsam ist. (18) Wurde o(u)ch dekein stoz oder dikein krieg zwischen dien lendern und ir eines von dem andern weder minne noch recht nemen wolde, so sol daz dritte lant daz gehorsame schirmen und minnen und rechtes beholfen sin.</p>	<p>(17) And if a quarrel or a feud would take place or would originate among the confederates, then the best and most knowledgeable persons shall come and intermedate in the feud and quarrel and shall smoothe them down, in agreement or by legal judgement. And if one legal party contradicts then the other confederates shall help the other one, in agreement or in accord with legal judgement, at the cost of that [party] that does not accept it. (18) If there is a feud or a war between the countries, and one of them does not want to accept either (reconciliatory) agreement or legal judgement, then the third country shall protect the complying one and shall be helpful in the sense of (reconciliatory) agreement or legal judgement.</p>
<p>(19) Were o(u)ch daz, daz der eitgenozen dekeiner den andern ze tode slu(e)ge, der sol o(u)ch den lip verliesen, er muge danne beweren, als ime erteilet wirt, daz er ez notwernde sinen lip getan habe. Ist aber, daz er entwicht, swer in danne huset older hovet older schirmet inrent landes, der sol von deme lande varn und sol niht wider in daz lant komen, untz daz in die eitgenozen mit gemeinem rate wider inladent.  (20) Were o(u)ch daz, daz der eitgenozen dekeiner den anderen t(i)ubliche oder frevelliche brande, der sol niemerme lantman werden, und swer in huset older hofet older gehalten, der sol jeneme sinen schaden abetu(o)n.  (21) Wer o(u)ch daz, daz unser eitgenoze dekeiner den anderen mit r(u)obe oder anders ane recht schadegete, vindet man des gu(o)tes icht inrent landes, damitte sol man dem kleger sinen schaden abetu(o)n.  (22) Ez sol o(u)ch nieman den andern phenden, er sie danne gelte oder b(i)urge, und sol dennoch tu(o)n nit wan mit sines richters urlo(u)be.</p>	<p>(19) If one of the confederates should kill the other one then he shall also lose his life; or else he can prove and get confirmed [by legal judgement] that he did so in the self-defense of his life. But if he escapes, anybody who would receive him in his house or farm or would protect him within the country shall leave the country (i.e. shall be banished) and shall not return to the country until the confederates invite him again on the basis of joint discussion and decision. (20) If any of the confederates raises fire against the other [person] in mad rage or malicious intent then he shall never become a [fellow] countryman again (i.e. a confederate). And whosoever accomodates him in his house or farm or supports him shall restitute the damage done to the [victim]. (21) If any of our fellow confederates damages the other [person] in terms of robbery or otherwise, without right, and if any of the [respective] goods be found inside of the country, then the damage of the complainant shall thus be restituted. (22) Moreover, nobody shall impound the other [person] unless he is the debtor or guarantor. And one shall not even do that except with permission by one's judge.</p>

<p>(23) Ez sol o(u)ch ein jeglich man sinem richtere gehorsam sin und sinen richter ceigen inrent landes, vor deme er dur recht sule stan.</p> <p>(24) Swer o(u)ch deme gerichte widerstu(e)nde oder ungehorsan were und von siner ungehorsami der eitgenozen dekeiner in schaden keme, so suln in die eitgenozen twingen, daz dien schadehaften ir schade von ime werde abegetan.</p>	<p>(23) Moreover, everybody shall comply with his judge and shall name his judge inside of the country whom he shall meet formally in case of legal issues.</p> <p>(24) If anybody acts against the court or does not comply with it, and if any confederate suffers damage because of his noncompliance, the confederates (fellow sworn-ins) shall force him to replace the damage to the damaged [persons].</p>
<p>(25) Unde dur daz, daz d(i)u vorgeschribene sicherheit und diu gedinge ewig und stete beliben, so han wir die vorgenannden lantl(i)ute und eitgenoze von Ure, von Swits und von Underwalden unser ingesigel gehenkit an disen brief, der wart gegeben ze Brunnen, do man zalte von gottes geb(i)urte dr(i)ucehenhundert jar und darnah in deme ff(i)umfgehenden jare an dem nehesten cistage nach sant Niclaus tage [= 9. Dez. 1315].</p>	<p>(25) And in order that the prescribed agreement and decisions remain eternal and permanent we, the aforementioned countrymen and confederates of Uri, Schwyz and Unterwalden, have put our seal to this letter that has been issued in Brunnen, in the year 1315 AD, on the Tuesday following Saint Nicholas [= 1315 December 9].</p>

## 9. THE FEDERAL CHARTER OF 1315: INTRODUCTORY NOTE

The Federal Charter of 1315 was agreed upon three weeks after the victorious battle of Schwyz against Austria and its allies. It contains a unique characterization of just and acceptable as well as unacceptable and violent government and the corresponding norms for the Swiss confederates. I consider it to be the most important political and protophilosophical thought produced in early Switzerland.

I begin with a conceptual commentary of the Federal Charter detailing a general value orientation, social and legal principles and regulations leaving the texts on sovereignty and rule to be covered in Ch 10.

### 9.1 VALUE ORIENTATION

§2: The proclaimed principles serve:

- Public utility/interest; benefit (MHG. ‘ze nutze’).
- Public peace (MHG. ‘ze friede’).
- Public welfare or, rather, tranquility, and public well-being (MHG. ‘ze gemache’).
- Public respect or self-respect; esteem (MHG. ‘ze eren’).

One of the goals is the **establishment of a legal and peace order**. The feature of the ‘public’ or ‘common’ is specified: MHG. ‘dien l(i)uten’ = ‘for the people or for the population’. The appeal to these basic value decisions characterizes this early constitutional text.

§4: The value orientation mentioned includes:

- ‘Peace’ and ‘good luck’ or ‘blessing’ conceded by God (MHD. ‘gnaden’ in contrast to MHG. ‘gemache’ [‘well-being’]).
- Protection and conservation of life and property.

## 9.2 MUTUAL OATH SWORN TO HELP AND TO ADVISE: ALLIANCE FORMATION

§3: The *actors* of this proclamation are the ‘countrymen’ (in general, the inhabitants) of Schwyz, Uri, and Unterwalden. This expression may directly refer to the meeting of the Cantonal Assembly or a similar assembly.

The *recipients* of this proclamation are the people who ‘read’ or ‘listen to the reading’ of this document.

§ 5: The *promise of loyalty* or, rather, swearing a mutual oath of loyalty involves

- Speech act: mutual promise of loyalty.
- Social act: mutual bonding.
- Validity: ‘eternal’, ‘permanent’. This is not typical for a ‘peace order of the country’ in Sablonier’s ‘daily political’ sense of the phrase.

§ 6: The *content* of the promise of loyalty includes:

- Mutual aid and advice.
- Modality: at the risk of life and property, at one’s own cost.

§7: *Aid* includes:

- Within the territories: *legal safety*; creation of a legal community.
- Outside of the territories: *an alliance of military defense* or, rather, safety. Legal safety against courts of justice outside of the country?

§ 8: *Enemies, conditions for help*:

- Generalization of enemies, violent wrongdoers or law breakers (‘all’, ‘anybody individually’).
- Note that those favored by this oath include the ‘collective’ (‘us’ = the inhabitants of the Valley or Country) or else the ‘individual’ (MHG. ‘unser dekeinem’ = Am. ‘one of us’).
- The conditions for aid are factual or intended ‘violence’ and / or ‘injustice’ against life or property / goods.

§9: The case of *damage* or *attack* defined

- Condition for aid: affiliation = ‘one of us’; factuality of the case of damage = ‘and if damage happens...’
- Extent of the aid: the confederates try as well as they can to restore life and property (intention of compensation).
- Modality of the restitution: reconciliatory agreement (MHG. ‘ze minnen’) or formal judgement in court (‘ze rechte’).



### 9.3 LEGAL REGULATIONS

#### SEIZURE OF PROPERTY

§ 22: Seizure = Fed Ch 1291, §25:

No seizure of another person's property.

- Except: with the debtor or guarantor.
- Also in that case only with the permission of a judge.

#### INDIVIDUAL CONFLICTS

§ 17: Conflicts among confederates = Fed Ch 1291, §21:

- Conflicts or feuding among the confederates in private (MHG. 'missehelli', 'krieg').
- Competent *intermediators* (MHG. 'die besten', 'die witzegesten').
- They *act* in reconciliatory agreement or in formal judgement in court (MHG. 'nach minnen', 'nah rechten').
- If one legal party *contradicts the intermediation*: general support for the other legal party at the cost of the contradicting party by means of the confederates' normative pressure.

#### CONFLICTS AMONG CANTONS

§ 18: No acceptance of conflict resolution = Fed Ch 1291, § 28:

- Conflict or war (MHG. 'stoz', 'krieg') *between the countries*.
- The countries are completely constituted as *territorial* units.
- Refusing to accept a reconciliatory agreement or a formal legal judgement in court by one of the quarreling countries i.e. within the framework of intermediation (*or* G. 'Tagsatzung' [?]: probably correct as the conflict refers to intercantonal problems): the third (non-party aligned) country shall protect the country that does accept the legal intermediation.

#### CONCEPT OF LEGAL TRESPASSING

§ 19: *Murder* = Fed Ch 1291, §22

- *Capital punishment* in case of murder. *Exception*: situation of self-defense proven and confirmed by a judge.
- In the case of the flight of the murderer and in case of being accepted and protected by another person: *banishment* of this person *as a helper*.
- *Readmittance* of the helper or supporter is possible by means of joint discussion and decision-making by the confederates only.
- Joint discussion and decision-making (MHG. 'mit gemeinem rate') refers to a (majority?) *vote by the Cantonal Assembly* acting as sovereign of the country. I propose to translate the expression as 'by decision of the Cantonal Assembly'.
- The *territory* ('lant') is constituted according to the wording and is *socially controlled*.

- ‘Confederates’ refers to any fellow countryman in the sense of ‘anybody of the local population’. The term ‘confederate’ (‘fellow sworn-in’) refers here to the murderer and the members of the Cantonal Assembly as lifters of the banishment.

§ 20: *Arson* = BB 1291, § 23:

- In case of arson: *loss of settling rights and of social membership* (MHG. ‘der sol niemerme lantman werden’ = Am. ‘he shall nevermore become a [fellow] countryman’). Categorization: MHG. ‘tueblich’ = ‘in affect (mad rage)’; MHG. ‘frevelliche’ = ‘in maliciousness’.
- *Supporters are liable* for damage caused by the arsonist.
- ‘Confederate’ refers to any fellow countryman. In this case, the term refers to the law-breaker.

§ 21: *Robbery* = Fed Ch 1291, § 24:

- Damage by robbery etc.
- If possible: safeguarding the goods stolen for the coverage of the claimant’s damage.
- ‘Confederate’ refers to any (fellow) countryman in the sense of ‘anybody pertaining to the local population’.

#### COURT ORDER

§ 23: *Obligation to comply with the judge* = Fed Ch 1291, § 26:

- The paragraph outlines rules of *legal procedure*.
- The *persons participating* in the legal process (everybody) must comply with the judge.
- The person participating in the legal action must *specify the judge* whom he will or shall present himself before. This passage remains a bit obscure. Late documentation shows that judges who form a council become elected by the Cantonal Assembly (cf Blickle 1990:97, 106). Perhaps, we are dealing with a certain degree of freedom of choice, as all judges seem to be elected. Effective interaction of the judges and the other participants in the legal process is unknown in detail.
- I think that the political reason for naming the judge is still King Rudolf I’s decree of 1291 February 19 depending on the social status of the defendant. Not until 1316 March 26 all Waldstätten cantons become declared as being directly dependent upon the Empire and free from services to local noblemen or similar forms of forced labor.

§ 24: *Noncompliance with the court causing damage* = Fed Ch 1291, §27:

- *Condition: noncompliance* of a participant in the legal process against the court.
- *Consequence*: damage for another confederate.
- *Forcing* the damager to pay for the damage by means of the confederates’ normative pressure.

## 9.4 PERMANENCY OF THE CONSTITUTION

§ 25: *Permanency* of the proclaimed constitution as a treaty (MHG. ‘sicherheit’) and decisions (MHG. ‘gedinge’):

- Actors: countrymen and confederates (MHG. ‘lantl(i)ute und eitgenoze’) of Uri, Schwyz and Unterwalden as authorizing und authenticating sovereigns. The expression connected by ‘and’ refers to the same total population (segment): ‘we’.
- Act of authorization: agreement, decision, writing (‘letter’).
- Authenticating: sealing with the seals of the three cantons.
- Locality of issue: Brunnen, Kt. Schwyz.
- Date: 1315 Dec 9, shortly after the Battle at Morgarten.

## 10. THE CONCEPT OF SOVEREIGNTY AND RULE (§10-16)

The Federal Charter of 1315 contains a unique characterization of just and acceptable, as well as unacceptable and violent rule, and the corresponding norms for the Swiss confederates.

### 10.1 THE RECOGNITION OF A LORD OR A RULE REQUIRES THE AGREEMENT OF THE OTHERS

‘(10) We also made the decision under the same oath that none of our countries and none of us shall oblige themselves (under oath) to or accept a lord without the approval (will) and advice of the others.’

*Concept formation:*

- (1) *The countries are socially controlled as geographical territories and are constituted as autonomous polities.*
- (2) *No recognition of a rule by one member country or any corresponding inhabitant (confederate) without agreement of the others. MHG. ‘beherren’ can mean ‘to accept the obligations with a lord, to give an oath to him’ (Lexer).*
- (3) *Agreement of the others: this implies (a) the agreement of the cantonal assembly as an assembly within the canton (country), (b) the agreement of the other cantonal assemblies (or, rather, their representation as the confederation).*
- (4) *Form of the oath: a collective mutual oath of the inhabitants (countrymen) in contrast to a personal oath of a serf or subject to his lord.*
- (5) *Others: other ‘member countries (cantons)’ and/or other ‘corresponding inhabitants’, i.e. other confederates, for example, by means of the cantonal assembly.*
- (6) *Concept of sovereignty: Note the phrasing in 1<sup>st</sup> person plural (‘we’) as an expression of authority-generating sovereignty. According to the context, this sovereign is primarily the confederation (committee of negotia-*

tion and intermediation, called 'Tagsatzung' later) or, rather, the cantonal assemblies who confirmed their identity by means of mutual swearing-in and, thus, constituted their membership in this decision-making organization.

## 10.2 THE RECOGNITION OF LEGITIMATE RULE OR OF A LEGITIMATE LORD IS CONDITIONED

'(11) Every human being, female or male (woman or man), shall be obedient to his legitimate lord or his legitimate government/rule with regard to services which are compatible in terms of health and are morally acceptable.'

*Conceptual analysis or concept formation:*

- (1) Legitimacy: *of the personal lord (MHG. 'sinem rechten herren') and of organized power or rule (MHG. 'siner rechten herrschaft').*
- (2) People in service concerned: *male or female; any human being.*
- (3) Content of service: *'obedience with regard to just or, rather, legally acceptable services'. The concepts of obedience and service are made precise and become bound to conditions.*

(4) Terminological specification of the conditions:

MHG. 'Gelimphlicher' = 'just, adequate; (corresponding to) sparing / easy-going behavior; (corresponding to) behaving oneself in general...' (Lexer) ['recht, angemessen; schonendem Benehmen (entsprechend); Benehmen überhaupt (entsprechend) ...' (Lexer).]

Cf. MHG. 'Gelimpf' = 'Behaving, moral standard, adequacy' (Hennig) ['Gelimpf' = 'Benehmen, Anstand, Angemessenheit' (Hennig)].

Cf. the negative forms: MHG. 'Ungelimpfen' = 'to treat without consideration / inhuman'; 'ungelimpf' = 'injustice, humiliation, bad behavior' ['Ungelimpfen' = 'schonungslos behandeln'; 'ungelimpf' = 'Unrecht, Schmach, schlechtes Benehmen']. My explications: 'to treat inhumanely or exploit someone', referring to work, health, and behavior as a social context: e.g. forced labor, disrespecting health and self-esteem of the other person.

Summary: MHG. 'gelimphlicher' = 'compatible in terms of health and corresponding to legal and moral norms', 'to treat with consideration' (E.H.).

MHG. 'Cimelicher' = 'schicklich, angemessen, zuträglich, gebührend, geziemend' (Lexer) = 'moralisch einwandfrei' (E.H.). = 'moral, adequate, convenient, respectful, observing the rules of good behavior' (Lexer) = 'morally acceptable / without moral objections / polite' (E.H.)

MHG. 'Unzimêliche' = L. 'mala et illicita delectatio' = 'bad and illicit (i.e. immoral) pleasure' (Internet/Köbler).

*Discussion:*

On the meaning of the expression '[obedience and services to be rendered] to his legitimate lord or the legitimate rule over him':

Hypothesis 1: *The corresponding lord (of everyone)*. The communities and the Cantonal Assemblies as their organizations of decision-making integrate the inhabitants of *all the different rules* on their territories incl. ecclesiastical and noble rule.

Hypothesis 2: Alternatively, it is possible that *only the King or Emperor or his direct representative in situ (i.e. the Imperial Plaintiff) is referred to*, in agreement with Imperial Freedom (G. ‘Reichsfreiheit’, ‘Reichsunmittelbarkeit’), i.e. direct dependency upon the empire or the emperor, and exclusive services for the empire or the emperor.

Hypothesis 3: Both hypotheses can hold: Hypothesis 2 as a *factually valid norm* (or if disputed as a claim of normative validity), Hypothesis 1 as a *claim of normative validity* with regard to the different religious or regional noble rules on the territory in question.

### 10.3 VIOLENT AND UNJUST RULE

‘(12) with the exception of those lords or that lord who wants to attack one of the countries (cantons) with violence or wants to coerce it to [accept] unjust things, to him or to them, however, no service shall be given as long as they continue unpunished (*or in criminal form*) with regard to the countries [in question]’

*Conceptual analysis and concept formation:*

- (1) Violence against a member country. *No service. This norm is probably directed against lords from outside.*
- (2) Unjust rule against a member country. *No service. This norm is clearly directed against outsiders, e.g. the regional or royal nobility. Cf §11, Hypothesis 1 and 2.*
- (3) Denial of obedience. Right to resistance *against violence and unjust rule. This means: absence of violence and just rule as political and social goals (meaning postulate of the behavioral intention). The criteria of legitimate rule include: ‘invulnerability of body & health’ and ‘moral acceptability’.*
- (4) Prohibition of services or obedience in case of criminal or unpunished behavior of the lord(s). *Condition: ‘as long as they are unpunished (or criminal [in their behavior])’.*

*Cf Lexer: MHG. ‘ungerihtet’ = G. ‘der ein Unrecht / Verbrechen begangen hat (hier: an den Ländern)’ = ‘who committed a crime / did injustice (in this case: to the countries)’. Hennig: MHG. ‘ungerichtet’ = G. ‘ungestraft, ungesühnt’ = ‘unpunished, unatoned’.*

*The right to resistance becomes more rigorously phrased as a prohibition to give services or to be obedient to orders. The criminal and punishable aspect of noble behavior is emphasized and expressed as a principle for legal and political action.*

#### 10.4 GENERAL AGREEMENT FROM ALL THE CANTONS AND CONFEDERATES IS NECESSARY IF GIVING AN OATH TO A FOREIGNER OR OUTSIDER

‘(13) We also reached the agreement that none of the countries and no confederate shall give an oath or shall enter into an agreement with the outsiders (or foreigners) without counsel and decision by the other countries or confederates’.

*Conceptual analysis and concept formation:*

- (1) *The concept of an oath or services for a foreigner by a confederate or a member country is introduced.*
- (2) *Such an oath or such services are bound to the consensual agreement of the member countries and their inhabitants (confederates). This is to be interpreted as a clear reference to a Cantonal Assembly (better: to the Cantonal Assemblies) or an intercantonal committee of intermediation.*
- (3) *The collective mutual oath of the confederates is (conceptually) contrasted with an individualized personal oath given to a nobleman.*

#### 10.5 PERMISSION IS NECESSARY TO START NEGOTIATIONS WITH FOREIGN LORDS OR RULERS

‘(14) And no confederate shall enter into negotiation with these outsiders (foreigners) without deliberation and decision and permission by the other confederates even as long as the countries are without a lord.’

*Conceptual analysis or concept formation:*

- (1) *Entering of a confederate into negotiations with foreigners.*
- (2) *Permission and deliberated agreement by the other confederates is necessary.*
- (3) *This holds even in case of a vacancy of the position of a lord (or ruler).*  
*Cf MHG. ‘unbeherret’ = ‘without a ruler (or: lord)’. MHG. ‘die wile untz daz’ = ‘[even] as long as’, ‘when’, ‘because’; cf. Hennig 2007<sup>5</sup>:468.*
- (4) *‘Other confederates’ who must consent and give their permission (MHG. ‘ir urlo(u)b’) = ‘all the (adult male) population’, i.e. the ‘Cantonal Assembly’ or its equivalent and/or an ‘intercantonal committee of intermediation (of the confederation)’?*

*We are obviously dealing with the position of the King or Emperor of the Holy Roman Empire or his representative in situ (i.e., the Imperial Plaintiff). I hypothesize that the text refers to the ambivalent election of two kings or to a possible interregnum without a king. I.e., the Federal Charter of 1315 was written in view of the unresolved conflict between Ludwig von Wittelsbach and Friedrich der Schöne (the Beautiful) of Habsburg. The text would then imply: we want to be considerate when we declare ourselves in favor of one of the candidates and we want to proceed together and coordinated, avoiding one-sided and unbacked actions. Cf the late swearing-in ceremony with Johann von Ahrberg, in representation of King Ludwig von Wittelsbach, in 1323 October 7, in Beckenried. The three countries (cantons) condition their oath to their perma-*

ment “Imperial Freedom” (direct dependency upon the empire) and to the exclusively local jurisdiction over their inhabitants.

#### 10.6 THE IMPLICIT CONCEPT OF LEGITIMATE RULE ANALYZED

- (1) *Legitimacy (of a foreign ruler or of foreign rule from outside of the cantons): it is based upon agreement by the member countries (procedural definition). Obedience or recognition of foreign rule by single persons or countries (i.e. cantons) is legitimate only to such a degree as such recognition is agreed upon or, rather, permitted by the other member countries (cantons).*
- (2) *The verification of the legitimacy of rule over the confederates (obedience of the confederates to a person or the representative of a ruler) is defined procedurally:*
  - (a) *The agreement among the member countries to accept a ruler from outside is based upon decision-making.*
  - (b) *The categorization and identification (diagnosis) of the acting of lords or rulers as ‘unjust’ vs. ‘just’, ‘violent’ vs. ‘peaceful’, or ‘generating calmness (in an acceptable sense)’ is bound to public decision by the Cantonal Assembly.*
  - (c) *It is prohibited to serve and follow an unjust lord or unjust rule.*

#### 10.7 TREASON OR VIOLATION OF THE CONSTITUTION

‘(15) But if somebody should betray or give up (i.e. surrender to the enemy) one of the countries, or would break or omit one of the prescribed agreements he shall be considered as committing treason and perjury, and his life and his property shall fall to the countries.’

*Analysis of concept formation:*

*This article is new in comparison to the Federal Charter of 1291.*

- (1) *Action: betrayal of the interests of the member countries by one of its inhabitants (confederates). Or: violating one of the articles of the Federal Charter.*
- (2) *Consequence: Proscription as a traitor and perjured. Persecution, confiscation of his property in favor of the member countries: Death penalty?*
- (3) *Inference: Everybody swore the oath (and is, thus, a confederate, a ‘fellow sworn-in’, G. ‘Eidgenosse’). Only he who has sworn the oath can break it and can thus be proscribed as perjured. This is a direct hint to the existence of the Cantonal Assembly and to the practice of mutual swearing-in. The proscription is assumed to be authorized by the Cantonal Assembly. Cf the following article starting with the phrase: ‘We, furthermore, have reached the agreement...’. It does not make much sense to assume that the articles analyzed hold for some local nobility only.*

## 10.8 REGULATION FOR ACCEPTING JUDGES

‘(16) Furthermore, we reached the agreement that we shall not take or have a judge who buys the office with money (‘pennies’) or with other property and who is not a compatriot of ours.’

*Conceptual analysis:*

- (1) *Requirement for becoming a judge: not bribable, not buying the position.*
- (2) *Further requirement: he must be a compatriot, i.e. from the Waldstätten cantons or, rather, the respective communities.*
- (3) *Political acts of authorization: ‘We reach the agreement or make the decision’, ‘we take (a judge)’, ‘we have (a judge)’. Control, choice or election, installation and authorization as political acts become clear: ‘We’ seems to refer, as stated in the beginning of the Federal Charter of 1315, to the “countrymen”, i.e. all the inhabitants with voting rights in the sense of the Cantonal Assembly, as sovereigns. Cf the Federal Charter of 1291, §20.*

## 10.9 THE PECULIARITIES OF SWISS POLITICAL DEVELOPMENT

The years in which the Waldstätten cantons evaded the Habsburgian kings (King Rudolf, King Albrecht and King Friedrich the Beautiful) were decisive for the policy of forming and consolidating the Waldstätten cantons’ claims of autonomy.

If one scans the events as they are here listed, the first Inner Swiss cantons seem to have followed a notable policy of self-organization, resistance formation and unambiguous relationship with the central power of the Holy Roman Empire. This holds, especially, for Unterwalden, too, that became stabilized successfully as an independent community. Only with Unterwalden, the control of the Saint Gotthard Pass is completed in terms of adding the Southern part of Lake Vierwaldstätten (Lake Lucerne). I.e. the first cantons utilize the following contrasts consciously:

- Emperor (King) vs Pope, or: royal central power vs church,
- King vs rivals in the election of the successor,
- King as central power vs regional nobility and monastic rule (Duke, Count; Abbot) vs Valley Organizations or, rather, the Confederation.

The art of diplomacy consists in always recognizing the uppermost formal layer – the Empire – and receiving the advantages of Direct Imperial Dependency (freedom, liberation from bond-slavery, formal protection against regional attacks) even as non-urban regions.

Together with Sablonier, a group of historians oppose the idea that the people in Inner Switzerland had created a program tuned towards liberation from regional aristocratic rule. I point out the expression ‘we, the countrymen assembled’ [MHG. ‘(wir, die) landlüte gemeinlich’] referring, in my opinion, to the Cantonal Assembly as sovereign in general. Moreover, I point out the expres-



sions *'honestati'* = '(for) the (self)esteem', and *'utilitati publicae'* = '(for) public utility (or interest)'; or, rather, *'den lüten ze friden unde ze gemache'* = 'for the people's peace and tranquility (or well-being or even peace of mind)', *'ze eren'* = 'for (self)esteem (or [self]respect)' and *'ze nutze'* = 'for utility (advantage, comfort[ableness])'. In agreement with Blickle (1990:194-202), central values are, thus, established as *programmatic ideas that structure future*. After the elimination of W. von Homberg, regional nobility comes more and more under control (hypothesis).

Being confronted with Europe's nobility and its absolute power, the French Revolution accomplished the *universalization of the Rights of Man and Citizen* as a principle (their declaration in Paris in 1789). The French Revolution had available political models as developed in the philosophy of the Renaissance and Enlightenment as well as in the American Revolution against the Kingdom of England. The concepts developed by the Swiss people in the second half of the 13<sup>th</sup> and during the 14<sup>th</sup> centuries are comparatively less comprehensive: inter alia, the concepts of legitimate rule (power, or sovereignty) and public utility (or, rather, welfare or interest) become developed *from the local tradition of the populations of the valleys*. Those valley populations develop their liberation from the special conditions of power in Central Europe. Among these conditions are: the Immediate Dependency upon the Empire, the possibility of one-self's buy-out, and the constitution of a legal community that tries to resolve or to intermediate in conflicts on the basis of self-organization and places the concept of internal peace at a central position. For a high degree of central rule and a low degree of institutional and educational (socializing) integration (as in Medieval central Europe) imply feuds and raids. The restriction to one's own territory as a *suppressed or omitted universalization of norms is relevant for political survival at this point in time*. The interregnum after 1245 and the election of two kings in 1314 might have offered new chances to conceptualize and to develop alternative ideas of rule.

*PART IV:*  
*COMPOSITION OF THE CANTONAL ASSEMBLIES*  
*IN UNTERWALDEN, SCHWYZ, URI*

Here I will consider the composition of the Cantonal Assembly and its relation to the whole community population.

**11. WHO BELONGS TO THE COMMUNITY AND TO THE COMMUNITY  
ASSEMBLY OF THE VALLEY OF UNTERWALDEN IN 1350?**

The following documents of 1350 concern the cancellation of the judgments of excommunication and interdict against Unterwalden imposed because of the support for King or, rather, Emperor Ludwig von Wittelsbach and the Cantonal Assembly of Schwyz during the dispute of community boundary markers and community-owned land with the monastery of Einsiedeln (cf Hinz 2016a).

(1) MILD ECCLESIASTICAL PUNISHMENTS IMPOSED ON  
ALL THE INHABITANTS OF UNTERWALDEN, BETWEEN 14 AND 70 YEARS OF AGE  
QWI/3:562 [Doc. 888]. *1350 March 10.* – State archive Obwalden, no 17. -  
Orig.: Parchment. 23x20 cm.

*Note E.H.:* The age limit of 70 yrs might be due to old age if you consider the participation in a pilgrimage to the Monastery of Einsiedeln.

(2) REDEMPTION OF THE PEOPLE, I.E. CLERICS AND LAYMEN OF BOTH SEXES,  
FROM JUDGMENTS OF EXCOMMUNICATION AND INTERDICTION  
QWI/3:562 [Doc. 889]. *1350 March 10.* – State archive Obwalden, no 18. -  
Orig.: Parchment. 20x21 cm.

(3) THE CHAIRMAN AND THE WHOLE CANTONAL ASSEMBLY OF THE VALLEY  
OF UNTERWALDEN, I.E. ALL PERSONS OF BOTH SEXES WHO BELONG TO THE  
PARISH CHURCHES... BECOME REDEEMED FROM THE INTERDICT<sup>25</sup>  
QWI/3:563 [= Doc. 890]. *1350 March 10.* – State archive Obwalden, no 19. -  
Orig. : Parchment. 16x26 cm.

Commentary E.H.:

(a) As in 1247, Habsburg had mobilized the Pope again in favor of its political-economical maneuvers against the loyalty of the primary cantons, incl. Unterwalden, towards the Empire or, rather the King or Emperor. The *process of excommunication* by Pope John XXII in *Avignon* (France) dates from 1324 May

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<sup>25</sup> *Interdict* = ‘a Roman Catholic ecclesiastical censure withdrawing most sacraments and Christian burial from a person or district’, Merriam-Webster Dict. 2003.

22 (QWI/2:608). Its reasons are obviously to be found in the confiscation of the Habsburgian-Austrian estates in Waldstätten and in the legal protection and subordination of the local population under the royal legal court [1324 May 5] as well as in corresponding Habsburgian conspirational countermeasures, later in the imprisonment of King Friedrich von Habsburg [Doc: 1324 July 19] as well as the dispute concerning the communal land boundaries with the monastery of Einsiedeln. Obviously, Habsburg had put into motion a comprehensive conspiracy against King Ludwig von Wittelsbach and the primary cantons.

King Charles of France was supposed to be elected as King of the Holy Roman Empire. If he becomes elected as king, he promises, in 1324 July 27, to safeguard Schwyz and Unterwalden as property of *Duke Friedrich* in terms of rights of inheritance and to intervene on behalf of his liberation from imprisonment. The document of 1325 March 13 [Doc 1269, QW I/2:634] represents an expiation between King Ludwig von Wittelsbach and Duke Friedrich von Habsburg (details, modes and reasons not communicated in the QW). On basis of this expiation, Duke Friedrich is said to have been released from imprisonment. Obviously, the conspiracy failed.

(b) Unterwalden continued to be *dependent directly upon the Empire, or, rather, the Emperor* (even after 1346, i.e. the fall of Emperor Ludwig). I.e.: *The Cantonal Assembly and its Chairman* (MHG. ‘*Amman[n]*’) in Unterwalden continue to be capable of acting and to be autonomous until 1350 and even after the negotiation and lifting of ecclesiastical bans. The inhabitants of Unterwalden had *acted as the Cantonal Assembly* following King or, rather, Emperor Ludwig against the Pope and had supported Schwyz *against the Catholic Church* in the dispute of the communal boundaries with the monastery of Einsiedeln.

(c) The fact of Unterwalden’s *direct dependency upon the Holy Roman Empire* shows: the Habsburgian documents of 1326 (Appendix 6.7 in Hinz 2016) and 1334 (Appendix 6.9 therein, i.e. the corresponding documents in the State Archive in Vienna) are probably *counterfeits*.

(d) The Church reacted obviously only to points of view related to ecclesiastical law and to territorial claims of the Monastery of Einsiedeln but not to political and economical questions only of interest to Habsburg.

(e) According to Point 3 above<sup>26</sup>, *all* the inhabitants of the Valley of Unterwalden are members of the *community assembly* (= *Cantonal Assembly*), i.e. (= MHG. ‘und’ = ‘und zwar’ in modern German, ‘that means’) in the ecclesiastically organized *parish churches, daughter churches and chapels* in the *central*

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<sup>26</sup> Cf the German text in QWI/3:563 [=572\* Doc. 890, 1350 March 10]: “*Bischof Ulrich von Konstanz löst im Auftrage des apostolischen Stuhles Ulrich von Wolfenschießen, Ammann, und die ganze Gemeinde des Tales Unterwalden und [sc. zwar] alle Personen beiderlei Geschlechts, die zu den Pfarrkirchen in Buochs<sup>4</sup>, Stans<sup>4</sup>, Kerns<sup>5</sup>, Alpnach<sup>5</sup>, Sarnen<sup>5</sup>, Sachseln<sup>5</sup>, Giswil<sup>5</sup> und Lungern<sup>5</sup> und zu ihren Tochterkirchen und Kapellen gehören, ... vom Interdikt und anderen Strafen..., die aus Anlaß der Prozesse des apostolischen Stuhles gegen Ludwig den Bayern verhängt worden waren...*“ *Notes* (eds. QW): <sup>4</sup>NW; <sup>5</sup>OW.

*places* (Stans and Sarnen) as well as in the *villages* in Nidwalden (NW) and Obwalden (OW), *men and women*. According to document (1) *all the inhabitants between 14 and 70 years of age* are implied to do a specified (mild) penitence. Nevertheless, probably only men have voting rights. This means: the Cantonal Assembly (*adult males only*) and the inhabitants belonging to the respective parishes (adult male and female inhabitants) are *correlated and corresponding, but not identical, sets of inhabitants*. In any case, the Pope imputes that nominally *all the adult inhabitants* did follow Emperor Ludwig IV in the sense of *loyalty as vassals directly dependent upon the Emperor or, rather, the Empire; also as members of the parish*. They are considered to be *politically responsible for their actions without exception*.

(f) This analysis holds implicitly and explicitly **also** for the cantons (*MHG. land, sg.*) of **Schwyz and Uri**.

## 12. A DOCUMENT (1261) DIRECTED TO THE CANTONAL ASSEMBLY OF NIDWALDEN CONCERNING FISHING RIGHTS

QWI/1:408f. [= Doc. 897]. 1261 September 21. Luzern.

Commentary E.H.:

1. Ecclesiastical document dating from 1261.

2. “[Directed] to all the members of the parish in Stans and Buochs (L. ‘in Stans et in... Buochs parochianis universis’)” : in the sense of ‘all the individual persons’ (responsible for their individual actions).

3. “[Admonishing] your assembly (L. ‘universitatem vestram’)” : in the sense of ‘Communal or, rather, Cantonal Assembly as the organization of decision-making’ (e.g., collective decisions concerning fishing rights or water utilization (exploitation) and the corresponding responsibility).

4. The utilization or exploitation of water seems to have been disputed.

5. In principle, I postulate a correspondence or semantic equivalence (⇔):

‘all parish members (*presumably men, women, [children?]*)’

⇔ ‘your Cantonal Assembly (*probably the adult males only who have the right of voting*)’.

The case or, rather, the problem (rights of fishing) connects both the sets of inhabitants.

6. The document has only been edited as an abbreviated paraphrase in QW with some isolated terms in Latin. But cf ‘Geschichtsfreund’, I:59 (Googlebook).

## 13. THE CANTONAL ASSEMBLIES OF SARNEN (UNTERWALDEN) AND SCHWYZ IN 1247

The *interpretation of Pope Innocent IV’s Bull* is possible without any vicious circle based on the contents of the document alone: the inhabitants in demographic terms [the population *excommunicated*] vs. the communal-political or-

ganization [communities *interdicted*] vs. ecclesiastical membership [in terms of canonical law processes depending upon the *diocese* of Constance and being *there published*]. The papal bull mentions Unterwalden ('Sarnen') and Schwyz (the Letter of Freedom of 1240 is still archived or, rather, preserved there) and proves a Letter of Freedom also for Unterwalden as demonstrated by my analysis of the terminology. In principle, the situation in 1247 corresponds to that in 1350: The whole population *as well as* the Cantonal Assembly, in its function as the political local or regional organization of decision-making, are implied. The direct dependency upon the empire had been decreed in factual and legal terms by the respective Emperors (Friedrich II, Ludwig IV). The consequences in terms of canonical law and ecclesiastical policy are the threatened or proclaimed punishments or, respectively, their conditional lifting.

#### 14. A COMPARISON OF THE ADDRESSES: LETTERS OF PROHIBITION (1234 AND 1299) AND THE MODEL LETTER OF PRIVILEGES FOR SCHWYZ (BEFORE 1282)

The Letters of Prohibition are directed 'to all the men (or people) in **Uri**' (Lat. '*hominibus universis*', 1234, Letter by King Heinrich VII von Staufen) and 'to all the men (in the sexual sense)...[i.e.] to the Chairmen (MHG. 'Ammann', sg.) and the whole Cantonal Assembly in **Schwyz**' (Lat. *viris... ministris totique universitati in Swicia*', 1299, Letter by Queen Elisabeth, the wife of King Albrecht von Habsburg). The implication is: only the adult male persons are voting members in the Cantonal Assembly.

King Rudolf I's Model Letter for all the inhabitants of the Valley of **Schwyz** reads [QW I/1:622 = Doc 1360, direct addressee ('you') unknown, probably the King's legal administrator; cf *here* Ch 4]:

"We ... do the favor to our faithful followers, all the inhabitants of the Valley of Schwyz, that with regard to legal procedures, initiated or to be initiated by whomsoever, against these inhabitants [independent of] which social status they might be assigned to, they cannot or must not be put on trial before any other person than before us or our sons or the judge of the valley. Therefore, you shall not tolerate, by any means, that these same faithful followers of ours shall be compelled to stand trial before other judges outside of the valley itself..."

*Commentary (E.H.):*

(1) *The decree holds for all the inhabitants of Schwyz ('universis... incolis') independent of their social or, rather, socioeconomic status ('quocunq[ue] nomine censeantur'). In detail, cf here Ch 4 (Comm.).*

(2) *The decree concerns legal procedures which are permitted to take place only before the judge of the valley ('vallis iudex'), the King himself or his sons. The judge of the valley is probably the Chairman of the Cantonal Assembly (MHG. 'ammann', L. 'minister'). Cf the Letters of Prohibition of 1234 and, especially, of 1299: in this sense, **legal procedures** of taxation or, rather, seizure are initiated by the Chairman or the Sub-chairmen of the Cantonal Assembly of Schwyz (and Uri).*

(3) *Terminology: Cf Federal Charter 1291 §19 ('conditio nominis') and §20 ('iudex'); Decree by King Rudolf I 1291 ('conditio', 'iudex'). Cf here Ch 17.*

The model letter proves: membership in the Cantonal Assembly is independent of the social or socioeconomic status. The Cantonal Assembly is also the locality of legal procedures (cf the office title in the Letters of Prohibition, 1234 and 1299; cf the Decisions by the Cantonal Assembly and my Commentary *here* Ch 16 (3)).

The composition of the Cantonal Assembly (*G.* 'Landsgemeinde', *Lat.* 'universitas' [*or* 'universi homines' = 'all humble / ordinary male persons'], *MHG.* 'landlüte gemeinlich' = 'countrymen as the Cantonal Assembly'), from the 13<sup>th</sup> till the middle of the 14<sup>th</sup> centuries, holds according to my opinion for:

(a) Unterwalden: 1247 (Papal Bull by Innocent I), 1261 (Letter to Cantonal Assembly on fishing rights), 1350 (Redemption from excommunication & interdict, several documents),

(b) Schwyz: 1247 (Papal Bull by Innocent I), 1282 (Model Letter by King Rudolf I in support of local judges), 1299 (Letter of Prohibition by Queen Elisabeth), 1350 (Redemption from excommunication & interdict, several documents),

(c) Uri: 1231 (Letter of Freedom by King Heinrich VII von Staufen), 1234 (Letter of Prohibition by King Heinrich VII von Staufen), 1274 Letter of Freedom by King Rudolf I von Habsburg, 1350 (Redemption from excommunication & interdict, documents lost but implied).

## **15. THE COMPOSITION OF THE CANTONAL ASSEMBLY AND THE PERIODICITY OF SWEARING-IN ITS MEMBERS ACCORDING TO THE FEDERAL CHARTER OF 1351 WITH ZÜRICH**

The Federal Charter of 1351 (between Uri, Schwyz, Unterwalden, Luzern, Zürich) details membership and periodicity of the swearing-in in the Cantonal Assemblies (to be renewed every 10 yrs). The Federal Charter of 1352 with Zug is similar. The Federal Charter of 1353 (between Uri, Schwyz, Unterwalden, Luzern, Zürich, Bern) details membership and periodicity of the swearing-in in the Cantonal Assemblies (every 5 yrs to be renewed).

From the Federal Charter of 1351 May 1 (alliance between Uri, Schwyz, Unterwalden, Luzern and Zürich). Original. State Archive Stans, Nidwalden. Transl. E.H. (2016, Ch IV.2.2).

### *(§24) Membership in the confederation and confirmation of rights*

‘(15) One shall know especially that we have reached an understanding and agreement with regard to all those who are included in this confederation (alliance) that every town, every country, every village, every farm, as far as anybody belongs to it [i.e.] who is in this confederation (alliance), shall completely conserve their freedoms, their privileges (or: written legal concessions), their

rights and their good customs as they have received them as traditions up to now, so that nobody shall restrict or restrain another person, without any conditions.’

*Conceptual analysis:*

- (1) *Membership in the confederation: the inhabitants of the named territories in: town / country / village / farm / ‘whosoever belongs to it’ = each man or also his family (women, children)? The territory is marked in the Federal Charter of 1351, §4. Within this territory, laws, decision-making, swearing-in of the population and the authority of the Cantonal Assembly hold.*
- (2) *The corresponding local courts of justice, freedoms, privileges (i.e. the written legal documents or concessions), rights and good customs shall continue to be valid.*

*(§25) Repetition of the oath to the alliance  
every 10 years by each male over 16 years of age*

‘(16) It is also especially agreed upon so that this confederation (alliance) is more and more raised to the awareness of young and old people and of all those who belong to it: that – under oath – this promise (vow) and alliance is elucidated and is renewed, in words, in writing, in swearing and with all those things that are necessary therefore, every ten years at the very beginning of May, before or after, without restriction, as anybody among us, the aforementioned towns or countries, will demand from the other person. Whichsoever man or boy is over 16 years of age at that point in time shall then swear to keep this alliance permanently, in eternity, in all the points as they are written in this letter, without restriction.’

*Conceptual analysis*

- (1) *All the men or boys over 16 years of age are sworn in, on this alliance. Swearing-in is periodically repeated, more or less, every 10 years. The Federal Charter with Bern of 1353 prescribes a repetition every 5 years. Obviously, the text is read out (‘in writing’), is repeated word for word by everybody (‘in words’) as an oath (‘in swearing’).*
- (2) *Function of the swearing: the sworn alliance shall be valid eternally and permanently. It is to be kept eternally by everybody. It shall raise to consciousness<sup>27</sup> by renewal of the oath and become elucidated<sup>28</sup>.*
- (3) *The oath or promise is to be given (and is expected to be given) mutually (‘as anybody among us, the aforementioned towns or countries, will demand it from the other person’).*

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<sup>27</sup> MHG. ‘*jemer mer desto wissenlicher si*’ = ‘the more often the more becoming conscious’.

<sup>28</sup> MHG. ‘*diese gel(i)ubt und buntn(i)uss... erluchten... s(i)uln*’ = ‘this vow and alliance shall become elucidated’.

(4) *My reconstruction: The mutual oath is obviously to be given to the Confederates, to the countries (länder) and to the constitutional text of the Federal Charter.*

## 16. THE INTEGRATION OF DIFFERENT SOCIAL STRATA WITHIN THE CANTONAL ASSEMBLY

The question was if all the different social strata were integrated as members of the Cantonal Assembly. Cf the documents quoted here.

(1) *Letter of Freedom 1231 for Uri (cf QWI/1:152):*

‘Universis hominibus’ (= addressed ‘to all the male persons / countrymen / humble people / serfs [Niermeyer 1976]’);

‘vestram universitatem’ (= ‘your Cantonal Assembly’).

(2) *Letter of Freedom 1240 for Schwyz (and implied and evidenced for Unterwalden and Uri):*

‘Universis hominibus’ (= addressed ‘to all the male persons / countrymen / humble people / serfs’),

‘sub alas nostras et imperii, sicut tenebamini, confug(i)endo tamquam homines liberi, qui solum ad nos et imperii respectum debebatis habere’ = ‘You seek refuge under our and the empire’s wings, according [to your position in which] you were conserved, as free men, who only had to respect us and the empire’.

(3) *Model Letter before 1282 [Privilege of Local Jurisdiction for Schwyz]: Local jurisdiction is conceded to every inhabitant in Schwyz independent of his socioeconomic status:*

‘quocunque nomine censeantur’ = ‘whatever social / socioeconomic status he is assigned to’.

*The latter expression might refer to social and economic dependency or, rather, obligation. In favor of the tenet of the comprehensive integration of the total population in the Cantonal Assembly as the place of jurisdiction cf Hinz 2016 I.4 [Register], 1338 Nov 11 [Doc 231, §2: ‘auf der Weide Recht sprechen’ = ‘to decide according to the law on the meadow (as the field of assembly)’] and 1373 May 15 [Kothing S. 271, §4, or Hinz 2016:71f: ‘den Landleuten, die dann alle zusammen dabei sind’ = ‘to the countrymen who are then all together present (in their function as co-judges when sanctioning the unlawful appropriation of another person’s property)’].*

(4) *Letter of Prohibition (of taxation of the Monastery of Einsiedeln, Schwyz) of 1299:*

‘Officialibus seu ministris et totique universitati’ = [addressed] ‘to the office holders or Chairmen and the whole Cantonal Assembly’.



*Cf Ch 14 Comm (2): The Cantonal Assembly seems also to be the local court of justice. Seizure, in the context of taxation, is a legal issue.*

- (5) *On the other hand, the Federal Charter of 1291, §19, speaks of an obligation to adequate service in comparison with an older Federal Charter [not preserved]:*

*‘Ita tamen, quod quilibet homo iuxta sui nominis conditionem domino suo convenienter subesse teneatur et servire’ = ‘but in such a way that everybody (or every male person / countryman / humble person / commoner) shall be conveniently (fittingly or in agreement?) subordinated to his lord in accordance with his rank and shall serve him.’*

*The context implies membership in the Cantonal Assembly [§18]. The concessive form could point to a change in the conditions of the Cantonal Confederation: King Rudolf I’s Decree of 1291 February 19 or, rather, the events in Luzern in 1291? I discuss the possibility that ‘service for the King’ might be meant (Hinz 2016).*

- (6) *Cf Hinz 2016, Anhang 1b, Three-year-long alliance between Zürich, Uri, Schwyz 1291 October 16 (§2, 3): Servants or bondsmen shall serve according to law as before:*

*‘If a lord has a man who belongs to him... that [man] shall serve him as accustomed before the time [of the death] of the King and according to law’.*

*They shall be protected against excessive pressure.*

- (7) *In 1316 March 26, the Imperial Court and King Ludwig von Wittelsbach confiscated the possessions and revenues of, and prohibited all services for, the Habsburgians. All people still serving the Habsburgians become citizens or, rather, free subjects directly dependent upon the King and the Empire. Since then, services are not mentioned anymore in the Federal Charters.*
- (8) *In 1324 May 5, King Ludwig von Wittelsbach reissues the Decree of 1316 and establishes direct royal legal protection of the population of Schwyz, Uri and Unterwalden (cf here Ch 7.4 [and 7.3]).*
- (9) *The Federal Charters of 1351 (with Zürich), 1352 (with Zug) and 1353 (with Bern) clearly refer to all the adult male population of over 16 years of age as members of the Cantonal Assembly.*
- (10) *The temporal contingency between the Federal Charter of 1351 and the ecclesiastical documentation of 1350 (cf here Ch 11) but reaching back at least to 1324 May (if not to 1316 March and earlier) allows for a safe historical reconstruction. A very similar ecclesiastical or, rather, legal frame also holds for the comprehension of the Papal Bull of 1247: the correlation of community and demography.*
- (11) *‘Rich’ and ‘poor’ people are sometimes mentioned in the documents, e.g. an emergency meeting of “rich and poor people” in Luzern in response and in defense against the upheaval of pro-Habsburgians in 1343.*

## 17. POPULATION SEGMENTS AND THE CANTONAL ASSEMBLY: QUANTORS / COMPONENTIAL ANALYSES

Universal quantifier = ‘all’

Fed. Charter 1291, §27:

*‘iurati... universi’ = ‘all... confederates’ referring to ‘universitas’ (‘cantonal assembly’, G. [Lands]gemeinde), §3, §14, §30. Cf Hinz 2016.*

Entry from King Rudolf I’s Book of Formulas (dated *Before 1282*).

*‘[only local jurisdiction for] all the inhabitants of the Valley of Schwyz... whichever social status they are assigned to’. I interpret this information not only as referring to jurisdiction but also to the locality of jurisdiction (the Cantonal Assembly) and the demographic perimeter of the Cantonal Assembly as the locality of jurisdiction: ‘all inhabitants’.*

*Source: The document itself is not preserved but the Book of King Rudolf I’s Letter Formulas contains this information together with the address ‘Valley of Schwyz’. Dating according to the editors of QW. Cf here Ch 4.*

On the terminology in the Fed Ch 1291, §19:

*‘quilibet homo iuxta sui nominis conditionem’ = ‘every man according to the condition of his social status’.*

*In the Fed Ch 1291 (§2), its authors are specified as:*

*‘homines vallis Uraniae universitasque de Switz ac communitas<sup>29</sup> hominum Intramontanorum Vallis Inferioris’ = ‘the men of the Valley of Uri and the Cantonal Assembly of Schwyz and the (sworn) association of men from the Central Forest of the Lower Valley (i.e. the Kernswald <?> of the lower part of the Engelberg Aa)’. I.e., ‘homines’ (‘the men’ = ‘all the men’) are listed on the same level as ‘universitas’ (‘Cantonal Assembly’) for the neighboring country.*

Edict of Rudolf I in 1291 [Tschudi’s copy]:

*‘universis hominibus Vallis de Untervvalden liberae Conditionis existentibus’ = ‘[addressed] to all the men of the Valley of Unterwalden who are of free social status’*

*vs. ‘aliquis servilis conditionis existens’ = ‘a [person] of unfree social status (i.e. as a bondsman)’.*

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<sup>29</sup> Cf Niermeyer 1976:223/224: ‘*communitas*’ = inter alia, ‘land subject to rights in common’; ‘sworn association’; ‘the common people’; ‘joint possession in the hands of a religious community’. The term appears in the treaty between the City of Bern and the *communitas hominum vallis de Hasle* (Hasli Valley, with the Church of Meiringen that belonged to the Emperor). It might refer to a smaller or more ad hoc assembly of free commoners. Cf Federal Charter of 1291, in: Hinz 2016, § 14; § 30: all three Cantons are finally called *universitas*.

*Cf Tab 1 & 2 below. Originally, 'universis' might be considered here as a subset of all the inhabitants of Unterwalden. Cf Hinz 2016, Ch 0.1(5).*

The earliest evidence of the universal quantifier ('all') is contained in the addresses of the so-called "Letters of Freedom" 1231, 1240 (as well as 1309).

*'universis hominibus vallis de – [Name]' = 'to all the men of the valley of –'*  
(converted into a general formula of address).

Evidence in the Letter of Freedom for Uri (1231)(QWI/1:152):

*'universis hominibus...' ('to all the men...') = 'vestram universitatem' ('your Cantonal Assembly').*

Evidence in the Letter of Prohibition (1234):

*King Heinrich VII (von Staufen) orders the Ammann and all the men of Uri to refrain from the taxation of the Monastery of Wettingen (QWI/1:164 = Doc. 349, 1234 April 26. Hagenau):*

*'fidelibus suis ministro et universis hominibus Uraniae...' =  
'to his vassals, the Ammann (elected Chairman) and all the men of [the Valley of] Uri.'*

*The evidence quoted so far permits us to consider 'universitas' ('Cantonal Assembly', nominative case) as being equivalent ( $\Leftrightarrow$ ) to 'universi homines' ('All men', nominative case), especially, since the Ammann is listed as the representative of the Cantonal Assembly:*

<p><i>[Lat.] Universi homines <math>\Leftrightarrow</math> Universitas = [Am.] 'All the Men' <math>\Leftrightarrow</math> 'Cantonal Assembly' (G. Landsgemeinde)</i></p>
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Evidence in the Letters of Prohibition (1299):

*QW I/2:88 [Doc. 191]. 1299 January 13. Nürnberg: Queen Elisabeth intervenes because of illegal taxation of the Nuns' Monastery of Steinen.*

First letter:

*viris providis et discretis... officialibus seu ministris totique universitati in Swicia = 'to the cautious and discrete men... (sc. i.e., E.H.) to the office holders or chairmen ('Ammänner', pl.) and the whole Cantonal Assembly in Schwyz'.*

Second letter:

*quod tu landenman ad ordinacionem officialium seu ministrorum memoratas sanctimoniales ob huiusmodi precarie exaccionem ... inpignoraveris* = ‘that you, Landammann (Country Chairman), would have seized in execution the mentioned nuns because of the demand for such a tax, on the order of office holders or Chairmen (of the Cantonal Assembly; G. ‘Ammänner’, pl.)’.

*The personally addressed ‘Landammann’ (‘landenman’) as high executive and the ‘office holders or Ammänner’ (Chairmen) (‘officialium seu ministrorum’, gen. pl.) as responsible persons, together with the ‘whole Cantonal Assembly’ (‘totique universitati’) are named and terminologically distinguished in both letters. The expression ‘viris’ (‘[addressed] to the men’) points to the fact that the whole (adult) male population is integrated in the community or, rather, in the Cantonal Assembly (‘totique universitati’) and that, in fact, the population in the sense of the assembly of the community, and not the community as a corporation only (in the sense of the community administration, L. ‘officialium’, gen. pl.), is meant. The safety of the nuns is recommended to the men (‘viris’) by the Queen. That fact underlines the qualifications in the address (‘to the cautious and discrete men’).*

*The evidence presented gives us the following equivalence relationship (⇔).*

<p><i>Lat. Viri ⇔ [tota] universitas (+ minister) ⇔ universi homines = Am. Sexually adult men ⇔ the [whole] Cantonal Assembly (+ Chairman) ⇔ all the men (or: countrymen)</i></p>
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*We are allowed to assume that the members of the Cantonal Assembly consist of all the adult male persons of the respective ‘country’ (MHG. ‘land’, Mod. G. ‘Kanton’). These persons have a right of voting. The Fed Ch of 1351 says men over 16 yrs of age; F.V. Schmid 1788-90 (similar to the ecclesiastical documents quoted in Ch 11 here) says men over 14 yrs of age in Uri; Brun’s Constitution of Zürich says men over 20 yrs of age.*

**TAB. 1: SEMANTIC FEATURE ANALYSIS:  
ALL THE MALE ADULTS INCLUDED IN THE CANTONAL ASSEMBLY**

All brackets E.H.

Letter by King Ludwig, 1324 May 4, Frankfurt/Main (QWI/2:602 = Doc 1198):  
*'Prudentibus viris... ⇔ vniversis hominibus vallis in Switze...'* =  
*'To the brave (or: judicious) male persons... ⇔ [i.e.] to all the countrymen in  
 Schwyz'. 'Prudentibus' implying adulthood (sexual maturity)?*

Letter of Freedom 1274 for Uri:  
*'Prudentibus viris ⇔ ministro et universitati vallis Uraniae'* =  
*'To the brave (or: judicious) men, ⇔ [i.e.] the Ammann (elected Chairman)  
 and the Cantonal Assembly of the Valley of Uri'.*

Letter of Prohibition of Taxation 1299 for Schwyz:  
 Lat. *'Viris ⇔ Officialibus totique universitati'* =  
 Am. *'To the men ⇔ [i.e.] to the community officials  
 and the whole Cantonal Assembly'*

Viris* <i>Male +Adult (± Vassal)</i> [1324]		universis hominibus* <i>All-Q + Male + Adult + Low Social Status</i>
Viris <i>Male +Adult (± Vassal)</i> [1274]	Ministro <i>Official + Community</i>	et universitati vallis <i>Add + Assembly + Male + Adult + Locality</i>
Viris <i>Male +Adult (± Vassal)</i> [1299]	Officialibus <i>Official + Community</i>	totique universitati <i>Add + All-Q + Assem- bly + Male + Adult</i>

\* Cf Niermeyer 1976; Gaffiot 1934.— First column: general address; second column: administrative personnel; third column: assembly membership. Term / *Semantic features: All-Q = universal quantifier / Add = add to the addressees.*

**TAB. 2: SEMANTIC COMPONENTS OF SOCIAL STATUS  
(FEDERAL CHARTER 1291, DECREE OF RUDOLF I 1291, AND  
ENTRY IN KING RUDOLF I'S BOOK OF FORMULAS BEFORE 1282):**

<i>Conditio nominis</i>	<i>Conditio libera</i>	<i>Free person</i>
<i>Term of social status</i>	<i>Conditio servilis</i>	<i>Bondsman / Servant</i>

*'Nomen'* = *'social status'*

*'Conditio'* = *'the specification/characteristic of the social state'*

**TAB. 3: FEATURES OF THE *SWORN* CANTONAL ASSEMBLY  
(FEDERAL CHARTER OF 1351)**

MEMBERSHIP: ALL THOSE INCLUDED IN THIS ALLIANCE	Town / Country / Village / Farm / Who belongs to it (Fed Ch 1351 §4 marks the geographical borders)
LEGAL ORDER	Freedoms / Privileges / Rights / Good customs conserved
THIS ALLIANCE RAISED TO AWARENESS AND RENEWED	Text elucidated; oath renewed every 10 yrs, at beginning of May
SWEARING-IN	All males over 16 yrs of age / Text read out, repeated by all, as a promise to keep the alliance permanently
CONTENTS OF THE OATH	Whole text (?) of the Federal Charter of 1351, e.g. §2-3 Note the oath of 1470 on Unterwalden*: To the benefit & esteem of the country; mutual advice, help, protection “in all we have a right to”; no foreign courts

\* “Weißes Buch zu Sarnen”; *here* Ch 21 (a)-(d). There seems to be an oath to the Cantonal Assembly (renewed every 5 yrs) in addition to the oaths on the different Federal Charters.

**TAB. 4: SEMANTIC ANALYSIS:  
ACCEPTABLE (CONFEDERATES) VS. UNACCEPTABLE (OUTSIDERS) *JUDGES***

<p><i>Coniurati / Conspirati</i> = ‘Confederates’ (G. ‘Eidgenossen’) (FedCh 1291)</p> <p><i>Wir, die lantl(i)ute und eitgenoze [von Ure, von Swits und von Under- walden]</i> = ‘We, the countrymen and confederates [of Uri, Schwyz, Unterwalden]’ (FedCh 1315 §25)</p>	<p><i>Non conprovinciales</i> = ‘no fellow countrymen’</p> <p><i>Non incolae</i> = ‘no co-inhabitant (in locality)’ (FedCh 1291)</p> <p><i>Usl(i)uten</i> = ‘outsiders’ [StA SZ 1294 &lt;5&gt;(2), &lt;11&gt;(7)]</p> <p><i>Unser lantman nicht sei</i> = ‘(who) is not our fellow countryman’ (FedCh 1315 §16);</p> <p><i>Dien uzeren</i> = ‘the outsiders’ (FedCh 1315 §§ 13, 14).</p>
‘Confederates/countrymen’ as judges acceptable	‘Foreigners/outsiders’ as judges not acceptable

**TAB. 5: CORRELATION OF THE DEMOGRAPHIC SETS**  
(COMMUNITY, CANTONAL ASSEMBLY, PARISH CHURCHES, ETC, MEMBERS)

<p>TOTAL COMMUNITY OF UNTERWALDEN</p> <p>[also valid for Schwyz &amp; Uri in 1350]</p>	<p>CANTONAL ASSEMBLY [1350]</p> <p><i>Chairman [MHG. amman, G. Ammann, L. minister] &amp; Cantonal Assembly [MHG. landliut gemeinlich, G. Lands-gemeinde, L. universitas]</i></p> <p>Interdict [1247] imposed on the community of <i>Sarnen</i> [i.e. the organization]*</p>	<p>MEMBERS</p> <p>All the [adult] men (voting rights implied)</p>
	<p>PARISH CHURCHES, DAUGHTER CHURCHES, CHAPELS [1350]</p> <p>Excommunication [1247] of (all) the (adult?) inhabitants of <i>Sarnen</i> [i.e. the population]*</p>	<p>All the men and women [between 14-70 yrs of age]</p>

\* Holds also for *Schwyz* in 1247.

The Cantonal Assembly (adult male persons) is, thus, to be considered as a *subset* of the total community (all the male and female persons between 14-70 yrs of age). According to my analysis, the situation of 1350 in Unterwalden and Schwyz and Uri [cf *here* Ch 11, Doc (1)-(3), Redemption from Excommunication and Interdiction], *corresponds* to the situation of 1247 in Sarnen (Unterwalden) and Schwyz [cf *here* Ch 1.1, Decree of Pope Innocent IV: Threat of Excommunication and Interdiction].

**TAB. 6: TAXONOMY OF SOCIAL STATUSES IN THE CANTONAL ASSEMBLY**  
ACCORDING TO TSCHUDI (DECREE OF RUDOLF I 1291; cf Ch 5)

LANDSGEMEINDE (CANTONAL ASSEMBLY) = LANDLEUTE (COUNTRYMEN)	
Freie (free persons)	Unfreie = Leibeigene (unfree persons = bondsmen; serfs)
Edle (noblemen)	Unedle (non-noblemen)

*PART V:*  
*FUNCTIONS OF THE CANTONAL ASSEMBLY*

**18. SOCIAL PRIMITIVES:  
ORDERING POLITICAL-SOCIAL RELATIONSHIPS  
AND THE FORMATION OF SOCIAL ORGANIZATIONS\***

Contents, extent, and regulation of living side by side or together define political-social relationships. A regulation can be enforced by a person in power against the will of another person or, rather, other persons in general (definition of ‘power’).

Political-social relationships are *conceptually characterized by*:

- (a) decisions (or, respectively, regulating actions),
- (b) their consequences,
- (c) their validity (legitimacy),
- (d) their semantic content,
- (e) the recruitment of the functionaries in power as well as
- (f) the recruitment of those subjugated to or participating in (the exercise of) power.

*Consciousness* can order political-social relationships:

- (a) It constitutes the *spirit of affiliation (solidarity)* of certain people in the sense of social and territorial identity.
- (b) It constitutes these people as *being entitled and obliged* in the sense of belonging to a determined community of law.
- (c) It constitutes the *sovereign who authorizes and makes the decision(s)*. ‘Sovereign’ is defined as *political participation, autonomous institution of order or self-determination (the people or the ruler as a sovereign) or simply self-organization*.

*Primitives* are elementary or basic *concepts*. In this case they represent political-social *actions* that *form political-social organizations and order political-social relationships*. The social primitives listed here are not exhaustive<sup>30</sup>.

*A = agent; R = recipient; Obj = object/theme (topic); H = action (act); Z = goal (of action); I = instrumental act; Q = features of qualification. Often: H = H\* + Obj (e.g., document or its content).*

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<sup>30</sup> Cf Roger C. Schank & Jaime Carbonell, “The Gettysburg Address. Representing Social and Political Acts” (Yale University, Dept. Computer Science, Research Report #127, Jan 1978). Stimulating a socio-evolutionary consideration of Jürgen Habermas, “Vorbereitende Bemerkungen zu einer Theorie der kommunikativen Kompetenz” in: Jürgen Habermas & Niklas Luhmann [Hsgb.], “Theorie der Gesellschaft oder Sozialtechnologie – Was leistet Systemforschung?”, Frankfurt am Main 1978: Suhrkamp Verlag.

\* Ch 18 and 19 are translated from my book “Landsgemeinde” (Hinze 2016).



## 1: MEETING OF THE CANTONAL ASSEMBLY AS A DECISION-MAKING BODY

Some conditions for the meeting of the Cantonal Assembly are specified in the Federal Charter of 1351 with Zürich and in the formula of the oath as adopted by Unterwalden in 1470 – to be reconstructed as rules or, rather, as instrumental acts: the regulation of participation, summoning, voting and decision-making, e.g. unanimous vs. majority votes; points of agenda in terms of content.

Unterwalden: *here* Ch 3 (8) [1432]; Schwyz: cf Hinz 2016, Ch I.4 [1339 Juni 24 etc.], Ch 0.1 (Legal privilege by Rudolf I [1291 Febr] incl. hypotheses of comprehension; cf *here* Ch 5).

A = all voting members of the Cantonal Assembly. Typical actions  $H_{1,n}$  = discussion; decision-making (vote); decreeing; sealing; publishing. Obj = decision as content. Cf the example in the Fed Ch of 1315: banishment; revocation of the banishment: ‘with joint (general) decision (of the Cantonal Assembly)’.

## 2: MUTUAL SWEARING OF AN OATH ON THE CONSTITUTION

A = Cantonal Assembly (Q = all men over 16 years of age; living in the respective valleys);  $H_1$  = swearing;  $R_1$  = to the saints; I = with lifted hands;  $H_2$  = repeating the words;  $R_2$  = with reference to the fellow countrymen and to the country [‘canton’] as well as to the constitutional text; Obj/Theme = mutual help and safeguarding. Cf Hinz 2016, Ch I.1. Under that oath the Cantonal Assembly is constitutional.

## 3: POLITICAL AND SOCIAL GOALS OF SELF-ORGANIZATION

Terminology: Z = ‘*peace and calmness (tranquillity)*’; ‘*respect and self-respect*’, ‘*common utility*’. Relatively abstract and general values are specified as goals of the self-organization of the population.

## 4: ISSUING A LEGAL ORDER (ALSO AS AN ALLIANCE OR CONSTITUTION)

A/R = all the members of the Cantonal Assembly. H = Decreeing legal norms (= Obj).

The dimensions of this legal order imply: recruitment of judges; concept of justice; establishing legal safety and legal peace; individual vs. intercommunal rights. I.e. norms on how to act as Cantonal Assembly/-ies and as Confed-erate(s). Especially, the legal decisions of the Cantonal Assembly refer to rights of land tenure and rights of usufruct of (communal) terrain but also to physical and psychological aggression.

As treaties of alliance of the different countries and cities, the Federal Charters (= Obj) belong to these decrees. A / R = All the Cantonal or Citizens’ Assemblies of the countries or cities joined in this alliance.

## 5: DISCUSSION (OF THE CANTONAL ASSEMBLY)

A = all the members of the Cantonal Assembly; H = discussion of the topic / theme (= Obj<sub>1</sub>) under consideration. Eventually, I = elaboration of a bill/draft for vote (= Obj<sub>2</sub>).

#### 6: ELABORATION OF A DRAFT FOR DECISION

A = e.g., chairmen, representative of the Cantonal Assembly; H = written elaboration of a draft/bill for vote (= Obj) [documented for the elaboration of the formula of the oath in Unterwalden, 1470].

#### 7: DECISION-MAKING = VOTING ON A DRAFT (FOR DECISION)

A = all the members of the Cantonal Assembly; H = acceptance or rejection of the bill / draft for voting [result: unanimous vs. majority vote]

#### 8: AUTHORIZATION OF DECISIONS BY SWEARING

A = all the members of the Cantonal Assembly. Cantonal Assemblies specified by name. H = swearing on the decision (= Obj). This form of swearing should be differentiated from the form of the mutual oath (No. 2).

Authorization includes certification, sealing and publication of the document.

#### 9: PROCEDURE OF WRITING DOWN AS A DOCUMENT (OR ISSUING IT)

A = on the order/behalf of the Cantonal Assembly, for example the 'Chairman'. Obj = document or written 'letter'. H = written version (for example on parchment).

#### 10: PROCEDURE OF AUTHENTICATION BY SEALING

A = (on the order of) the Cantonal Assembly, naming the authenticating organs, or e.g. the Chairman of the Cant Ass. H = sealing. Obj = document.

#### 11: PROCEDURE OF PUBLICATION

A = representatives of the Cantonal Assembly. H = publication of the resolution (=Obj). E.g. public reading; sending as a letter to neighboring communities; possibility of individual reading.

#### 12: ELECTION OF THE REPRESENTATIVE

A = probably all the members of the Cantonal Assembly. R = chairman; judge (councilors); representatives (messengers, 'intermediators' = G. 'Tagsatzung'). H = election; period = e.g. for 1 year. Cf the election of arbiters etc. in the Fed Ch of 1351, 1353 etc.

More abstract concepts, *procedurally explicated (procedural definitions)*, follow. They include legal (14A-D) or juridico-political actions, especially by the members of the Cantonal Assembly. A list of such actions follows.

#### 13: THE CONCEPT OF RULE DEFINED PROCEDURALLY

In this case, 'rule or government' refers to the King or Emperor and to the service for the Holy Roman Empire.

A = in principle, all the members of all the Cantonal Assemblies (plural!) of the corresponding alliance *recognizing* (foreign) rule, i.e. from outward. Formal

endorsement by the individual Cantonal Assemblies and the whole confederation is necessary for the recognition of any rule from outside.

R = [recipient; in favor of or against] the respective Lord (= King?).

H = ascertaining the fact of just rule: Q [of R] = no violence or injustice; only demanding services conserving health and respecting moral standards. Cf Fed Ch 1315. [In case of negation or doubt the Cantonal Assembly can reject or omit the swearing, or does not feel bound to the oath (cf the document of 1323 Oct 7, Beckenried: conditioned swearing before Count J. von Ahrberg instead of King Ludwig von Wittelsbach; cf *here* Ch 7.2)].

#### 14: THE CONCEPT OF LAW PROCEDURALLY DEFINED (AS LEGAL ORDER)

*Fixation of legal norms:*

Resolutions of the Cantonal Assembly with legal or constitutional character (e.g. Federal Charters). Conceptual distinctions: damage, differentiated according to persons or material objects. Restitution as a punishment or fine. Seizure or confiscation. Quarrel: individual vs. intercantonal.

*Recruitment of judges:*

A = all members of the Cantonal Assembly; R = judge; Q = free of corruption and local (i.e. fellow countryman); probably elected or determined by consensus. H = election.

*Obligation of a formal reporting* of a transgression – within the framework of the documents analyzed, substantiated only for the so-called Upheaval in Luzern (in 1343).

A = in principle, any member of the Cantonal Assembly (condition: under oath). H = reporting the legal transgression (R = before the Chairman or council or judge).

*Finding the judgement:*

A<sub>1</sub> = participant in the legal process or, rather, the person accused; H<sub>1</sub> = appearing of the legal participants in court (= R); A<sub>2</sub> = judge (and councilor); H<sub>2</sub> = sentence given by the judge or in court (legal resolution in court).

*Peace under the law:*

The legal resolution is valid and, if necessary, becomes pushed through by means of normative pressure i.e. becomes acknowledged.

#### 14.A: FINDING THE JUDGEMENT

A = actor: judge; H = application of legal norms (= Obj) to the legal case (in accord with Federal Charters or other decrees of the Cantonal Assembly) or R = (against or in favor of) the accused / complainant.

#### 14.B: LEGAL DECISIONS ARE IMPOSED BY NORMATIVE PRESSURE

A = all the confederates, or on their behalf in accordance with the judge; R = accused person; H = e.g. seeking agreement / mutual acceptance; enforcing the validity of the judgement (= Obj).

#### 14.C: EXILING, PUNISHING

A = judge (?), Cantonal Assembly or on behalf of the Cantonal Assembly; R = wrongdoer; H = Sentencing and executing the punishment.

#### 14.D: LIFTING THE BANISHMENT

A<sub>1</sub> = probably the whole Cantonal Assembly or on its behalf; H<sub>1</sub> = lifting the banishment by majority vote; H<sub>2</sub> = informing about the decision [A<sub>2</sub> = by messengers]; R = wrongdoer.

#### 15: THE CONCEPT OF IDENTITY PROCEDURALLY DEFINED

A / R = all the persons with voting rights in the Cantonal Assembly. Q = criteria of inclusion (membership): a. living together; terminology: ‘fellow countryman’, ‘fellow inhabitant’ from the respective Valleys. b. male persons past 16 years of age. H = swearing mutually to/on each other. Terminology: ‘swearing together’, ‘promise each other’ <as a procedure or as constituting the social identity and the nation in *statu nascendi* in the sociological and constitutional sense.>.

#### 16: THE CONCEPT OF SOCIAL SOLIDARITY PROCEDURALLY DEFINED

A / R = all the persons with voting rights in the Cantonal Assembly/-ies. H = help. Help = ‘to help each other, mutually, with life and goods, at one’s own cost’. According to the Federal Charter of 1332 eventually a formal procedure of voting (in the case of attack or, rather, defense) and summoning an ally if a whole community or valley is implied as a target.

#### 17: THE CONCEPT OF SOCIAL COHESION PROCEDURALLY DEFINED

Actors or persons concerned: all fellow countrymen, especially members of the Cantonal Assembly and their families [as well as people admitted and, sometimes, foreigners (guests)]. Actions: ‘obedience to / compliance with legitimate lords [Fed Ch of 1291 and 1315], norms, political and legal decisions taken by the Cantonal Assembly/Assemblies’. All the confederates help in arbitration or pushing through of legal decisions.

‘Norms’ (=‘Rights and obligations’) =<sub>df</sub> expected participation that determines living together. ‘Integration’ can be defined in terms of participation (Lang and Hinz 2002). The actions listed generate social cohesion. Cf Points 5, 12.

*My commentary: I show that a “nation” can be composed voluntarily. This holds only virtually; i.e., as a matter of fact, there are traditions, customs, communities of settlements that have developed in the course of time and, thus, form the basis of togetherness, sharedness and voluntariness. Voluntariness can be connected, in principle, with ‘la volonté générale’, operationalized by general voting, conceptualized in content as (political and social) self-organization. This idea of voluntariness is complemented by the idea of coercion or, rather, **normative pressure** in the sense of binding by oath (and the possibility of breaking the oath, i.e. betrayal) or helping, even at the risk of one’s own life.*

## 19. DIMENSIONS OF SELF-ORGANIZATION OF THE CANTONAL ASSEMBLY

From the register of legal decisions by the Cantonal Assembly of Schwyz (“Landbuch von Schwyz”), one can derive the following dimensions of traits concerning the self-organization of this canton, considering the Federal Charters of 1291 to 1353:

(a) The Cantonal Assembly *sets the laws in principle*; but it also settles *individual cases of conflict*.

(b) The Cantonal Assembly regulates the *law of individual possession, especially of land property as well as the individual right of usufruct of communal property*. The Cantonal Assembly of Schwyz abolishes (*especially foreign or, rather outsider*) *feudal tenure or, rather, manorialism, in 1389* (at least, a partial defeudalization).

(c) The Cantonal Assembly regulates *the inheritance of possessions, especially of real estate*. Restrictions in the extent of inheritable land property hold here (1294).

(d) The Cantonal Assembly supervises / watches over problems of tutelage / guardianship and minority and assumes the rights of the person of minor age if need be.

(e) Especially, the Cantonal Assembly restricts the role of the clergy and church (*secularization*): *the prohibition of donations of land to the church*; prohibition of legal processes, especially seizures, before ecclesiastical courts of justice outside of the canton(s). Attempts to seize land by means of ecclesiastical courts outside of the cantons are probable in the light of transferring real estates to monasteries, a fact that became forbidden from 1294 onwards, at least in Schwyz.

(f) The Cantonal Assembly or, rather, the cantons united in the corresponding treaty (Federal Charter) set the common laws for the whole territory, with some restrictions (*unification of the legal system*).

(g) The *territory is controlled* in political and social terms: by means of boundary markings and other subclassifying markings which serve, for example, as environmental protection.

(h) The rights *to use communal land* (G. ‘*allmende*’) relate to the pasture of cattle, the usufruct of water and firewood. Partially, the conflict with the church and the monasteries crystallizes here.

(i) In the long run, the Cantonal Assembly insists on the disputed *taxation of the monasteries* (cf 1294). A mechanism is suggested with the help of which the monasteries are brought under control: access to water, firewood, pasture, etc. in exchange of the payment of taxes only.

(j) The Cantonal Assembly sets *the right of taxation*. Thus, Schwyz seems to be well-ordered in terms of financial resources. The Cantonal Assembly prohibits paying its Chairman with taxes who otherwise would become motivated

by the payment of fines to himself. Part of the fines seems to be destined for the community.

(k) The Cantonal Assembly makes *political decisions*, inter alia *making laws, forming alliances and taking care of defense*. The Cantonal Assembly protects the boundary forest as an *installation of defense*. This is also an indication of the military structure of the country.

(m) The Federal Charters, e.g. of 1351 (with Zürich) and 1353 (with Bern) give information on *military planning capacities and reflections on military capacity in terms of troops*. Cf the additional treaties with one or the other city in supplementing the respective Federal Charter.

(n) According to the Federal Charters, starting with 1332 (with Luzern), the formal instrument of *calling onto the individual Cantonal Assemblies* is prescribed to *decide* on the case of defense, i.e. *on war and peace*.

(o) With the Federal Charters as treaties, the Cantonal Assemblies decide upon *value orders* of a new kind oriented towards the future, emphasizing *public utility, peace and the formation of society*.

(p) The Letters of Freedom of 1231, 1240, 1274, 1309, etc., and the Letters of Prohibition by King Heinrich VII von Staufen in 1234, by Queen Elisabeth (King Albrecht von Habsburg's wife) in 1299, but especially the Federal Charter of 1351 (with Zürich), 1352 (with Zug) and 1353 (with Bern), demonstrate that *all the adult male population [over the age of 16 years]* is integrated into the Cantonal Assembly. Cf *here* Ch 15; Ch 17. The Letters of Freedom of 1240 and 1274 (Uri) inform about the contents of 'freedoms' and privileges.

(q) The important consequence of the full participation of the population, independent of their social and economic status, is: the canton or, rather, country, comes forward in unity. *The split into military factions is avoided*. That could be the basis of military prevalence. Civil war is avoided.

(r) This analytical result is to be defended against the sentiment of some historians. *The homunculus theory of the Cantonal Assembly*: it is incapable of reading and writing. It is 'helpless' with regard to administration and self-organization and depends, thus, on noblemen's aid. It is without the unity referring to legal rights, territory and social classes.

In order to counter that position: Federal Charters and Cantonal Assembly's decisions (starting with 1294) show the legal unification and territorial control. Terminology and logic show the integration of social classes in the primary cantons, persistently and primarily only there. Cf the Upheaval in Luzern in 1343 (Hinz 2016, Ch IV.1.3). The Letters of prohibition [cf (p) in the above] show the ability to decide and to plan, and to put up resistance as a custom. They, moreover, prove the ability to understand letters written in Latin.

The frequent re-election of (perspicuous and competent) Chairmen from the same families is completely compatible with the thesis of universal participation of the adult male population. For *Uri*, the royal privilege becomes extended in 1389: *The Chairman acts as the highest judge, elected by the local Cantonal*

*Assembly (i.e., all the male adult population), who is automatically authorized by the King by means of this election to act as judge imposing the death penalty instead of the King himself.* This fact is called an old tradition: ‘as it is the custom of old’ (cf Hinz 2016, Ch I.5; *here* Ch 7.5).

We have to take into account the possible co-existence of different political and existential orders, e.g. of an inhumane-tyrannical kind vs. a democratic-participative kind, side by side in the region.

(s) The Cantonal Assembly *sets right against violence*: against raid or attack within the territory of Schwyz: the individual *obligation to help and aid*; against *murder* or, rather, killing and *bodily harm* and also against mental violence (*insults*). Proceedings are formalized when accusations are made but are still unproven. Threats in terms of drawing a *weapon*, incl. carrying weapons, are prohibited.

(t) The Cantonal Assembly assigns land plots or, rather their usufruct, inheritable in exchange for *works or accomplishments for the country or community*, to certain persons: for example, maintaining ways or roads.

(u) The role of the accuser (MHG. ‘kleger’) or the person filing a complaint (MHG. ‘leider’) is clarified. Such a person is motivated by payment of part of the fine.

(v) The continuation of litigation because of the boundaries and usufruct of the alps (i.e., pastures, meadows) between the Monastery of Engelberg and the Cantonal Assembly of *Uri* [1309 June 25; QWI/2:234, doc. 485] shows the intermediation by arbiters on the level of the Cantonal Assemblies and between different communities. This clarifies further functions of the Cantonal Assembly.

#### 19.1 NOTES ON THE LEGAL OR POLITICAL INSTITUTIONS IN SCHWYZ

Beside the ‘Landammann’ (*Country Chairman*), two councils, of 60 and 200 members each, are mentioned for the year of 1373, in addition to the other men of the Cantonal Assembly. 9 people seem to take the *Country Chairman’s* oath. Four complainants (MHG. ‘kleger’) seem to be formally elected and collect the fines. Otherwise, we do not learn anything about these offices. The decision of the Cantonal Assembly taken in 1373, §2, points to legal norms for the Country Chairman (MHG. ‘landamman[n]’), the Chairmen (MHG. *ammen[n]*) and the “councilors”. But no formal decision about that is conserved. Cf. QWI/2:410f [Doc. 806, 1315 Nov 24, Letter by King Ludwig], address: ‘*officiato, consilio, civibus et universis hominibus in Switz*’ = ‘*to the Chairman, the council (!), the citizens and to all the (country)men (subjects) in Schwyz*’: the distinction (?) between citizens and men / countrymen / subjects. I.e., the (comprehensive) liberation of the countrymen / subjects by means of the decision of the Imperial Court of Justice in 1316 March 26? Note the mentioning of a council (aside from ‘all the men’).

## 20. REGISTER OF CHRONOLOGICALLY ORDERED DECREES OF THE CANTONAL ASSEMBLY OF SCHWYZ 1282-1397

The following register is chronologically ordered. It is probably not complete but comprises legal decisions considered to be substantial. For a different register, cf Blickle 1990:96, Note 231. Part of the documents consists in originals written on parchment and sealed, the other part of entries and copies of documents in the “Landbook of Schwyz”, the earliest collection of (copied) legal decrees. All documents listed are translated into modern German in Hinz 2016, Ch. I (or, rather, I.4.3).

The coherent transmission of documents points to a systematic development of legal norms (laws). Otherwise, the legal norms as contained in the Federal Charters of 1291, 1315 and 1332 make up for the confederates’ law.

**1282: Decision of the Cantonal Assembly of Schwyz, concerning communal land and its sale in exchange for work for the community.**

1282 Januar 1 (!), Schwyz. [QWI/1:620 = Doc. 1358]. Cf Hinz 2016, Ch I.2.1.

**[1284?] ‘If somebody has foreign estates in our country then that person shall also help to cover common costs.’**

Cf the next entry for 1294, §§<11-12>(7): only an excerpt thereof? 1284 is possibly misspelt for 1294.

**1294: Decision of the Cantonal Assembly of Schwyz concerning land tenure rights: Selling land to foreigners/outside is prohibited. Donation of land to monasteries is prohibited. Inheritance of land among conjugal partners becomes limited. Law of taxation.**

1294 Schwyz. [QWI/2:39 = Doc. 89]. Cf Hinz 2016, Ch I.2.2. Cf here Ch 22.1.

**1338: Conferring real estate together with prohibition of cutting wood there in exchange for the construction and maintenance of a road.**

1338 November 11, Schwyz. [QWI/3:158 = Doc. 231]. Cf Hinz 2016, Ch I.2.5.

**1339: Usufruct of the communal terrain or march (G. ‘allmende’).**

The countrymen of Schwyz establish an order for the use of communal terrain  
1339 Mai 27, Schwyz. [QWI/3:177]. Cf Hinz 2016, Ch I.3. Cf here Ch 24.1.

**1339: Cutting of wood and burning of charcoal prohibited in the Muothen Valley etc.**

1339 June 24, Schwyz. [QWI/3:181 = Doc. 273].

Protection of all the corresponding forest against excessive clearing.

**1339: Cutting of wood prohibited in the defensive boundary area.**

1339 Juni 24, Schwyz. [QWI/3:182 = Doc. 274].



**1339: Obligation to help in case of alarm (raid).**

1339 Juni 24, Schwyz. [QWI/3:183 = Doc. 275].

*The sworn obligation of every inhabitant to help another confederate in case of of threat or danger to life or against bodily harm ('under the oath which that person has sworn to the country'). In the case of abstaining from help, that offender is to be proscribed and persecuted.*

**1340: Conferring real estate in exchange for maintaining an open road.**

1340 May, Schwyz. [QWI/3:213-214 = Doc. 319]. Cf Hinz 2016, Ch I.2.5.

**1342: Punitive stipulations concerning physical and psychological aggression.**

1342 April 23, Schwyz. [QWI/3:262 = Doc. 400]. Cf here Ch 23.

*Preceding regulations are determined in the Federal Charters of 1291 and 1315 and mark the written fixation of legal norms or, rather, punitive legislation within the Waldstätten cantons and the attempt to unify the legal system. The long period without model decisions as may be noted in the Landbook of Schwyz may thus be explained.*

**1342: Cutting Wood.**

1342 May 15. [QWI/3:265 = Doc. 405]. Cf Hinz 2016, Ch I.3. Cf here Ch 24.2.

**1343: Cutting or collecting wood is prohibited (Ofenmühle).**

*Wood as protection against flood waters can be used only with the permission of the people living by the water.*

1343 December 2. [QWI/3:317 = Doc. 485].

**1358: Safeguarding the boundary defenses of the community.**

1358 August 1, Schwyz. Kothing, Landbuch, S. 269-70.

**1373: Decision of the Cantonal Assembly of Schwyz to take over land property.**

1373 May 15, Schwyz. Kothing, Landbuch, S. 271. Cf Hinz 2016, Ch I.2.3.

**1384: About the "old small agreement" on punitive law.**

*The Cantonal Assembly and its Chairman establish legal norms regarding the prevention of armed violence.*

1384, August 1, Schwyz. Kothing, Landbuch, S.11-12.

*Commentary: The use of knives or other weapons and stones in attacks is punished with 30 Shillings of Pfennige.*

**1389: Marital law and law of inheritance.**

1389, Schwyz. Kothing, Landbuch, S. 272. Cf Hinz 2016, Ch I.2.6.

**1389: Decision of the Cantonal Assembly Schwyz: Abolition of feudal tenure.**  
1389 October 15, Schwyz. *Kothing, Landbuch*, S. 272-274. Cf here Ch 22.2.

**1396: Guardianship: underage and subsistence allowance ('dowry?'). Ruling in case of embezzlement.**

1396 February 26, Schwyz. *Kothing, Landbuch*, S.274. Cf *Hinz 2016, Ch 1.2.6*.

**1397: Public regulation of pawning immovable or movable property.**

1397 July 21 or 22; ('21. Heumonat'), Schwyz. *Kothing, Landbuch*, S. 275. Cf *Hinz 2016, Ch 1.2.6*.

## 21. SWEARING-IN ACCORDING TO THE 'WHITE BOOK OF SARNEN' (1470)

[MARGINAL NOTE: "LETTER OF WISSERLEN..."]

[*QW III/1:126f.*; *Durrer 1910:277ff.*]. *Transl., notes & comm. E.H. (cf Hinz 2016, Ch 1.1.5)*.

The Joint Cantonal Assembly of Obwalden and Nidwalden accepts the text of the oath elaborated as a proposal in a session in Wisserlen, OW (Kernswald) in the presence of messengers from Zürich, Luzern, Uri, Schwyz and Zug.

1470 October 14.

'...(2)... and [the Cantonal Assembly in Wisserlen] has ordered... the Chairmen and Councilors of Obwalden and Nidwalden to lay down an oath in written form as follows here which we, the whole Cantonal Assembly of Obwalden and Nidwalden, shall swear to in all eternity, more or less every five years just as one demands that, honestly and as agreed upon, [i.e.] everyone who is over the age of 16, whether fellow countryman or protected refugee (MHG. 'hinders(e)as') [i.e. people] who are not [our] countrymen and who have been living in the country for years and days.'

= '(3) That we, the Chairmen and Councilors, have carried out the aforementioned [task] and have composed the oath, as it is here written down word for word. It reads thus: "That every countryman and every protected refugee (MHG. 'hinders(e)as')<sup>31</sup> as long as he wants to be behind us in our country and is residing there, and especially the refugee as long as he wants to be under our protection shall swear formal oaths with lifted hand, in bodily presence, to God and the Saints as is phrased here":'

= '(a.) To further benefit ([common] interest *or* advantage) and respect (*or* esteem) for our joint country and to prevent damage for us, and reverse it'

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<sup>31</sup> Note E.H.: MHG. 'hinder uns' = 'under our protection'. The protected refugees are put under the special protection of the canton ('country') and swear an oath like the countrymen do. 'Countrymen' can refer to 'compatriots' too; cf Fed Ch 1291, §20 ['conprovincialis'] = Fed Ch 1315, §16. Terminological contrast: 'lantlüt' vs. 'hindersäs'. That does not conform to the analysis in HLS, "Hintersassen" [hls-dhs-dss.ch/textes/d/D15998.php]. Unterwalden shows, at this point in time, a different development: demographic, political or economic reasons?

= ‘(b.) And with the same oath: that we all shall help and give advice to each other in good faith and shall protect and cover [each other] in all we have a right to<sup>32</sup>,

= ‘(c.<sup>33</sup>) And if somebody, whosoever he may be, a countryman or a stranger, would damage unlawfully or attack a [fellow] countryman or countrywoman of ours or somebody who has settled or lives among us in contrast to what is right and acceptable (just), then we, all [together] and every countryman [individually] shall act and help and give advice to each other – the Chairmen, Councilors and countrymen –... so that everybody who happens to be attacked shall be protected according to law.’

= ‘(d.) And also that one shall swear in that oath separately that no countryman shall oppress the other or attack [him] in terms of foreign courts, either by ecclesiastical or mundane ones, or put or bring him into Imperial or under Papal Ban, under no circumstances, because of an estate that is situated in our country and is under our protection or because of any other issue with the exception of marriage or open usury only...’

*Commentary:*

(1) *Everybody – i.e. every male person? – over the age of 16 is supposed to swear the oath. That set of persons includes ‘countrymen’ (MHG. ‘landlüt’ living in the country or ‘land’) and ‘protected refugees’ (MHG. ‘hintersäs’ living in the country for many years but not being countrymen). The decision of Wiserlen of 1470, addresses and includes the ‘protected refugees’ in the swearing ceremony especially if they want to continue as protected persons.*

(2) *The swearing is to be repeated more or less every five years.*

(3) *The oath is valid ‘in all eternity’.*

(4) *The oath is to be given by the Joint Cantonal Assembly of Obwalden and Nidwalden and thus marks the unity of Unterwalden.*

(5) *The oath is characterized as ‘formal’, ‘with lifted hand’, ‘in bodily presence’, directed ‘to God and the Saints’.*

(6) *The items invoked verbally in the oath are: the joint country, i.e. Unterwalden (‘to the benefit’, ‘to the esteem or: respect’), the people – we – (‘prevent damage to us and reverse it’).*

(7) *Included are the specifications ‘to give advice’, ‘to help’, ‘to protect’, ‘to cover each other’: semantic extension: ‘in all we have a right to’. The ideas of*

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<sup>32</sup> Note the phrasing ‘in all we have the right to’. Cf. Federal Charter of 1332 §6: ‘einander zu helfen und zu beraten ... in allem, was Recht ist’ = ‘to help and to give advice to each other... in everything that is (the) right (or just)’. The concept of right corresponds to the freedom and authority of setting the law and of legal supervision by means of the Cantonal Assembly.

<sup>33</sup> The MHG. or rather Early New High German texts of the paragraphs (c)-(h) are missing in the QW and are supplemented according to Durrer’s transcription in: R. Durrer 1910:277ff.

right, law and justice are emphasized, in addition to the right of sociopolitical association.

(8) The right for legal and political protection – the mentioning of the Chairmen and Councilors of the Cantonal Assemblies as well as the “countrymen” – against attacks is to be noted.

(9) The concept of legal protection is extended to include the following items in the oath: the protection of every fellow countryman against foreign courts outside of the country, ecclesiastical or mundane ones, and the abstention from any attempts to put any fellow countryman under Imperial or Papal Ban.

(10) It seems to me to be significant that ‘estates’ are highlighted as legal issues. Only spiritual issues like marriages or cases of usury are exempted from this norm invoked in the oath (referring the issue to ecclesiastical courts). It is probable that ecclesiastical courts were appealed to with regard to estates or land property conferred in wills to, or claimed by, monasteries.

(11) In studying the formula of the oath it becomes clear that its precursors are much older as testified by the Federal Charters. Cf Hinz 2016 for translations of the different Federal Charters into modern German.

## 22. LAND TENURE RIGHTS

### 22.1 DECISION OF THE CANTONAL ASSEMBLY OF SCHWYZ 1294.

PROHIBITION TO SELL LAND TO FOREIGNERS.

PROHIBITION TO DONATE LAND TO MONASTERIES.

INHERITING LAND AMONG MARITAL COUPLES BECOMES RESTRAINED.

TAXATION LAWS.

[QW I/2:39 (Doc. No. 89 w archival n)].

1294 Schwyz

State Archive Schwyz, No. 29.– Original: Parchment 14x34 cm. Seal (St. Martin) hangs badly damaged. – Print: Kopp, Urk. II, Nr.90 etc.

Concerning the handwriting of the document cf Bd.I, Note of No. 1582.

Modern Translation from the MHG.: E.H. Notes unless marked otherwise: E.H.

<p>&lt;1&gt; In gottes namen. Wir die lantl(i)ute von Swiz k(i)unden all dien, die disen brief ho(e)-rent oder sehent lesen, das wir uberein sin komen mit gemeinem rate des landes und mit geschwornen eiden,</p>	<p>&lt;1&gt; In the name of God. We the countrymen of Schwyz make known to all those who listen to the reading or who read this letter that we have reached an agreement by general consultation of the country (i.e. the Cantonal Assembly) and with sworn oaths:</p>
<p>&lt;2&gt; (1) das nieman vercho(u)fen sol dekeine-me chloster in dem lande dehein ligendes gu(o)t weder zu(o) sinem kinde noch dekeinen weg, und geben jeman daruber dienselben chlostern dehein liegendes gu(o)t, der sol wi-</p>	<p>&lt;2&gt; (1) that nobody in the country (Schwyz) shall sell a real property to a monastery, neither on behalf of a daughter of his [when entering the monastery] nor otherwise. And in addition if somebody should give (donate)</p>

der lo(e)sen und deme lande geben v(i)unf phunt und dero ein phunt dem richter und deme lande vier(i)u.	a real property to the same monastery, he shall reverse it and shall give 5 pounds to the country, and of that, 1 pound to the judge and 4 pounds to the country.
<3> Beschehe aber, das jeman sinen lib und sin ligendes gu(o)t dargebe, so sol das gu(o)t sin siner neheston erbon, und suln die dem Lande aber geben d(i)u v(i)unf phunt. Und wollten dieselben erben desselben gu(o)tes nicht, so sol es sin des landes, wan es si verbotten hant mit geswornem eide.	<3> But if somebody should enter [the monastery] himself and should donate his real property (land), the land shall belong to his closest inheritors and they shall give 5 pounds to the country. And if the same inheritors should not want the real property it shall belong to the country since they [ <i>sc.</i> the countrymen] did prohibit this [ <i>i.e.</i> such a donation] under sworn oaths.
<4> Und were der also kranch, der sin liegendes gu(o)t dar gebe, das ers nicht losen mochte, so sol aber dasselbe gu(o)t sin der erbon also ê, und enwolten die des nicht, so sol es sin des landes in dem selben rechte also das erre.	<4> And if he who should donate his land would be so poor as being unable to reverse [the donation], the same piece of land shall become the possession of the inheritors as before. And if they should not want that, it shall belong to the country in accordance with the same right as in the case before.
<5> (2) Were o(u)ch jeman, der sin ligendes gu(o)t gebe von dem lande ze cho(u)ffene oder deheinen weg, der sol ez wider losen und dem lande geben v(i)unf phunt aber, und were aber derselbe also kranch, das ers nicht wider lo(e)sen mo(e)chte, so sol aber dasselbe gu(o)t sin der erbon oder des landes also e.	<5> (2) If there should be somebody who would give away his real property [to somebody from] outside of the country, by sale or otherwise, then he shall reverse it and give 5 pounds to the country. And if the same would be so poor as to be unable to reverse it, the same real property shall fall to the inheritors or to the country as [in the case] before.
<6> Und beschehe aber dirre cho(u)ffe oder dirre gabe dekein(i)u heinliche, da sol dem leider werden ein phunt, und aber das gu(o)t stan in dem erren rechte, und swa dirre gedinge deheinen ubergangen wurde, das sol man ze hant widertu(o)n.	<6> But if the sale or such a donation should take place secretly, one pound shall be given to him who reports [it to the judge] <sup>34</sup> . And the real property shall be restored to its former legal state. And if one of these agreements was disregarded, it [the illegal sale] shall be reversed without delay.
<7> (3) Ouch sin wir die lantl(i)ute des ze rate worden mit gemeinem rate und geswornen eiden, das man in enheiner st(i)ure noch gewerfe [de]heinem ammanne iemer phennig suln gegeben.	<7>(3) We, the countrymen, also came to the conclusion after common deliberation <sup>35</sup> and under sworn oaths that one should never give a penny <sup>36</sup> out of a tax or fee to an <i>ammann</i> (Chairman of the Cantonal Assembly).
<8> (4) so sin[t wir o(u)]ch uberein komen, das enkeiner (i)unser lantman sinem wibe mache me danne halbes sin gu(o)t. Were o(u)ch das, das deheinem lantman zu(o) sinem wibe wurde gegeben verndes gu(o)tz	<8> (4) Thus, we have reached the agreement that no countryman among us shall give his wife more than half of his (real) property ( <i>i.e.</i> land). If it would be the case that movable property was given to a countryman for his

<sup>34</sup>MHG. ‘leider’ = ‘accusator’ (note: eds.).

<sup>35</sup>MHG. ‘mit gemeinem Rate’ = ‘with deliberation or consultation of the Cantonal Assembly’.

<sup>36</sup>MHG. ‘phennig’

und er icro das nicht angeleit, e das er in gelt kumet, so sol er gelten e dien rechten gelten und danne sinem Wibe geben und das tu(o)n vor gerichte.	wife and if he did not register that formally as a loan [from her] <sup>37</sup> before he incurs debts, he shall first pay [the debt] to those who have a claim according to law and after that he shall give [payment] to his wife and he shall do so in court [i.e. in front of a judge].
<9> (5) So sin wir o(u)ch des uberein komen: und wollten d(i)u chlo(e)ster, d(i)u in dem Lande sint, nicht dra[gen] schaden an st(i)ure und an anderme gewerfe mit dem lande nach ir gu(o)te also ander die lantl(i)ute, so suln s(i)u miden velt, wasser, holz, w(i)unne und weide des landes.	<9> (5) We thus have also reached the agreement: And if the monasteries which are in the country would not share the burden of taxes and other fees with the country in correspondence to their property as the other countrymen, they shall avoid fields, water, wood, meadows and pasture of the country.
<10> (6) So wollen wir o(u)ch nicht, das devrowe ir manne mache me danne halbes ir gu(o)t.	<10> (6) Thus we do not want a wife to give her husband more than half of her property.
<11> (7) So sin wir o(u)ch des uberein komen, swer der ist, der dehein gu(o)t in dem lande hat der usl(i)uten, das der sol tragen schaden mit dien lantl(i)uten in der maze, also deme gu(o)te gerihen muge, an des lenmannes schaden.	<11> (7) We thus have also reached the agreement that he who has a (real) property from the foreigners in the country must share costs with the countrymen to such a degree as they may apply to the property of his, without damages ( <i>or</i> costs) for the vassal (i.e. for him to whom the property was granted in exchange for certain services) <sup>38</sup> .
<12> Und were aber jeman, der sinen lenman daruber bek(i)unberren wollte oder entwerren desselben lehens unde er dasselbe gu(o)t wollte einem andern lihen, swer denne dasselbe gu(o)t enphienge oder in dekeinen weg damitte kumberte, der sol dem geschadegeten sin schaden abetu(o)n und v(i)unf phunt und aber das lehen lidig lan,	<12> But if there would be anybody who would afflict his feudal vassal for this cause or would take the same tenure away from him and would give the same property to another [person], he who would then receive the same (real) property, or would somehow create trouble thereby, shall then pay for the damage to the damaged person, i.e. 5 pounds, and shall furthermore lose the feudal tenure.
<13> und also dike er das tu(o)t, also dike so sol er ime sinen schaden abe tu(o)n und v(i)unf phunt aber geben. Und were jeman, der also krank an gu(o)te were, der disen einung verrichten nicht enmo(e)chte, swer deme hulfe oder riete mit libe oder mit gu(o)te, mit husonne oder hovondo, mit ezsenne oder mit trinkeme, der sol aber deme geshadegotten die vorgenannden bu(o)ze geben.	<13> And as often as he will do it, so often shall he pay for the damage [done] to the [other person], and give him 5 pounds. And should there be anybody who would not have the necessary means to be able to pay this fixed fee [and] if somebody would help him or give him advice, physically or economically, with house or farm, with food and drink then that [person] shall give the aforementioned penalty to the damaged one.

<sup>37</sup> MHG. ‘anleite’ = G. Immission; *here*: formal registration of ownership [as a loan for, or debt of, somebody] (cf Lexer).

<sup>38</sup> E.H.: This seems to imply that the feudal lord has to pay for the costs.

<p>&lt;14&gt; (8) Un swer dirre gedinge deheinez breche, der sol deme lande geben vier phunt und deme [richter] ein phunt und also dike, also er die bu(o)ze verschuldet. Diese brief wart gegeben, do von gottes geburte waren tusent zweihundert n(i)unzich und in dem vierden jar bi des [ro(e)mi]schen k(i)unges hern Adolfes ziten.</p>	<p>&lt;14&gt; (8) And who would break one of these regulations shall give 4 pounds to the country and 1 pound to the judge, and as often as he deserves the penalty. This letter was issued 1294 years after God's birth, in the time of the Roman King Adolf [of Nassau].</p>
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Note the very early date indicating the fully developed functions of the Cantonal Assembly as overseeing legal processes and issuing laws. The date is close enough to that of the agreement on the Federal Charter of 1291 and permits the interpretation of the Federal Charter as a decision ratified by the Cantonal Assembly (L. *universitas* or *communitas* or *homines vallis* = 'the men of the valley') as mentioned in the Latin text itself.

## 22.2 ABOLITION OF FEUDAL TENURE BY THE CANTONAL ASSEMBLY OF SCHWYZ IN 1389

After the Confederates had won the decisive battles against Austria at Sempach in 1386 and at Näfels in 1388, Schwyz restructured the right of land tenure or land ownership completely anew in 1389. Blickle highlights the entry '1389, 9. Weinmonat (9<sup>th</sup> wine month)' (following Kothing, editor) in the Land Book of Schwyz in his summary:

"In 1389, Schwyz abolished any form of feudal real property and rule definitely by means of a decision by the Cantonal Assembly. All feudal lords from outside have to sell their real properties within a limit of two years", "under the threat of expropriation by force" (Blickle 1990:81).

- TAXATION OF RENT ON LAND.
- PROHIBITION TO BUY PROPERTY THAT YIELDS CONTINUOUS RENT.
- PROHIBITION TO ACCEPT OR GIVE FEUDAL TENURE.
- PRESCRIPTION TO SELL REAL PROPERTY OWNED BY FOREIGNERS.
- PROHIBITION FOR FOREIGNERS TO ACCEPT REAL PROPERTY AS INHERITANCE.

Decision of the Cantonal Assembly of Schwyz 1389 (1389 October 15).  
State Archive Schwyz.— Ms.: Landbuch von Schwyz. Print: ed. M. Kothing 1850:272-274.  
Modern Translation from Middle High German, notes and commentary: Eike Hinz.

<p>(1) Allen dien, die disen brief ansechent oder hörent lesen, künden und verjehen wir vlrich ab iber, lantman ze switz, und ouch wir die lantlüt gemeinlich des / selben landes ze switz, das wir sin vber Ein komen Mit</p>	<p>(1) To all those who read or listen to the reading of this letter we make known and declare, we, Ulrich ab Iberg, <i>Landammann</i> (Chairman of the Cantonal Assembly) of Schwyz, and also we, the countrymen as the</p>
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wolbedachtem muot vnd Einhelllich Mit gemeinem rat dur vnsers landes nutz vnd notturft willen aller der sachen / vnd stucken, als hie nach geschriben stat.	Cantonal Assembly of the same country of Schwyz, that we have reached an agreement with well thought-out reasons and un-animously with common decision [i.e. of the Cantonal Assembly] for the utility and need of our country in all the items and points as they are hereafter written down.
(2) Des ersten so sin wir vber ein komen, wer in vnserm land dekeinen Ewigen guldin geltz vf sinen gütern hat, das der sol für jeclichen guldin / ewiges geltz geben vier vnd zwentzig phvnt pheningen, vnd für einen halben Ewigen guldin geltz sol zwelf phvnt pheningen weren; vnd sol die weren zu dien tagen, als die lantlüt / sint vber Ein komen.	(2) Firstly, we reached an agreement: that he who earns one Eternal Guilder of Money on his real properties [as rent] shall give 24 Pounds of Pennies [G. ‘Pfennige’] for each Guilder of Eternal Money and for half an Eternal Guilder of Money he shall pay 12 Pounds of Pennies. And he shall pay them on those days the countrymen agreed upon. <sup>39</sup>
(3) Vnd wer Ein phvnt geltes alder me vf sinen gütren hat, der sol für jeclichs phvnt geltes, das ewiges geltes ist, zwentz phvnt pheningen geben, vnd für / zechen schilling geltes zechen phvnt, vnd sol ouch die weren vf die tag, als bered ist. Vnd wer die phening nit also werthe, als die lantlüt vber ein komen sint, so sol denn das / guot dem verstanden sin, dem der zins da solt, für sinen zins.	(3) And he who has one Pound of Money or more on his real properties [as interest] shall give 20 Pounds of Pennies for each Pound of Money that is Eternal Money, and 10 Pounds for 10 Shillings (MHG. ‘schilling’) of money. And he shall also pay that on the days as agreed upon. And if he does not pay the Pennies as the countrymen have agreed, then the real property of he for whom the interest is destined shall be cancelled, because of his [unpaid] interest. <sup>40</sup>
(4) Ouch sin wir vber Ein komen, das von dis hin nieman me in vnserm land enkein Ewigen guldin geltz noch / enkein Ewig phvnt geltes kouffen sol in dem zil, als hienach geschriben stat. Vnd wer das vber gienge vnd das breche, der sol vmb den kouff komen sin, vnd sol das guot vnd / der kouff denn dien lantlütten gevallen sin an al genade, den kouff, den er getan hat.	(4) We have also reached the agreement that from this point in time on, no one in our country shall yet buy [a feudal real property worth] one Eternal Guilder of Money or one Eternal Pound of Money within the borders as here described. And he who disregards and breaks that [norm] shall lose the [amount of money paid for the] purchase, and the real property and the payment for the purchase

<sup>39</sup> ‘Eternal Money’ – “the eternal money, the eternal rent, i.e. the rent or interest of capital (e.g. assets or goods) that is inseparable forever [from the (real) property], or can be terminated or cancelled by the loan-giver”, *Johann Andreas Schneller*, “*Bayerisches Wörterbuch*” [7. Nachdruck der von G. Karl Frommann bearbeiteten 2. Ausgabe München 1872-1877; 2008 Oldenbourg Wissenschaftsverlag GmbH München]. ‘Eternal Guilder’ (= ‘annual interest’): “that W. von Sch... then claims one Rhine Eternal Guilder as interest annually on Saint Michael’s Day”. Cf “*Deutsches Rechtswörterbuch*“, Entry: ‘Ewiger Gulden’, Source: 1522 Meißn UB [cf Hennig 2007<sup>5</sup>:65: ‘eischen’ = ‘fordern’]. Internet = rzuser.uni-heidelberg/~cd2/drw/e/gu/lden/gulden.htm

<sup>40</sup> He who earns interest for his real property shall pay a fee to the community of Schwyz. If he does not pay the fee, the property and the interest will be confiscated by the community. The difference between §2 and §3 seems to be the currency: ‘guilders’ and ‘pounds of money’ / ‘shillings’; the tax is measured in ‘pounds of pennies’ (MHG. ‘phening’). Furthermore, the confiscation of the real property and the interest are specified in case of not paying the tax.



	shall fall to the countrymen, the payment for the purchase he made, without any mercy.
(5) Ouch sin wir vber ein komen, das nieman in vnserm [sc. land, M.K.] enkein erblen lan sol noch nehmen / sol, dar vmb nieman dekein guot vmb zins versasti, dekeinen weg. Vnd wer das ouch vbergienge vnd das breche, der sol vmb den kouff komen sin vnd sol der dien lantlütten / werden an al genade.	(5) We also reached the agreement that no one in our country shall give or take a feudal real property that is inheritable <sup>41</sup> so that no one shall offer ( <i>or</i> change the legal status of) a real property for interest [i.e. as a loan or as security], under no circumstances. And he who disregards and breaks that shall lose the payment for the purchase and it shall fall to the countrymen, without any mercy.
(6) Ouch sin wir komen vber ein: wer vslütten, die nit vnser lantlüt sint, ligendü güter in vnserm land het, das sie svn verkouffen hinan von nv den / nechsten sant Marttis tag vber zwei iar, und svn si vnsern lantlütten geben noch nieman anders. Vnd tettin si des nit, so sol das guot, das si in vnserm land hant, vns, den / lantlütten, vervallen sin an al genade.	(6) We also reached the agreement: the foreigners who have real properties in our country [and] are not our countrymen shall sell [them] from now on, starting with next Saint Michael's Day over the following two years, and they shall give them to our countrymen and to no one else. And if they do not do so, the real property which they have in our country shall fall to us, the countrymen, without mercy.
(7) Wer ouch, das ieman in vnserm land ligendü gütter dekeinest arbte, die nit vnser lantlüt werin, die svn es ouch den verkouffen / in den nechsten zwein iaren, so es ze schvlden kvnt. Tettin sie den das nit, so sol das aber der lantlütten sin an al genade, als dick es fiele, als es ze schvlden kvnt.	(7) If someone of those who are not our countrymen should inherit a real property, he ( <i>Ms.</i> they) shall sell it to them [i.e. the countrymen] within the next two years as the obligation holds. But if they would not do so, [the real property] shall belong to the countrymen, without mercy, whenever it happens as the obligation holds.
(8) Were / aber, das ieman an kilchen alder an sel geretz vtz welte geben lvtterlich dur got, das mag man wol [sc. vf, M.K.] güter setzen vnd ouch kouffen vf gütern, der es gerne tuot / an al geverde, das es disen einvng nüt sol angan.	(8) But if someone would pay for masses in church or for masses for the soul's salvation, sincerely with God, one shall be allowed to set [as seller], and also to buy, that [amount of money] on real properties whosoever wants [to do] so, without any restriction so that it does not touch upon this agreement.
(9) Vnd sol dü Einvng weren viertzig iar vnd darnach vntz das in die lantlüt ablant. Vnd har vber ze einem waren / vrkünde so haben wir vnser landes ingesigel gehenkt an disen brief ze Einer gezvgnuss der vorgeschribnen sach, der geben wart an dem nechsten samstag vor sant / gallen tag in dem iar, do man zalt von gottes geburt drützechen hvndert iar vnd achtzig iar vnd dar nach in dem nünden iar.	(9) And the agreement shall be valid [without change] for 40 years, and thereafter until canceled by the countrymen. And as a veritable document about that we have placed the seal of our country to this letter, in evidence of the prescribed matter. Given on the Saturday before the Day of Saint Gallen, in the year of 1389 after God's birth.

<sup>41</sup> MHG. 'erblen' [i.e. G. 'Erb-Lehen'], an inheritable feudal concession of real property, probably in exchange for services or other merits.

*Commentary:*

§1: The 'landamman' (Chairman of the Cantonal Assembly) of Schwyz specified by his name, Ulrich ab Iberg, and the Cantonal Assembly (MHG. 'landlüte gemeinlich', lit. 'the countrymen as a communal assembly') of Schwyz are the acting persons. Terminology: 'well-thought reason', 'unanimous vote', 'common deliberation', i.e. 'deliberation in the Cantonal Assembly'. Envisaged goals: 'for the utility and needs of our country'.

§2: Taxation of income from interest for renting land. Terminology: 'eternal guild of money', 'eternal money' = permanent (annual) amount of interest. The deadline for paying the tax is fixed by the Cantonal Assembly.

§3: Taxation of income from interest for renting land. If not paid, the right to the real property as well as to the interest for renting it lapses for the person to whom the interest has to be paid [my hypothesis of comprehension: MHG. 'verstanden sin' = 'to lapse (as deposit / debt or property)'; cf Hennig 2007<sup>5</sup>:416]. The deadline for paying the tax is fixed by the Cantonal Assembly.

§4: Prohibition of buying land (real property) with permanent interest.

§5: Prohibition of giving or accepting a feudal concession of property (implying interest) that is inheritable (MHG. 'erblen', G. 'Erblehen').

§6: Owners of real property from outside (of Schwyz) must sell their real property to the countrymen of Schwyz within two years.

§7: Inheritors of real property from outside of Schwyz must sell their real property to the countrymen of Schwyz within two years.

§8: It is allowed to add a certain amount of money to the sale or purchase of land for the payment of church masses or masses for the salvation of the soul.

§9: The agreement of the Cantonal Assembly (MHG. 'einung') shall hold for 40 years without change; after that till its abolition by the Cantonal Assembly.

In conjunction with the decision of the Cantonal Assembly of Schwyz in 1294, this document proves continuity and centrality of real property ownership (or land tenure rights) as a focus of the communal and political development of the country (canton) over a period of approx. 100 years. As the documents for Unterwalden (and Uri) show, this holds for Inner Switzerland in general and even for the following centuries. The corresponding *system formation* is introduced by means of an *interpretative construct*. Cf Hinz 2016, Ch IX.1; here Ch 29.3, Ch 30, Ch 32.2 (Fig. 4) and 32.3 (Fig.5).

### 23. PUNITIVE STIPULATIONS CONCERNING PHYSICAL AND PSYCHOLOGICAL AGGRESSION

1342 APRIL 23, SCHWYZ

THE COUNTRYMEN OF SCHWYZ STIPULATE PUNITIVE REGULATIONS FOR  
MANSLAUGHTER, WOUNDING, DELIVERING BLOWS AND INSULTING.

[*QWI*3:262 = *Doc. 400 w archival n*].

State Archive Schwyz, Nr. 120. – Orig.: Parchment 20x26 cm. Small holes. Seal hanging from parchment strip, oldest seal of the country of Schwyz, damaged on the left side. Dorsal note (end of 15<sup>th</sup> century): “von totsleger und einung wegen. (MHG.)”... = “because of manslaughterers and punitive compensation.” ...

*All notes by eds. QW (unless marked otherwise). Transl. E.H.*

<p>(1) In gottes namen amen. Wir die lantl(i)ute gemeinlich ze Switz k(i)unden allen den, die disen brief ansehent oder ho(e)rent lesen nu oder hienah, daz wir han ufgesetzt durch fride und durch gnade: Wer den andren ze tode schlât oder ersticht oder welhen weg er in to(e)det, da sol der, der da beklegt und geschuldiget wird, uber den toten gan uf gottes erbernde. Wirt der tote blu(e)tende, so sol man den schuldigen o(u)ch to(e)den<sup>42</sup> und sol in davor nieman schirmen.</p>	<p>= ‘(1) In the name of God. Amen. We, the Countrymen as the Cantonal Assembly of Schwyz, inform all those who read this letter (document) themselves or who listen to its reading, now or later, that we have decided for the sake of peace and blessing (well-being?): Whosoever commits manslaughter or stabs or kills another, no matter how [it is done], shall then walk over the dead person in case he is [then] accused and charged [therewith], at God’s mercy. If the dead body starts to bleed, one shall also kill the culprit and nobody shall save him from that.’</p>
<p>(2) Man sol o(u)ch wissen, das nieman den andren v(i)uror schuldigen sol, den als manig wunden der tote hat; wo(e)lte aber jeman den andren v(i)uror ansprechen oder schuldigen, den als da vor bescheiden ist, der sol des ersten swerren einen eit ze den heiligen, daz er wêne, daz er schuldig sige, und anders umb enkein videntschaft.</p>	<p>= ‘(2) One shall also know that nobody shall incriminate the other person from the outset regardless of how many wounds the dead person has. But if somebody wants to accuse or incriminate the other person before he is condemned [by the judge] the [accuser] shall swear by oath to the saints that he thinks that [the other] person is guilty and that otherwise he has no enmity [against him].’</p>
<p>(3) Beklagte o(u)ch jeman den andren, der vogtbere were und einen vogt hetti oder mu(e)ste han, da sol der vogt uf des vogtkindes sele swerren einen eit ze den heiligen, daz er nieman v(i)uror schuldige noch beklage, den alz da vorgeschriben stat.</p>	<p>= ‘(3) If somebody accuses another person who is of minor age and would have a guardian or would have to have one, then the guardian shall swear an oath on the soul of the minor to the saints that he would charge or accuse nobody in advance except as is prescribed.’</p>
<p>(4) Swer o(u)ch den andren frevenlich wundet oder blu(o)truns machet, der mu(o)z ein pfunt geben deme, der er gewundet oder blu-</p>	<p>(4) ‘He who wounds the other person with evil intent or makes him bleed must give one pound and pay for the damage to the person</p>

<sup>42</sup> Cf GRIMM, Wörterbuch, unter Bahrgericht; K. LEHMANN in *Germanist. Abhandlungen zum 70. Geburtstag K. v. MAURERS*, Göttingen 1893.

<p>(o)truns gemahet hat, und sinen schaden abtun und sun darzu(o) elli sine gerichte gan damitte und sol dem lande ein pfunt phennigen<sup>43</sup> geben und<sup>44</sup> sol des ein dritter teil dem richter<sup>45</sup>. Swer o(u)ch den andren stosset oder schlât oder wirfet frevenlich, der sol dem geserten geben zechen schilling und sinen schaden abtu(o)n, und dem lande zechen schilling, und sol aber ein dritteil dem lantamman und son aber ell(i)u sin(i)u gerichte damitte gan.</p>	<p>whom he wounds or causes to bleed <i>and all his legal costs shall be covered by that*</i> and he shall give one pound of pennies (<i>phennige</i>) to the country and a third part shall [be paid] for the judge. He who stabs the other person or beats him or throws [something at] him with evil intent shall give 10 shillings to the wounded person and [thus] pay for the damage, and 10 shillings to the country and a third amount to the judge (<i>lantamman</i>) and all his costs in court shall be covered by that.’</p>
<p>(5) Swer o(u)ch dem andren spricht diep oder bo(e)swicht oder du l(i)ugest frevenlich, der sol dem geben, dem er es spricht oder gesprochen hat, f(i)unf schilling und dem lande f(i)unf schilling pfennigen, und sol der richter von disen beiden teilen nehmen einen dritteil. Swer dieser einungen nicht geben mag, dem sol es gan an die hant bi der lantl(i)uten eide. Swer dieser gedingen dekeines leidet, dem sol werden f(i)unf schilling, da nimet o(u)ch der richter einen dritteil.</p>	<p>= ‘(5) He who calls the other person “thief” or “villain” or [says] “You are lying maliciously” shall pay 5 shillings to he whom he says or has said so, and 5 shillings to the country (canton), and the judge shall take a third part of these two sets. He who does not want to give this restitution shall lose his hand under the oath of the countrymen (i.e., his hand shall be cut?). To he who reports [the breaking of] one of these norms shall be paid 5 shillings. Also the judge shall take a third part [of that amount].’</p>
<p>(6) Dis(i)u vorgeschribenen ufgesetzten recht sun vest und stêt beliben alle die wile, untz si der merteil der lantl(i)uten ablât in einem offennen lantage. Und harumb ze einem waren urk(i)unde, darumb so haben wir die lantl(i)ute die vorgeantent (i)unser eigen ingesigel gehenket an disen gegenw(i)urtigen brief. Datum et actum ab incarnatione domini M<sup>o</sup>CCC<sup>o</sup> quadragesimo secundo, in die sancti Georgii martiris.</p>	<p>= ‘(6) These aforementioned set legal norms shall remain immovable and stable until a majority of countrymen will abolish them in an open Country Day (day of judgement). And in the sense of a valid document we, the countrymen, as mentioned before, have hung our own seal to this present letter. Given and executed after the incarnation of [our] Lord during the 1342<sup>nd</sup> [year], on the day of the martyr St. George.’</p>

My Notes (E.H.):

(§2): Vigentschaft = cf vî(g)ent-lich = *Adj.* ‘feindlich’, ‘feindselig’, ‘böswillig’ [*Am.* ‘harmful’, ‘hostile’, ‘malicious’]; vîent-schaft = ‘Feindschaft’, ‘Feindseligkeit’, ‘Hass’ [= *Am.* ‘enmity’, ‘hostility’, ‘hate’] (*B. Hennig 2007<sup>s</sup>:425*).

(§3): *This norm seems to guarantee that the guardian does not accuse or stands behind the accusation in order to appropriate the heritage for himself.*

(§4): *Italics\**: probably wrongly copied as this phrase is repeated later. Frevenlich = ‘malicious’, ‘in evil intent’, ‘violently’. Sun / son = ‘they shall’ (3. *Pl. Pres.*). See below §6. ‘Landammann’ vs. ‘Richter’ (*‘Judge’*): cf Hinz 2016, Anh. 9.

(§5): cf *Lexer 1992<sup>38</sup>:405*, in h[enden] gân = ‘in gefangenschaft geraten’ (= ‘being taken prisoner’).

<sup>43</sup> MS. slightly damaged; ‘m’ written instead of ‘nn’.

<sup>44</sup> Hole in the Doc. Phrase reconstructed.

<sup>45</sup> Supplement: ‘sin’.

*Commentary (E.H.):*

*The Cantonal Assembly becomes clearly visible as an institution that decides upon legal principles and imposes them. Defacto, capital punishment belongs to them as already mentioned in the Federal Charters. [Formally, capital punishment is conceded to Schwyz in 1415 only. Cf L. Weisz 1940:154.]. Of somebody accused of manslaughter, the so-called probe of the bier is demanded: the accused person has to walk over the dead person. If the latter's wound starts to bleed, the accused one is to be executed. The oath (§2, 3) is taken very seriously. (It is to be given by every [adult male person; §5]: 'under the oath of the countrymen'. This is evidence of the comprehensive participation of the whole population in the Cantonal Assembly, with regard to rights and duties.). No condemnation in advance, no tolerance of malicious slandering. Five Pounds are to be paid to each: to the damaged person, to the country, to the person reporting the case. One third of each of these three payments is reserved for the judge or Chairman of the Cantonal Assembly (G. 'Landammann'). 'Landtag' ('Country Day' or 'Court Day') = 'Cantonal Assembly as court'.*

## 24. ECOLOGICAL NORMS OF THE CANTONAL ASSEMBLY

The Cantonal Assembly of Schwyz regulates the rights of land ownership for its communal territory and, in addition, environmental rights of usufruct of the common marches, e.g. for pasture (1339) and the collection or cutting of wood (1342). These regulations provide for the self-regeneration, protection and control of resources.

### 24.1 USUFRUCT OF COMMON MARCHES

1339 MAY 27, SCHWYZ

THE COUNTRYMEN OF SCHWYZ ISSUE A REGULATION FOR THE USUFRUCT OF COMMON MARCHES (MHG. 'GEMEINMERKI')

[*QWI/3:177 = Doc. 265 w archival n*].

State Archive Schwyz, Nr.112.— Orig.: Parchment. 12,5x31,5 cm. Seal on strip of parchment, slightly damaged. Oldest seal of the Country of Schwyz. Dorsal Note (15<sup>th</sup> Century): "Umb gemein merchÿ." Print: Gfr. 27, S.315; Das Landbuch von Schwyz, hg. von M. KOTHING, S. 214/267 (slightly changed); Mitt. des HV Schwyz 18, S. 127. Translation into modern German: LEO WEISZ, Die alten Eidgenossen, S. 113. – By the same scribe as Nr. 273-275.

*Notes (unless marked otherwise), commentary and translation by E.H.*

= '(1) We, the countrymen as the Cantonal Assembly in Schwyz, make (publicly) known to all those who read this letter themselves or who listen to its reading that we have consulted with each other and have reflected on (*or* have made deliberations concerning) our community marches in the Country of Schwyz, [in the sense] that one should use them, whosoever wants to do so, till June 10, after that one shall not pasture on them unless they are one's property.'

(1) Note:

*N(i)umen = niemer (Hennig 2007<sup>5</sup>:241, E.H.). Won = wân (= ‘unless’)[eds. QW]; einer des das eygen ist = ‘it belongs to one, it is one’s property’.*

= ‘(2) One shall also go there from September 15 onward (calculated as 14 days before the feast of St. Michael = September 29)<sup>46</sup>, whoever wants that and pasture the community marches. But if somebody should prohibit that to [another person] who wants to use as pasture the community boundaries [in accordance with the regulations] as he should pasture as is written down here the [forbidder] shall recompense for [his behavior] in terms of a transgression. Moreover, nobody shall fence the marches completely unless there will be open entrances so that one can enter and leave. If somebody should fence the marches completely so that there would be no openings in the community boundaries left for public use, he would be obliged to compensate [for the damage].’

*Note: I follow Leo Weisz (1940:113) in his translation.*

= ‘(3) If somebody should break down the fence of the [aforementioned] person since he had found no opening left, then he shall not [be considered of] having committed a transgression if he breaks [it] so that he can enter and leave [the marches]. If somebody rich or [poor] would have planted grain or turnips (white rutabaga) on the marches, then he shall fence and separate this from the meadows. Nobody shall pasture on it or break down his fence.’

= ‘(4) And in order that (all) this may remain valid and unchanged, therefore we, the countrymen of Schwyz, have sealed this letter (document) with the particular seal of our country. Issued in Schwyz on an open Court Day (MHG. *lantag*, G. *Landtag*), counted 1339 years after God’s birth, on Corpus Christi Day of our Lord.’

*Commentary:*

*The regulations concern dates for the use of the marches and fences with respect to entrances or openings, except in the case of plots for grain or turnips.*

## 24.2 CUTTING AND COLLECTING WOOD.

1342 MAY 15 / SCHWYZ

At an open Court Day, the countrymen of Schwyz prohibit the [cutting and collecting of] wood along the river bed (MHG. *Flüehen*) or: in the ‘Flühen’.  
[QWI/3:265 = Doc. 405 w archival n].

State Archive Schwyz, Nr. 121.— Orig.: Parchment. 13x29 cm. Hanging seal, margin slightly damaged, oldest seal of the Country (Canton) of Schwyz, cf Nr. 231. Print: Kothing, S. 216.— Cf also Mitt. des HV Schwyz 18, S. 136.

*Translation, notes and commentaries by Eike Hinz.*

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<sup>46</sup>Wan sol o(u)ch vor sant Mychels mes vierzehen tagen daruf varen, wer es gerne tu(o)t, und die gemeinmerki etzen. Cf. 1309 June 25, nbdig-59267\_2.pdf:241 [Doc. 485]: *von sant Michels mes unz ze ingenden Meien*.

<p>(1) Allen den, die disen brief ansechent oder ho(e)rent lesen, k(i)unden wir, die lantl(i)ute gemeinlich ze Switz, daz wir sin (i)ubereinkomen einhelleklich und gemeinlich uf einem offennen lantage, daz wir verbannen haben und bannen an disem gegenw(i)urtigen brief daz holtz in den Flu(e)n von der Swanda inhin under dem weg hin untz an Wernhers Lillis gu(o)t, untz enrunt an den berg, alz d(i)u zeichen gant, und uf hin und under dem berg hin untz an daz J(i)uchli, alz o(u)ch d(i)u zeichen gant, und den graben nider untz aber in die Swanda, alz o(u)ch d(i)u zeichen gant, also mit dem gedinge:</p>	<p>= (1) ‘We, the countrymen as the Cantonal Assembly of Schwyz make known to all who read this document themselves or who listen to its reading that we have agreed unanimously and as the Cantonal Assembly at an open Court Day that we have prohibited the [collecting and cutting of] wood under the threat of punishment and do prohibit it by means of the present document, along the river bed (<i>or</i> in the “Flühen”), [starting] from the Swanda below the road until [reaching] Werner Lilli’s estate, to the ascendance of the mountain as the marking signs also show; and up and along the slope of the mountain until [reaching] the Jüchli as also shown by the marking signs, and down the ditch until [reaching] the Swenda again, as also shown by the marking signs, thus with the stipulation:’</p>
<p>(2) Swer in disen zillen dekein holtz r(i)uti oder h(i)owi oder swanti<sup>47</sup> oder dannan zuge, ez si d(i)urres oder gru(e)nes, sta(e)ndes oder ligendes, der mu(o)z geben ze einung ein pfunt pfenning von jechlichem stok oder von jecklichem holtze. Und sol darum klagen, wer es gerne tu(o)t, und alz menger darumb klagent, alz mangem mu(o)z er geben ein pfunt pfenning.</p>	<p>= (2) ‘Those who clear, cut or burn out [the roots] of wood (trees) and drag it (them) away thereafter, be it dry or green, standing or lying, must give as compensation one pound of pennies for each stick (<i>or</i> stem) or for any [piece of] wood. And he who wants to do so shall make the accusation. And if (<i>or</i> whenever) someone files the charge therefore the [delinquent] must give the [accuser] one pound of pennies.’</p>
<p>(3) Were aber, daz jeman disen einung verschulte, der alz arn were, daz er disen einung gerichten nicht enmo(e)chte, den sol man versrigen und verbieten in dem lande, daz in nieman huse, noch husi, noch hofe, noch essen, noch trinken gebe.</p>	<p>= (3) ‘But if somebody would run into this legally fixed compensation money (<i>or</i> But if somebody could not pay the compensation money) who would be too poor as to be able to pay for this punishment then one should “cry him down” (i.e. persecute him) and enjoin him in the country so that nobody would house him, would receive him in his house or farm or would give him food and beverage.’</p>
<p>(4) Wer daz ubergiengi, der mu(e)ste den einung v(i)ur jenen richten, der den einung verschuldet hetti, und sol man darab richten von tag ze tage, so man baldest mag, an alle geverde. Wir haben aber vor verlassen, tro(e)ge ze ho(u)wenne, daruber d(i)u gemeinde trenket, und was holtzes man betarf zu(o) dem wege in den Flu(e)n, ân alle geverde.</p>	<p>= (4) ‘Those who do not pay attention to that [stipulation] shall pay the punishment instead of the person who provoked this punishment (<i>or</i>: compensation money), and he shall be punished for it from one day to another, as soon as possible, without any restrictions. But we have permitted the cutting of [wood for] troughs by means of which the community is providing drinking water. And as</p>

<sup>47</sup> Cf “Schwendbau” [swidden agriculture] (in: Wikipedia).

	much wood as one needs for that on the way along the river bed ( <i>or</i> : in the “Flühen”, <i>toponym</i> ), without restrictions.’
(5) Und harumb daz dis war und stet belibe, darumb so han wir die vorgenanten lantl(i)ute ze Switz disen brief besigelt mit (i)unsers landes eigenens ingsigel, der gegeben wart ze Switz, des jares, do man zalte von gottes geb(i)urte dr(i)ucehnhundert und virzig jar, darnach in dem andren jare ze mitten Meigen in einem offennen lantage.	= (5) ‘And for the reason that this may remain valid and unchanged, therefore, we, the aforementioned countrymen of Schwyz have sealed this letter (document) with the particular seal of our country. Issued in Schwyz, A.D. 1342, May 15, at an open Court Day (i.e. in a public gathering of the Cantonal Assembly).’

**(§1) Terminology:**

Landl(i)ute gemeinlich von Switz = ‘*the countrymen as the Cantonal Assembly of Schwyz*’. Sin (i)ubereinkommen einhellklich und gemeinlich uf einem offennen Lantage = ‘*...have unanimously agreed in a public gathering of the Cantonal Assembly*’. (Ver)bannen = ‘*to banish (under threat of punishment)*’. Als die zeichen gant = ‘*as the marking signs are set*’.

**Commentary:**

*The Cantonal Assembly sets legal regulations for the usufruct of the wood for parts of its communal territory that was set apart by means of marking signs. Thus, the territory of the polity is controlled and subdivided in terms of geographical markings.*

**(§2) Terminology:**

Zille = ‘*Land markings*’, refers to markings of the territory.

Alz menger... alz mangem (*cf.* mengi = ‘*crowd, set*’): manec/ic (1) = ‘*many a one*’; (2) = ‘*often*’. Perhaps: ‘*as often... as often...*’; *or*: ‘*as many as file the charge therefor he shall pay...*’ That could mean: *each accuser is to be paid the fine.*

*The use of wood is differentiated terminologically: ru(e)ti = ‘to clear’, h(i)owi = ‘to cut’, swanti = ‘to burn out the roots’ (G. schwenden), zuge = ‘to drag or carry away’.*

*Wood (incl. sticks) is classified as ‘dry’ vs. ‘green’, ‘standing’ vs. ‘lying’.*

*Einung: ‘one pound of pennies’ as punishment or in compensation.*

**(§3) Commentary:**

*This paragraph shows a rigorous proceeding. It proves a territorial order: the validity of legal regulations, in this case the so-called ‘Einung’ (compensation money or punishment), is enforced: if the transgressor is unable to pay the fine, he is not to be housed or fed within the territory in question.*

**(§4) Commentary:**

*He who breaks the aforementioned prohibition has to pay for the punishment himself. Excepted from this ruling is cutting wood in order to build troughs for the drinking water supply of the community. It is interesting to note the presence*



*of a trait that is central to Wittfogel's theory: the construction of water works for the supply of drinking water and the irrigation of fields as a condition for the emergence of a state organization. Probably, we either have to imagine isolated unconnected troughs (for the collection of rain water for people or cows) or a cascade of troughs for spring water from the mountains (less probable: for river water).*

*PART VI:*  
*THE SOURCES CRITICALLY ASSESSED*

**25. TABULAR OVERVIEW: TRANSMISSION OF LETTERS OF FREEDOM**

Authority / Document	Schwyz	Uri	Unterwalden
1. <i>Heinrich VII – 1231</i> Letter of Freedom	Tsch. Commentary ( <i>too sketchy</i> = vd)	Tschudi (verbatim) = credible (cf 14.)	Tsch. commentary ( <i>too sketchy</i> = vd)
2. <i>Friedrich II – 1240</i> Letter of Freedom	Orig. StA SZ; Tsch. (verbatim) Cf <i>here</i> Ch 1.5, 1.1: <i>Decree by Pope</i> <i>Innocent IV</i>	Tsch. ( <i>short ref.</i> = ?); Schmid (ver- batim). Cf <i>here</i> Ch 1.2 : <i>Litigation</i> <i>between Uri &amp;</i> <i>Engelberg 1275</i>	Tsch. ( <i>short ref.</i> = ?). Cf 1316 StA OW. Cf <i>here</i> Ch 1.1: <i>Decree by Pope</i> <i>Innocent IV</i>
3. <i>Rudolf I von Habsburg – 1274</i> Letter of Freedom	<i>Nonexistent</i>	Tsch. & Schmid (verbatim). Cf <i>here</i> Ch 1.2: <i>Litigation</i> <i>between Uri &amp;</i> <i>Engelberg 1275</i>	<i>Nonexistent</i>
4. <i>Rudolf I von Habsburg – 1291</i> Free people not before unfree Judges	Orig. StA SZ; Tsch. (verbatim – 1316)	Tsch. Comment (copied by himself = credible) Schmid (register)	Tsch. (verbatim) (copied by himself = credible); cf 1316 StA OW. Cf <i>here</i> Ch 5.
5. <i>Adolf von Nassau – 1297</i> Letter of Freedom	Orig. StA SZ; Tsch. has copied ms.	Tsch. (verbatim); Schmid (verbatim)	Tsch. commentary: <i>Not seen</i> (= ?).
6. <i>Heinrich VII of Luxembourg – 1309</i> confirms freedoms, rights in general	<i>Tsch. note.; cf RI:</i> <i>copy 18th century</i> = <i>credible?</i>	Tsch. note; cf RI: copy 18th century = credible?	Orig. StA OW; Tsch. (verbatim) Cf <i>here</i> Ch 2.
7. <i>Heinrich VII of Lux. – 1309</i> confirms Letter of Freedom by Friedrich II 1240	Orig. StA SZ; (Reg. Tsch. ?)	<i>Nonexistent / Lost?</i> ( <i>Not mentioned by</i> <i>Tsch./ Schmid</i> )	<i>Nonexistent or</i> <i>destroyed? (Not</i> <i>mentioned by Tsch.)</i>
8. <i>Heinrich VII of Lux. – 1309</i> confirms Letter of Freedom by Adolf v. Nassau 1297	Orig. StA SZ; Tsch. Translation	Tsch. Lat. intitulatio & translation = credible?	<i>Nonexistent or</i> <i>destroyed? (Not</i> <i>mentioned by Tsch.)</i>
9. <i>Heinrich VII of Lux. – 1309</i> Leg. Court Privileges	[Confirm. 1316 by Ludwig of Bavaria Orig. StA SZ](= credible)	Tsch., Schmid (verbatim = credible)	Orig. StA OW Cf <i>here</i> Ch 7.1

10. <i>Heinrich VII of Lux. – 1310</i> Confirmation of buy-off from Count Eberhard v. Habsbg. 1269; Unmediatedness (SZ <i>only</i> )	Tsch. (verbatim)	<i>Nonexistent</i>	<i>Nonexistent</i>
11. <i>Ludwig of Bavaria – 1316</i> Collective confirmation (1240, 1291, 1309 [courts]; 1310 [SZ <i>only</i> ])	Orig. StA SZ; Tsch. (verbatim)	Tsch. Reg/Note = credible	Orig. StA OW; WB 1470; Tsch. (ab- breviated) = c [incl. 1240 = c; cf <i>here</i> Ch 1.1]
12. <i>Ludwig of Bavaria – 1327</i> Summary confirmation of rights, documents, etc.	Orig. StA SZ; Tsch. (translation)	[holds for all Wald- stätten]	[holds for all Wald- stätten]
13. <i>Ludwig of Bavaria – 1328</i> Confirm. of freedoms, rights, privileges for Waldstätten	Orig. StA SZ; Tsch. (verbatim)	[holds for all Waldstätten]	[holds for all Waldstätten]
14. <i>Karl IV of Bohemia – 1353</i> Confirmations	<i>Nonexistent</i>	Tsch. Reg [1231, 1274, 1297, 1309 (courts)]; Schmid (verbatim)	<i>Nonexistent</i>
15. <i>Karl IV of Bohemia 1361</i> Confirms freedoms, rights, documents of his predecessors	Reg: Sächs. StA Dresden (Reichsre- gistratur = Imper. Register of Karl IV)	Reg: Sächs. StA Dresden	Reg: Sächs. StA Dresden
Tsch. = Tschudi Schmid = Schmid 1788-90 verbatim = lit. transcript of the texts Orig. = Original StA = Staatsarchiv [state archives]	SW = Schwyz OW = Obwalden Sächs. StA = Saxon state archives	RI = Regesta Imperii = c = credible = vd = very dubious = ? = credibility is open	Reg = entry in register WB = Weißes Buch zu Sarnen ca. 1470

Tschudi's reliability can be discussed according to the criterion to which degree the "originals" (or copies) extant in the archives do correspond to Tschudi's transcriptions of the texts. Furthermore, Tschudi's specificity of archival information can be helpful: copied by himself, seen by himself, variants confirmed by himself (or only very sketchy statements). When was a document first reconfirmed by a later king or emperor? Anyway, the "producers (of the documents) *a posteriori*" are not Tschudi or Schmid. If at all, we are dealing with Heinrich VII von Luxembourg, Ludwig von Wittelsbach (Bavaria), or Karl IV von Bohemia. Concerning the question of confirmations of letters of freedom by the corresponding successors of the kings or emperors in question, cf Hinz 2016, App. 3.3., Ch 0.; App. 7, 9. b), c), d) [in German]. Doc. Nr. 2, 5, 9, 11, 15 are especially important.

## 26. 'ORIGINALS' (AS CONFIRMED AND OPTIMIZED VERSIONS) AND 'IMITATIONS POST FACTUM' (ANALOG COPIES)

Confirmations in their *optimized* form for the recipients (with clauses of restrictions as contained in the older versions eliminated) are sometimes also called 'originals'. Nevertheless, the *first date of issue* tends to be conserved. Cf the Federal Charters renewed in 1454 for Luzern and Zug (suppression of any dependency on Austria) and in 1473 for Glarus (obtaining equal status with the other members of the confederation). Such *revised* versions may become the standard of reference, with older 'non-optimal' versions sometimes being destroyed.

Sablonier uses the term 'Nachstellung' to refer to certain documents central to early Swiss history. 'Nachstellung' can be translated as 'analog copy', 'document *a posteriori*' or 'production *ex post facto* (afterwards)' but it can also be an 'imitation' or a 'counterfeit'. Thus, Sablonier often speaks of a '*probable imitation*'. Introducing this non-standard term is Sablonier's rhetorical accomplishment that is intended to cast doubt on the authenticity of historical documents. We have to distinguish: (a) the document under consideration in material form, (b) the evaluation of its authenticity in transmitted or copied form as well as (c) in its intent (e.g. as a reconstruction, a confirmation, a concession).

## 27. ON THE SYSTEMATICS OF CONFIRMATIONS OF LETTERS OF FREEDOM BY THE INDIVIDUAL KINGS

a) Some historians (e.g. Gallati) consider copies only conserved in Tschudi (1550 or 1570) or Schmid (1788-1790) to be falsifications which originally did not exist. Cf the differentiated discussions in the supplements of the RI. ***Some monarchistically oriented historians are silent on, or even conceal, the fire of the archive in Uri (1799) and its possible consequences for the transmission of documents in history altogether.*** They simply consider Tschudi and Schmid as forgers of documents.

b) King Rudolf I von Habsburg tried to introduce the inheritable monarchy for Habsburg and to abolish the feudal tenure of Habsburgian counts (dependent upon concessions by the king) by converting the counties into dukedoms. Documents extended by predecessor kings are not valid directly with the Habsburgians but become extended anew (e.g. the 'confirmation' of the Letter of Freedom by King Rudolf I in 1274 for Uri, originally given by King Heinrich VII von Staufen in 1231 and in 1240 by Emperor Friedrich II von Staufen).

c) Especially, the documents extended by Emperor Friedrich II von Staufen, excommunicated by the Pope in 1239, again in 1245, and brought down by the electors in 1245 (the legal cut-off date for the Imperial Court), are not recognized by the Habsburgians after these corresponding events. Habsburgian intrigues do play a role (as in the case of Emperor Ludwig von Wittelsbach).

King Adolf von Nassau was defeated and killed in battle by Albrecht von Habsburg (who then became king and was killed later by his own kinsmen). Thus, Adolf's documents are questioned by Habsburg.

Emperor Ludwig von Wittelsbach's confirmations and concessions were later considered to be in need of replacement. The Habsburgian Dukes incited the Emperor's own kinsmen to fight against his rule in Bavaria and offered peace to Ludwig in exchange for revocating his concessions to Inner Switzerland. Emperor Ludwig himself might have become unclear in his concessions, under the immense pressure and blackmailing by Habsburg. But the ecclesiastical processes against him (cf Part IV: Composition) point more to the fraudulent production of documents by Habsburg. By the end of Ludwig's life, Karl IV of Bohemia (and Luxembourg) became elected as King, and King Ludwig was overthrown finally.

In the beginning, King (later Emperor) Karl IV of Bohemia sent copies of Letters of Freedom which the confederates wished to reconfirm to the Habsburgian Dukes for comment. Thus, Karl IV confirmed only those Letters for Uri which were issued by Rudolf I von Habsburg (1274) and by non-excommunicated Heinrich VII von Staufen (1231), Adolf von Nassau (1297) and Heinrich VII von Luxembourg (1309 [court privileges]). The fact of including Adolf's Letter of Freedom (written anew but corresponding verbatim to Friedrich II's Letter of Freedom) points to the fact that Friedrich II's Letter was not acceptable to the Habsburgian Dukes. After becoming Emperor, Karl IV reconfirmed the Letters of Freedom and concessions for all the Waldstätten cantons. It seems that Habsburg lost support in the Holy Roman Empire. There seem to be no originals of Karl IV's reconfirmations conserved in the archives, only a registration in the Imperial Registry of this Emperor in Dresden, Saxony.

An exception seems to be Heinrich VII von Luxembourg who (according to Kopp) postponed the confirmation of the Habsburgian feudal tenure for some time. Heinrich VII (of Luxembourg) confirmed Letters of Freedom whereas Rudolf I von Habsburg and Adolf von Nassau reissued them. Heinrich's concept of legitimacy is grounded in the elective monarchy and in continuity with his predecessors. He reconfirms Letters or concessions extended by Friedrich II von Staufen and Adolf von Nassau (at least for Schwyz). Legal concessions in terms of autonomous local courts seem to hold for all three cantons. Emperor Heinrich VII of Luxembourg seems later to be recognized by Count Wernher von Homberg (II), the Habsburgian plaintiff in Inner Switzerland, who negotiates peace for Habsburg with the confederates in 1318. Cf Sablonier 2008<sup>3</sup>:150-51 [i.e. Habsburgian legal claims *before* 1309 are not named, nor are Duke Leopold's as of 1311].

Similarly, King and later Emperor Ludwig von Wittelsbach (called G. 'der Bayer', 'the Bavarian'), in a fight and in direct confrontation with the Counter-King Friedrich der Schöne (the Beautiful) von Habsburg, confirms verbatim – in a comprehensive quotation – documents originally extended by Friedrich II

von Staufen (Letter of Freedom), Rudolf I von Habsburg (Free men to be judged by free judges (plaintiffs?)), Heinrich VII von Luxembourg (Court and legal privileges). Remember that, three days earlier, Ludwig's *Imperial Court of Justice* declared all Habsburgian possessions in Inner Switzerland to be Imperial property (incl. the bondsmen or serfs, from now on directly dependent upon the Imperial Court of Justice and independent of Habsburgian courts). The confirmation of the buy-out of bondsmen in Schwyz (e.g. Steinen (?) 1310, originally issued in 1269 (?)) and the reconfirmation of their direct (*unmediated*) dependency on the empire seems to be significant (cf the confiscation of Habsburgian property including bondsmen in Inner Switzerland 3 days earlier).

d) The decrees issued by King Heinrich VII von Luxembourg in 1309 seem to be respected in the treaties of peace between the cantons of Waldstätten and the Dukes of Habsburg (or, respectively, on behalf of them, Count Wern(h)er von Homberg as peace negotiator for Habsburg) in 1318. Cf Sablonier 2008<sup>3</sup>:150f: Habsburgian legal claims covering the time *before* 1309 are not recognized.

e) The cantons (*MHG. Länder*) seek the confirmation of their 'freedoms, privileges and rights' with each incumbent king and, thus, demonstrate that they had recognized the existential advantages of *unmediated dependency upon the empire*, that they strived for it and tried to secure this for themselves. Cf. the claim to readjust the Federal Charters, starting with the Federal Charter of 1332 with the City of Luzern, in the light of the later (1415-1417) conceded Imperial Freedom (*unmediated dependency upon the empire*) to the cities of Luzern and Zug. This readjustment was carried out in 1454(/1455) and consisted in the elimination of political and economic advantages of the Habsburgian Dukes.

## 28. ADVANCING EMPIRICAL SUPPORT IN SOLVING A PUZZLE VS. ADVANCING A RHETORICAL PLEA OR ALLEGATION

I focus on central documents with legal implications (e.g. Imperial Freedom).

1210 (no month, no day): Several documents covering the exchange of real estate between the Monastery of Engelsberg and Count Rudolf II von Habsburg. In exchange for real estate and rights involving a *bailiffship* ('together with the bailiffship [*advocatia*] that is to be held in possession everlasting by the often-mentioned Church in freedom'), Rudolf II receives an estate in Sarnen (Unterwalden) [State Archive Sarnen (OW), *UI*]. Cf QWI/1:254 (= Doc. 552). Cf Hinz 2016a. A corresponding document of 1210 is located in Engelberg; cf *here* Ch 3 (12): 'Kopie in Buchschrift' = 'copy in book-writing' [?] (QWI/1:111f, Doc. 235); a 'marginal addition of witnesses' in the MS is unknown to the various eds. In the paraphrase, the editors of QW speak of 'Zugehörden' ('people or things belonging to [the estate]'). Moreover, two documents: one reconstructed by the eds of QW, the other in Engelberg (1240, no month, no day). The Habsburgian Count transfers the rights he had as a bailiff onto the Abbott

of Engelberg. From the *Engelberg document of 1240* (in: *Der Geschichtsfreund*, vol 12:196f; internet: Google) that seems to be of crucial importance in understanding Habsburgian claims:

Noverint igitur tam posteri quam presentes, quod cum progenitor noster R. quon- / dam de Habisburc Comes predia que fuerunt ultra Beinstrazse sita, H. quondam Abbati et ecclesie / Montis Angelorum pro quibusdam prediis eiusdem ecclesie in Sarnon conmutasset sub hac forma, vt si qui / libere condicionis homines seu iure aduocatione eidem subiecti, a quibus de iure Tallia seu seruitia uel / in eos aliquam iusticiam exercere possemus, pro nostro arbitrio uoluntatis translati ultra Beinstrazse in bona Monasterii memorati a nostra iurisdictione et sericio penitus essent immunes.

= ‘Therefore, those living later or now may know that our progenitor Rudolf, the former Count of Habsburg, had given the estates situated on the other side of the “Bone Street” (G. ‘Beinstraße’; geographical term) to Heinrich, the former Abbot, and the Church of the “Mount of the Angels” (G. ‘Engelsberg’) in exchange for some estates of the same Church in Sarnen, in this way: if people (men) of free status, respectively subjected to him (i.e. Count Rudolf) according to law [i.e.] by means of bailiffship from whom we could [demand] taxes or services, according to law, or exercise some judicial authority against them, [were] transferred, at our arbitrary discretion, on estates of the mentioned monastery on the other side of the “Bone Street” (G. ‘Beinstraße’), they were completely exempted from our jurisdiction and service.’

*Note: L. qui / libere condicionis homines* = Am. ‘who are people (men) of free status’; *L. pro nostro arbitrio uoluntatis translati* = Am. ‘transferred, at our arbitrary discretion’. *The wording emphasizes – or even exaggerates – arbitrary and authoritarian proceeding against free people submitting them to monastic rule. This fact seems to hint to the purpose of the document: to introduce a new – aggressive – concept of power and arrangement between the Habsburgs and the Catholic Church when downgrading the social status of free persons: (a) Binding people to the land. (b) Subjugating them in terms of work and jurisdiction to the new owner, the Church. Please note Emperor Friedrich II’s statement (conserved in the Letter of Freedom for Schwyz: ‘(you), as free men, who only had to respect us and the empire.’ I understand ‘seu iure aduocatione eidem subiecti’ above as an explication of ‘liber(a)e condicionis homines’ (‘free men, respectively [persons] subjected to him through law, through bailiffship’): the law is explicated on the basis of the bailiffship. Cf PONS 2007:853: „sive u. seu ... (2) oder (b. einem unwesentlichen Unterschied) [= Am. ‘(2) or (marking an unimportant difference)’]. ‘Exercere’ (to exercise; to persecute, vex): split semantically into ‘demand’ and ‘exercise an authoritative function’.*

Cf Niermeyer 1976: L. ‘tallia’ = F. ‘taille’, ‘exaction seigneuriale’, E. ‘tallage’, ‘municipal contribution’. L. ‘tallium’ = E. ‘retail’ (here: synonym of ‘tallia’?). Niermeyer 1976:25, L. ‘advocatio’ = E. 1. ‘judicial assistance’; 2. ‘ecclesiastical advowry, the office of an advocate, as well as the whole of his powers and rights’; 3. ‘the king’s power regarding royal churches’; 4. ‘area under an ecclesiastical advocate’s jurisdiction’; 5. ‘district assigned to a “*missus dominicus*”’; 6. ‘tutelage’; 7. ‘recognition of a lord’s suzerainty’, ‘surrender of a property, it being given back as fief (“*feudum oblatum*”)’; 8. ‘warranty’. L. ‘iustitia’ = E. ‘jurisdiction, judicial authority, right to payment of certain dues’.

It is possible that the Engelberg document of 1240 was produced after the issue of Emperor Friedrich II’s Letter of Freedom for Sarnen or, rather, Unterwalden and is supposed to reinforce claims by the Habsburgs against Unterwalden. A connection with Pope Innocent IV’s Ban against Friedrich II is possible. Is this document supposed to fill in the *missing evidence* of “free people or, ra-

ther, bondsmen obliged to service” in the original document of 1210?<sup>48</sup> Note that the later documents show details not mentioned in the first document. I propose the hypothesis that U1 in Sarnen is a product intended to have been issued *before* Friedrich’s II reign because of the Habsburgs’ later rejection of all documents issued by Friedrich II.

1231 May 26 (QWI/1:152): The Letter of Freedom for Uri is to be considered as *dubious* simply because it is transmitted by Tschudi only (Sablonier). ‘*Universis*’ ≠ ‚[to] all‘ (cf Stettler, next entry).

1240 Dec (QWI/1:197): The Letters of Freedom are to be considered as *dubious* (Sablonier). ‚*Universis*’ ≠ ‚[to] all‘. Letter of Freedom for Uri: “very unlikely” (Stettler, *here* Ch 1.5); but cf the litigation because of the alps [‘pasture grounds’] in 1275, *here* Ch 1.2). Letter of Freedom for Unterwalden: “to be excluded” (Stettler, *here* Ch 1.5; but cf Pope Innocent IV in 1247, *here* Ch 1.1: ‘*homines de Subitz et Sarnon*’ = ‘the men of Schwyz and Sarnen’ and not ‘some or, rather, certain men of...’). In accord with canonical law, the interdict is de-

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<sup>48</sup> I am inclined to believe that we are dealing with a conspiracy between Count Rudolf III and Pope Innocent IV: an early version of *absolute* power for Habsburg in exchange for the political support of the Papacy and Church against Emperor Friedrich II. Such a conspiracy might involve documentary manipulations. **My points of objection against the authenticity of the documents of 1210 and 1240 of Habsburg/Engelberg are:** (1) The *preamble* in 1210 (U1) is questionable: what is ‘brought together’? The style is strange and reminds me of later constitutional documents (cf contracts of purchase in the QW; the authors seem to make up for ‘eternal validity’). At least 3 different estates are involved in a confusing exchange. (2) The *fief of bailiffship* is not mentioned as such but becomes sold (or changed or ‘alienated’): ‘to be possessed everlastingly (!)’. (3) There is *no participation* of any person or, rather, representative of the Cantonal or Community Assembly of Sarnen recorded in U1 except ‘other numerous’ *anonymous* ‘knights and citizens’ (!) of the City of *Luzern* (!) (the people and the geography implied are in need of further analysis; in contrast, cf the addresses in the Letter of Prohibition to Uri of 1234; Letter of Freedom for Uri 1231 etc). (4) According to the Eds of QW, the marginal note naming witnesses in the *MS of 1210 in Engelberg* is *unknown* to the different editors. The document consists in two *loose leaves*. Note the strange phrasing ‘in book-writing’ and the reference to the Emperor as ‘bailiff’ (!) and the terminological change between L. ‘*comes*’ (= ‘count’) and L. ‘*princeps*’ (= ‘prince’). (5) In the *MS of 1240* [QWI/1: 198, doc 425], the implied assault against *free people* (!) or, else, people subject to the Count by so-called legal implications of the bailiffship (right of taxation, to services and jurisdiction or legal fees over them, as maintained “*according to law*”) is revealing: the bailiffship as an instrument to convert a free population to monastic or ecclesiastical serfs or bond-slaves. That has to be seen in conjunction with, e.g., the Pope’s Bull of 1247 and King Heinrich’s document of 1311 (see *below*) in reaction to claims by Duke Leopold [not conserved]. (6) The *contents* of the documents of 1210 [a bailiffship mentioned] and 1240 [claims against *free as well as dependent* people listed additionally; cf Point (5)] appear to be *incongruent*. (7) Documents issued by Friedrich II *up to 1239* are said to be *accepted* by the Habsburgians (or, at least, by royalist historians). The Letters of Freedom for Schwyz (and Uri, Unterwalden) are issued for 1240 December (no day). Is the Habsburgian document of 1240 without a precise date intended to match and counteract them?



creed against *whole localities as organizations*, without restrictions. The evidence shown for Uri and Unterwalden is independent of Tschudi (and F.V. Schmid). With regard to a possible Letter of Freedom for Luzern, cf Hinz 2016a [Unterwalden, Anh.: Luzern reichsfrei?]. The document by Duke Albrecht [1292 May 31, Luzern = nbdig-59267\_2.pdf = S. 10\*] refers us to “rights as in existence under the (previous) rule of the Monastery of Murbach”. Cf the various letters by the Habsburgian high-level nobility directed to Duke Friedrich the Beautiful of Habsburg as the potential successor of the assassinated King Albrecht von Habsburg on behalf of Luzern’s rights in 1308 (see below 1308).

1274 Jan 8 (QWI/1:502): Direct dependency of Uri upon the Holy Roman Empire decreed by King Rudolf I at the beginning of his rule “*in sentimental exuberance*” (Kopp). [Rudolf I has probably been elected king of the Holy Roman Empire because of his ability to intermedicate in the feud in Uri; hypothesis E.H.].

In this context the following inquiry by King Rudolf I is to be seen:

1274 Nov 19 (QWI/1:518): King Rudolf I’s inquiry about what to do with the imperial possessions of Emperor Friedrich II. The Imperial Court answers cautiously: “*Conserving the imperial possessions [for the Empire]*”. *In fact, there were imperial possessions and King Rudolf I was urged to keep them. Thus, he might have simply abstained from reconfirming some of them.* We need to distinguish Habsburg’s nonrecognition of actual concessions from factually non-existing concessions by Emperor Friedrich II or King Ludwig IV von Wittelsbach.

King Rudolf brought up this issue at least twice (a second time in 1281; cf QWI/1:616). That might point to a cautious attitude assumed by King Rudolf. The Imperial Court was obviously unwilling to follow the King with regard to an arbitrary redistribution. King Rudolf knew that his position was not so strong as to withstand moves towards his removal if he would take an overwhelmingly arbitrary or, rather, unjust stance or if he would become incapable of handling the situation.

*Before 1282* (QWI/1:622; cf *here* Ch 4): Entry in King Rudolf I’s book of model letters (letter formulas), with the explicit address ‘Schwyz’. According to Kopp, probably ‘*(only) a writing exercise of the Imperial Chancellery*’. Cf my discussion in: Hinz 2016, App. 6.2. The address hints towards the historic facticity of an actual letter conceded.

1291 Feb 19 (QWI/1:758; cf *here* Ch 5): According to some historians, the decree by King Rudolf I for Uri and Unterwalden is *only a later imitation by Tschudi (!)*. But cf King Ludwig von Wittelsbach in 1316 March 29, at least for Unterwalden (original conserved) and for Uri (probably burned in 1799), to be indirectly reconstructed in accord with the confiscation decree as of 1316 March 26 since Uri is mentioned therein. Note the difference between King Ludwig

and Tschudi and the *rhetorical shift* from Ludwig's confirmation to Tschudi's reconstruction, as supposed by the eds. of QW.

1291 Aug 1 (QWI/1:776; cf Hinz 2016, Ch II): Federal Charter, according to Sablonier *hypothesized as "imitated" or "reproduced"* (G. 'nachgestellt'). He postulates it as being issued in 1309 (as an *imitation / reproduction a posteriori or as an original?*). By means of this later dating, Sablonier hypothesizes Wernher von Homberg as the main author (again, of an imitation or of an original?) who would have been only 8 years old in 1291 and who would then have to be ruled out as an author. Sablonier seems to be anxious to make sure that doubts remain with the historical value of this document under any circumstances. But, at the same time, by means of his incoherent arguments, Sablonier tries to prove that Wernher von Homberg is the *architect* of the Swiss Confederation. The Federal Charter of 1291 is the replacement of an older version (according to internal evidence) that might have been *renewed*. Without explicit reference, the Federal Charter of 1291 is *de facto* replaced by the Federal Charter of 1315 Dec 9. With regard to terminology and concept formation, the Federal Charter of 1291 is related to King Rudolf I's Decree of 1291 Feb 19. Cf my arguments in: Hinz 2016, Ch. 0.1. There is a later MHG. translation of the Latin written Federal Charter of 1291 that contains the date "1291 at the beginning of August (i.e. Aug 1)." This translation is attributed to the turn of the 14<sup>th</sup> to the 15<sup>th</sup> centuries. Maybe it is a bit later in terms of stylistic criteria?

1297 Nov 30 (QWI/2:74 = Doc. 159a&b): Confirmation of the Letters of Freedom of 1240 by King Adolf von Nassau. This is completely uncertain for Unterwalden but it is to be hypothesized as a counterhypothesis against the pro-Austrian or, rather, monarchy-oriented historians. For Uri confirmed (indirectly) in 1353 by King Karl IV of Bohemia. Cf under "1353". Cf Hinz 2016:316ff.

1234 (QWI/1:164 = Doc. 349) and 1299 Jan 13 (QW I/2:88 = Doc. 191) [Letters of Prohibition of Taxation, by King Heinrich VII of Staufeu (1234) and Queen Elisabeth, King Albrecht's wife (1299); cf *here* Ch 17]: Indirect evidence confirming the *execution of autonomous decisions of the Cantonal Assemblies in Uri and Schwyz*. On the basis of privileges for the monasteries concerned in Wettingen (Uri) and Steinen (Schwyz), the decisions of taxation are not recognized as legal under royal protection. Cf *here* Ch C, Stettler's Outline: Are the addressees of the Letters of Prohibition really "not further determined groups of countrymen in the correspondingly mentioned regions under the leadership of a few influential families or dynastic (houses? or) lineages (G. *Geschlechter, pl.*)" [Stettler]? Cf the quotations *here* in Ch 17 incl Tab 1.

1308 (cf Hinz 2016a:23f): King Albrecht was assassinated by his own nephew. Several letters, e.g. by the widow, Queen Elisabeth, and Duke Leopold, directed to Duke Friedrich the Beautiful von Habsburg, the presumed successor of King Albrecht (my hypothesis), on behalf of Luzern: *the petition to Duke Fried-*

*rich to restore the old rights of the City of Luzern* obviously abolished during King Albrecht's reign, thus facilitating the option for the Electors (G. 'Kurfürsten'), again my hypothesis. Cf Hinz 2016a [Unterwalden, Anh. Luzern reichsfrei?].

1309 Jun 3: King Heinrich VII of Luxembourg confirms the Letters of Freedom for Schwyz issued by Emperor Friedrich II von Staufen (1240) and King Adolf von Nassau (1297). In addition, the Privilege of Local Jurisdiction only has probably been issued for Schwyz (original not conserved)<sup>49</sup> because it is contained in King Ludwig's confirmations of 1316 March 29 (see below). The fact of verbatim confirmations of preceding documents and the general comment on the authenticity of them makes me think that a destruction of documents took place in Sarnen or, rather, Unterwalden (see discussion *here* Ch 3) before Heinrich VII's ascension to power. King Heinrich VII issues a *general unspecific* confirmation for Unterwalden (cf *here* Ch 2) whereas he emphasizes that he had *actually seen* the documents for Schwyz which had been confirmed by him *as untouched* (cf *here* Ch 1.1, Outline of my arguments [10.]). That (hypothetical) destruction of documents of Unterwalden is probably reflected in King Ludwig's strong reaction in 1316 March 29 as well. See below. It is possible that the two monarchs had been confronted with invalidated documents (names erased or seals removed or parchment torn apart). Under any circumstances, the Habsburgian Kings (Rudolf and Albrecht) had acted against the conservation of Imperial property interests in favor of their own dynastic ones in contrast to the directive given by the Imperial Court of Justice in 1274 and 1281.

1310 May 5: Confirmation of the buy-out from Count Eberhard von Habsburg by Heinrich VII of Luxembourg: Cf nbdig-59267\_2.pdf 270\* Anm. 546 (1): "So leichtfertig oder so eilig im Augenblicke vor seiner Abreise von Zürich hat der König gehandelt!" (Kopp, Gesch. IV/1, A.3) = "How thoughtlessly or quickly did the King act at the moment before his departure from Zürich!" The misinterpretations (wrong translation!) of the 1310 document go back to Kopp due to his preconceived views and, possibly, Tschudi. Cf Hinz 2016, Anh. 6.2 [1310].

1311 Jun 15: Duke Leopold of Habsburg, *demanding the restoration* of estates and rights, even over free human beings (!) *in Schwyz and Uri* (and not in Unterwalden, E.H.). King Heinrich VII of Luxembourg expresses a proviso. Some historians argue: if the reply had been conserved it would imply the cancellation of the concessions.

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<sup>49</sup> Similar (re)issues for Uri are probable since at least the reconfirmation of King Heinrich VII's Legal Court Privilege (Local Jurisdiction) by King Karl of Bohemia is documented for 1353. See below.

Observation: Duke Leopold (his complaint has not been conserved) seems to rely on *kinship-based* concessions by King Rudolf I (and King Albrecht) von Habsburg which constitute changes in the possessions of the Empire and, correspondingly, in the legal order of the Empire. King Heinrich VII's decision remains to be open.

Cf. the *proviso*:

‘in such a way, however, that, if we or our successors in the Empire would seem to have a legal right over the same goods (estates), said same Leopold and his brothers will be obliged to fulfill, to the advantage of us or our successors in the Empire, what the legal order has prescribed if (*or*: as long as) the office (*or*, *rather*: the power) conferred onto them has been given as a fief from our side [= *Lat. dum ex parte nostra actio sibi mota fuerit*]. According to *Navigium* we are dealing with a verb form: 3<sup>rd</sup> person plural perfect indicative active. Thus, a translation by *if we have initiated legal action against them* is hardly feasible: King Heinrich VII should know!

King Heinrich VII refers the Habsburgian addressees to the “legal order”, similar to the Court Privileges of 1309 (Unterwalden). Cf L. ‘actio’ = ‘legal process’; also: ‘delegated power, office’ (*Niermeyer 1976*); L. ‘moveri’ = also: ‘to be held in fief of a lord’ (*Niermeyer 1976:707*). I.e., as a matter of principle, we could be dealing with the question if the case has to be viewed as a (royal) “fief” or as “acquired private property”. This point might be the very issue: a pro-Habsburgian move to change imperial law!

*QWI/2:300 (=Doc. 598)*

1311 June 15. In the military camp at the siege of Brescia.

Archive of the Chapter [German Templars], Pisa, Nr. 1366. — Contemporary copy; a second one in the same locality, Nr. 1350. — Print: Kopp, *Geschichtsbl.* I, 173 f. Urk. II, Nr. 136; MG. Constit. IVi, Nr. 636. - Registry: Kopp, *Gesch.* IVi, 250 f.; Oe. 509. ...

*Note of the Eds QWI/2:301: Cf the Entry in the Registry of the fortification of Baden f. 2 a, with regard to this document [further information by the Eds QW omitted by E.H.]*

[1] H(enricus) dei gracia Romanorum rex semper augustus ... Cum ... per illustrem Liupoldum, ducem Austrie et Styrie, principem nostrum dilectum, in nostris serviciis in Italia constitutum, nostre clemencie supplicatum extiterit, ut ipsum et fratres suos in possessione bonorum et iurium, que in Alsacia, in vallibus Switz et Urach<sup>1\*</sup> et hominibus liberis in (eisdem)<sup>2\*</sup> vallibus de gentibus<sup>50</sup> ac in bonis et opidis, que vulgariter Waldstet dicuntur, sibi et fratribus suis pertinere asserit, reponere dignaremur<sup>3\*</sup>,

= [1] ‘Henry, King of the Romans by God’s grace, always Augmentor... As the supplication for our clemency has been put forward by the famous Leopold, Duke of Austria and Steiermark, our esteemed prince who is in our services in Italy so that we should consider him and his brothers worthy of reinstallation in the possession of properties and taxes (fees) that he claims to belong to him and his brothers in Alsace, in the valleys of Schwyz and Uri and against (at the expense of) free people in the same valleys, of dependants (*or* “sibs”), and in properties and in towns that are called ‘Waldstätten’ in the local language.’

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<sup>50</sup> This expression L. ‘gentibus’ might refer to *inheritable* slavery or service obligations as evidenced in the case of monasteries. Cf *Niermeyer 1976* for more interpretations.

[2] quia de iure sibi et imperio in premissis competenti nondum plenarie nobis constat<sup>51</sup>, ex parte nostra nobili viro Eberhardo de Burgelon<sup>4\*</sup> et ex parte predicti Liupoldi Friderico comiti de Tokkenburch<sup>5\*</sup>, qui duo terciam seu communem personam, si eis oportum videbitur, eligent et assumunt, (u)t<sup>6\*</sup> sub iuramento prestito apud vicinos et notos super predictis bonis inquisitionem faci(a)nt<sup>7\*</sup> diligentem, est commissum.

= [2] ‘As there has not yet been quite adequate [information] about their and the Empire’s legal rights submitted to us in the aforementioned statements, the task is entrusted, on our part, to the nobleman Eberhard of Bürglen, and, on the aforementioned Leopold’s part, to Friedrich, Count of Toggenburg both of whom shall choose and co-opt a third or arbitrating person if it seems fitting to them, in order to carry out a diligent investigation about the said properties among the neighbors and known persons, under sworn oath.’

[3] Qua inquisitione legaliter facta per tres personas predictas aut duas, si tertia assumpta non fuerit, et nobis plenius exposita prefatum ducem Liupoldum et fratres suos in possessione omnium bonorum et iurium predictorum, que dicti duces et progenitores eorum hereditarie tenuerunt ab antiquo et in quorum possessione pacifica dare memorie quondam rex Rudolfus, cum adhuc comes existeret, et Albertus, rex Romanorum, existens dux Austrie, ratione comitatus et hereditatis fuerunt et que iidem reges et duces Austrie, qui nunc sunt, iusto emptionis titulo<sup>52</sup> possederunt<sup>8\*</sup>, reponere et relocare volumus et tenemur,

= [3] ‘After the investigation [will have been] carried out legally by the three or two aforementioned persons if the third one would (*or*: will) not have been co-opted, and after it [will have been] demonstrated<sup>53</sup> to us more completely that the aforementioned Duke Leopold and his brothers [have been really] in possession of all the properties and taxes aforementioned which<sup>54</sup> the said Dukes and their parents owned by means of inheritance since ancient times and in – notably (*or*: [just] to remember it)<sup>55</sup> – peaceful (*or* undisputed?) possession of which the former King Rudolf as long as he was Count, and Albrecht, King of the Romans, in the time when he was Duke of Austria, have been, on the basis of the [office of the] County and the inheritance, and which the same Kings and Dukes of Austria, which [official title] they hold nowadays, owned with legitimate title of purchase: [in that case] we want and we are obliged to give back and restitute to them (the possessions)’

[4] ita tamen quod, si nobis aut successoribus nostris in imperio in eisdem bonis ius aliquod competere videbitur, idem Liupoldus et fratres sui, dum ex parte nostra actio<sup>56</sup> sibi mota<sup>57</sup>

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<sup>51</sup> L. *constat*: ‘to be known (to us)’; cf Niermeyer 1976:257: ‘devoir être soumis à la décision d’un juge, d’un tribunal’. *Present tense, E.H.*

<sup>52</sup> L. *iusto emptionis titulo possederunt*: The requirement of ownership to be proven by ‘legal titles of purchase’ points to a historic situation of imminent expropriation by the Habsburgian nobility. The Electors and the non-Habsburgian Kings seem to protect the property of the Empire and, thus, rights of the population under Imperial rule.

<sup>53</sup> Cf Niermeyer 1976: L. *exponere* = ‘explain’, ‘show’.

<sup>54</sup> L. *qu(a)e*: accusative plural neuter. L. *hereditarie*: adverb. (cf Navigium; Niermeyer 1976).

<sup>55</sup> In this sense I understand the phrase L. “*dare memoriae*” (cf Dictionarium latino-germanicum, Petrus Dasypodius 1536:54r, ebook (Google): “Ingedenck seyn” (G. ‘eingedenk sein’ = Am. ‘to remember’, ‘to be aware of-’; ‘in order to remind [you]’, ‘notably’, ‘nota bene?’).

<sup>56</sup> L. *actio* = ‘legal process’; also: ‘delegated power, office’ (Niermeyer 1976).

<sup>57</sup> L. *moveri* = also: E. ‘to be held in fief of a lord’; F. ‘mouvoir, dépendre par un lien féodal’ = ‘to be dependent upon/to belong to a feudal bond/relation’ (Niermeyer 1976; cf the example given by him: *Terram illam, que a me movetur quamque ipsi de me in feodum tenebant, resignaverunt* = ‘They gave up the land that is given as a fief by me and that they held as a fief from me’ [Actes de Namur, no. 21, a. 1179]).

fuerit, nobis et successoribus nostris in imperio facere tenebuntur, quod dictaverit ordo iuris. = [4] ‘in such a way, however, that, if we or our successors in the Empire will seem to have any legal right over the same properties (estates), the same Leopold and his brothers will be obliged to fulfill, to our advantage and that of our successors in the Empire, what the legal (*or* judicial) order has prescribed if (*or* under the condition that) the office (*or* the power) conferred onto them has been given as a fief from our side’.

[5] In cuius rei testimonium presentes litteras nostre maiestatis sigillo iussimus communiri. Datum in castris ante Brixiam xvij. kal. Iulii anno domini M<sup>o</sup>.CCC.XL, regni vero nostri anno tercio.

= [5] ‘In testimony of this matter we have given the order to fix the seal of our majesty to the present letter. Issued in the fortification before Brescia XVII. Kal. Iulii, AD 1311 [=1311 June 15], but in the third year of our rule.’

[\*Notes by the Eds QW:] <sup>1\*</sup> D u r r e r , Jahrb. 35, 119 A. 4, assumes that it was wrongly written instead of ‘Unterswalden’. <sup>2\*</sup> “eisdem” is missing in the first copy but is added in the second one. <sup>3\*</sup> Cf above Nr. 534. <sup>4\*</sup> Cf Nr. 249 A. 6. <sup>5\*</sup> Friedrich IV von Toggenburg, s. Nr. 54 A 5. 490. <sup>6\*</sup> und (= ‘and’). <sup>7\*</sup> Both copies have “et” and “facient”. The second, however, is imperfect, has “cum” instead of “reponere dignaremur [Navigium: 1. pl. imperf. conj. (deponens), E.H.], quia” (and “constet” instead of “constat”) and omits “est commissum” at the end of the sentence altogether, the finite verb is thus missing. But „est commissum” seems to require the change to “ut” (instead of “et”) and “faciant”. <sup>8\*</sup> Cf T. Schieß, Archiv d. Histor. Ver. d. Kts. Bern 31, S. 11 ff.; K. Meyer, Zeitschr. 10, 419, and on the further course of things, D u r r e r , Jahrb. 35, 120 Anm.

#### *Analysis:*

A formal demand by Duke Leopold of Habsburg has been made to King Heinrich VII von Luxembourg with regard to estates and people in Waldstätten.

Duke Leopold’s justification for such a demand is considered to be insufficient in terms of documentation and legal arguments. Thus, King Heinrich VII orders a legal investigation into the issue.

- (a) *The legal inquiry has to confirm:* that Duke Leopold and his brothers are factually in *possession* of all the mentioned properties and rights. I.e. on the basis of *inheritance* by their progenitors or ancestors. That means: the possessions exist “*since ancient times*” and came about “*peacefully*”, i.e. without violence or in agreement (cf Niermeyer 1976:750, *pacificus*. 4.)
- (b) Points [1], [2], [4] show that the legal verification *is still to be done*. [3] *si tercia...fuerit* (Fut/Cond II!): knowledge about the co-option *is still open*.
- (c) Especially, it is to be proven by documents that King Rudolf as Count before (and not later as King, E.H.), and King Albrecht as Duke (and not later as King, E.H.) came into the said possession, thus based on the position of a Count or Duke; moreover, under the later *changed* situation, as Kings or Dukes (since times of Kg Rudolf who created the Dukedoms), that the estate was bought as a purchase as can be proven by legal titles of purchase (*iusto emptionis titulo*) [and not expropriated illegally from the population by the office holder in power, the King or the Duke; E.H.].
- (d) *Then [and only then], King Heinrich VII of Luxembourg wants, and is obliged, to give back the ‘possession’ and to restore it.*

- (e) If the current King Heinrich VII or, rather, the Holy Roman Empire has any right over the said properties, Duke Leopold and his brothers do have to comply with the legal order (L. ‘ordo iuris’) if their office and power were given as a “fief”. *Thus, the investigation is still left unfinished.*

The document is a *key to understanding Habsburgian and non-Habsburgian policy* in conjunction with Pope Innocent IV’s suggestion (or, rather, conspiracy) in 1247. It has been misinterpreted in dramatic form and has given rise to a completely distorted image of Swiss and Imperial history: [2] says that not enough information has been submitted (verb forms: present and future tense; cf *videbitur*). [3] marks the *conditions* for a successful revision. [4] characterizes the central legal issue: the question of ‘imperial property’ (G. ‘Reichsgut’) as in the decisions of the Imperial Court of Justice in 1274 and 1281.

The careful analysis of this document, together with the observations mentioned on King Heinrich VII’s confirmations of Emperor Friedrich’s and King Adolf’s Letters of Freedom for Schwyz (1309: ‘is not cancelled and has no ab-rasions’) leads me to the conclusion that Heinrich VII’s summary confirmation for Unterwalden in 1309 was based on unjustly invalidated evidence and was well grounded. My notes on the contradictory pro-Habsburgian documents of February 1326 and 1334 show that even the *production of documents* formed part of Habsburgian policy. Cf *here* Ch 11.

1314 January 6: *Raid* against the Monastery of Einsiedeln (by Schwyz). The motive for this attack remains dubious and enigmatic: much space for speculation, e.g. with regard to a (future) collaboration between Wernher von Homberg (the Imperial Plaintiff in Inner Switzerland under the deceased Emperor Heinrich VII von Luxembourg), the Habsburgians as possible successors of Heinrich VII and the Monastery of Einsiedeln. The connection with the battle at Morgarten *later* remains unclear: the attack against Einsiedeln as an occasion but hardly as the cause. Otherwise, any support [in favor of Schwyz] by the Imperial Archbishop in his role as Elector (G. *Kurfürst*) after the attack against Einsiedeln would hardly have been feasible. King Heinrich VII’s Confirmations of 1309 [regarding Emperor Friedrich II: ‘non cancellatas’ = ‘not cancelled’] and 1310 for Schwyz [regarding the redemption from bond-services for ex-Count Eberhard of Habsburg], together with Duke Leopold’s demands of 1311 [not conserved directly], as a cause for action on both sides? Incidentally of the various letters of the Habsburgian high nobles directed to the potential successor, Duke Friedrich the Beautiful, asking him to re-establish or to reconfirm the (former) rights of the city of Luzern, after the assassination of King Albrecht in 1308. Cf Hinz 2016a.

1316 March 26 (QWI/2:423; Hinz 2016:337f, text and translation): *Confiscation* of Habsburgian estates and properties in *Uri (!)*, Schwyz, Unterwalden by the Imperial Court of Justice. I.e., all the three cantons get their direct, unmedi-

ated dependency upon the Empire confirmed. *All human beings within this territory become free. Services are to be rendered to the King, or, rather, the Empire alone.* Hypothesis E.H.: Since this time, obligations of the inhabitants to services are not mentioned anymore as had been the case up to the Federal Charter of 1315 Dec [Fed Ch 1291, §19; Fed Ch 1315, §11]. The decree by the Imperial Court of Justice can also be interpreted as *liberation from any service obligation towards local lords internally within the three primary cantons.* Cf Hinz 2016, Ch II.6: discussion of the alliance between Zürich, Uri and Schwyz in 1291 Oct 16.

1316 March 29 (QWI/2:424; Hinz 2016:375ff): *Originals for Schwyz and Unterwalden conserved (in the corresponding State Archives).* In the case of Unterwalden and Uri, Austria-oriented historians have “demonstrated” these confirmed documents as being “imitation” or “fraudulent”. *Therefore*, the reproduction of the documents of 1240 and 1291 for Uri in Tschudi’s *Chronicon Helveticum* has been “proven as fraudulent”. The arson of the archive in Uri in 1799 is concealed in the corresponding discussions. In my opinion, the expressions ‘*paginam infringere*’ (*destroy/tear apart the page/document*) and ‘*ausu temerario*’ (discussible: [*by*] *the action of forging / counterfeiting* [Niermeyer 1976:1016]) can be understood as hints towards the destruction of documents in the past on Habsburgian request. (Completely uncorroborated: the relatively un-specific reference may hint at a clerical author of destruction and therefore a strong degree of constraint of any direct censorship within the reconfirmations of the documents.)

The fact that the Document of 1309 [Privilege of Local Judges and Courts only] by King Heinrich VII von Luxembourg is missing in Schwyz is easily explained: King Ludwig von Wittelsbach’s confirmations of 1316 March 29 do not contain the restriction of validity (as evidenced in the conserved prototypical document of 1309 for Unterwalden). Thus, Unterwalden 1316 [State Archive of Obwalden] and Schwyz 1316 [State Archive of Schwyz] are to be considered as being ‘new valid originals’. Tschudi’s observations seem to be exact: he notes the divergences in the text.

1324 May 5 (QWI/2:604 = Doc. 1199): Repetition of the decision of confiscation and legal imperial protection for Uri, Schwyz and Unterwalden (the whole population under the Royal or Imperial Court of Justice; prohibition of Austrian courts and any service of the first Swiss cantons for Habsburg). Cf Hinz 2016:339f, Appendix 6.4. This decision fires a series of conspirative actions initiated by Habsburg in collaboration with the Pope in *Avignon*. Not commented on by royalist historians. Cf Hinz 2016b:1 (Research Gate), for a short description of this conspiracy. It is quite dubious if King Friedrich the Beautiful von Habsburg continued in his fight for the crown after he was taken prisoner and released on the basis of an expiation. Thus, the cancellation of Imperial Freedom of several polities, e.g., of *Uri* in 1326, appears to be questionable



[QWI/2:649 = Doc 1312; 1326 Feb 10]. At least, there remains to be an *incompatibility in contents* of the documentation of 1324 and 1326 (cf also the following documents 1334 till 1350). Points of reference: King Friedrich being out of office, Duke Leopold shortly before his death. Some of the documents appear to have been “prepared” for claims, without any valid basis.

1326 Jan 7: *Alleged declaration of resignation by Ludwig of Wittelsbach or, alternatively, initiation of a co-rule with the Habsburgian counter-king Friedrich the Beautiful* that is acknowledged by some historians as authentic, without any further comment. The documents appear to be a forgery or, rather, reflect some (psychopathic) *confabulation*. Cf Hinz 2016:344f, app 6.6.

1326 Feb [between 10-28]: *Alleged revocation of the privileges for Waldstätten in favor of Habsburg, by Ludwig of Wittelsbach*. Cf similar documents for 1334 Sept. *Dubious registers only in Vienna*. Cf Hinz 2016:340f.

1328 and 1329: Summary confirmations of unmediated, direct dependency of Uri, Schwyz and Unterwalden upon the Empire by Emperor Ludwig of Wittelsbach. Some historians acknowledge the authenticity of these documents together with those of 1326 (the two preceding entries) without further commentary.

1334 Sept 4 (QWI/3:49): Alleged revocation of unmediatedness of the Waldstätten cantons by Emperor Ludwig of Wittelsbach. But there are only registrations in Vienna (e.g., dating from 1843). *No originals* in Vienna or anywhere else. The result of the – documented – order of juridical investigation initiated supposedly on the basis of Habsburgian pressure remains unknown. But cf my arguments against the authenticity of the Austrian registrations (in the archive of Vienna) in Hinz 2016b as well as Hinz 2016, app. 6.9, ‘renewed negotiations’ in 1341 Feb 24 between Unterwalden and the negotiators of Emperor Ludwig von Wittelsbach, von Nellenburg and von Hohenfels. The address ‘to the Chairman [of the Cantonal Assembly] and to the countrymen of the Cantonal Assembly in Unterwalden, our beloved faithful followers, our grace and everything well’ (*‘dem amman und den lantlu(e)ten gemeinlich, ze underwalden, unsern liben getriwen, unser huld und alles gut’*) as well as the further content of the document hint towards the *continued direct control under the Empire* (G. *‘Reichsunmittelbarkeit’*). Cf the documents (release from excommunication and interdiction of SZ, UR, UW in 1350) *because of active support for King or Emperor Ludwig von Wittelsbach since 1324* (replaced by the Electors in 1346; he died in 1347). These documents point to the *factual and legal validity of the ‘Reichsunmittelbarkeit’ at least till 1348* [imputed (!) revocation of unspecified privileges for the Waldstätten cantons by King Karl IV, in favor of the Habsburgian Dukes; cf QWI/3:328 = Doc. 787].

1353 Oct 16 [QWI/3:788, Doc 1078]: King Karl IV of Bohemia confirms the documents of 1231, 1274, 1297 [Letters of Freedom], 1309 [Legal Court Privi-

leges] for *Uri*. This confirmation was in Latin, only Tschudi's translation is conserved. It remains unclear to me if the whole documents in Latin are quoted verbatim or only the very beginning of each document as suggested by Tschudi's text. According to Gallati, the documents were not read diligently and became confirmed accidentally (!) by Emperor Karl IV. Kopp's remarks on the confirmations by King Heinrich VII von Luxembourg in 1310 are more or less similar. Patterns of rhetoric? *Not read diligently*: cf the dates in the QW relating to Karl IV's confirmations, covering the time from Oct 5 [QWI/3, Doc 1074], and Oct 16, a series of 3 concessions: Doc 1076 ['*Reichsvogtei* (Imperial Bailiffship) in the Leventina Valley conceded to J. von Moos from UR'], Doc 1077 ['Toll of Flüelen conceded to J. von Attinghausen from UR'], Doc 1078: Freedom Privileges for Uri. This means: King Karl IV had 12 days to study, to issue and to prepare the concomitant decisions forming the frame of reference for Uri (toll privilege and bailiffship for persons from *Uri*, too).

As King Karl IV presented the requests of confirmation to the Habsburgian Duke for comment, one is allowed to infer the rejection of Emperor Friedrich II's Letters of Freedom by Habsburg. Therefore, the confirmation of the other Letters of Freedom can be regarded as a replacement (substitution). The same would hold for King Ludwig von Wittelsbach's confirmations as both Emperors were excommunicated by the respective popes.

After coronation as Emperor, Karl IV confirms the unmediated dependency upon the Empire (*Imperial Freedom*) for all the three Waldstätten cantons in 1361/62.

The problem with the presented, predominantly pro-aristocratic rhetoric is an epistemological or, rather, metascientific one: *pleas, inventions and uncommented juxtaposition of incompatible evidence instead of coherent argumentation and documentary proofs*.

*PART VII:*  
*STRUCTURAL CONTEXTS AND EXPLANATORY MECHANISMS*

Within the framework of explanations (for example, the Hempel-Oppenheim scheme) structural contexts can be considered as *antecedent conditions* (cf Stegmüller 1969 for a systematic treatment) or as part of explanatory mechanisms.

**29. STRUCTURAL CONTEXTS: THE OPERATIONAL AND DEVELOPMENTAL  
FRAMEWORK OF THE CANTONAL ASSEMBLY**

29.1 THE (POLITICAL) RELATIONSHIP BETWEEN THE *LAND* AND THE EMPIRE  
AS CONSTITUTING THE FRAMEWORK OF THE SWISS PROGRAM

1. The Canton (MHG. *land*) is expected to swear to the King.
2. With the weakness of the central power of the Holy Roman Empire, the consolidation of the newly elected king's power is seen as a condition for swearing to him.
3. Swearing of loyalty and obedience to the king is conditioned – by Inner Switzerland – to the fulfillment of certain demands. Until these demands are fulfilled swearing to the king is suspended. The demands are to be considered to be *programmatically*.

*'Local Autonomy' defined:*

4. Self-administration continues, even in the case that the confirmation or issue of privileges has not yet taken place.

5. The canton (*land*) is waiting for the formal recognition of its demands.

*Imperial Freedom from any regional rule (G. 'Reichsfreiheit'):*

6. It consists in the formal concession of 'Letters of Freedom' or their confirmation by the new king. Local jurisdiction only is demanded by the canton. In the face of an Austrian tyrannical threat, confirmation is always sought for.

7. The norm is: service for the King or, rather, the Empire only.

8. The oath of loyalty is given, or to be given, to the king or his representative.

*'Resistance' defined:*

9. If the supraregional or local Habsburgian (backed) power cannot enforce the swearing of allegiance or loyalty to itself, local autonomy continues *de facto*.

29.2 POLITICAL SYSTEM LEVELS AND SOCIAL STRATA: AN OUTLINE

Different polities and their legal claims are organized on an **uppermost political level A**. This level is the *Holy Roman Empire* with the position of the king or, respectively, the *emperor* (i.e. the crowning of the king by the pope in Rome) and his *Imperial Court of Justice*. The king has *territories directly dependent upon the Empire* at his disposal. Their inhabitants are obliged only to

serve (him or, rather, the Empire) as free commoners in a limited way. Enemies of the empire can be outlawed by means of the *imperial ban* (*G. Reichsacht*).

“**Imperial Freedom**” (B): On a further **level B1** the *princes of the Empire* became organized: *dukes, imperial abbots, partially: counts*; on a **level C** *subordinated or, rather, allied vassals: partially counts under the control of dukes, other noblemen and bailiffs (partially servants)*. The princes are considered to be the King’s or Emperor’s sworn-in vassals. They can concede territories that belong to them, or are claimed by them, to vassals as personal fiefs. Free inhabitants on such estates can obviously become subjugated as bondsmen (basis unclear: mere power?). The **level B2** is formed by *the territories directly dependent upon the Empire*, e.g. some cities, but also the rural Waldstätten cantons. These territories are under continuous pressure to defend their unmediated direct dependency upon the Empire against local princes (*the defense against attempts of the “mediatization” of territories directly under imperial rule*). As a rule, the populations of these polities which are directly dependent upon the Empire are considered to consist of *free commoners*.

A **low level D** is formed by *interest payers (G. Zinser, sg.) and bondsmen or bond servants (G. Eigenmann, sg.)* as populations in dependency upon princes of the empire or, rather, monastic rule.

A **parallel system** is formed by the Catholic Church (monastic sovereignty; marital law in ecclesiastical hands; crowning of the emperor by the pope in Rome; some of the abbots are princes of the empire; otherwise a monastery is obviously in need of a mundane / Imperial legal bailiff). Particular persons or whole communities can be excommunicated by means of the *papal ban*.

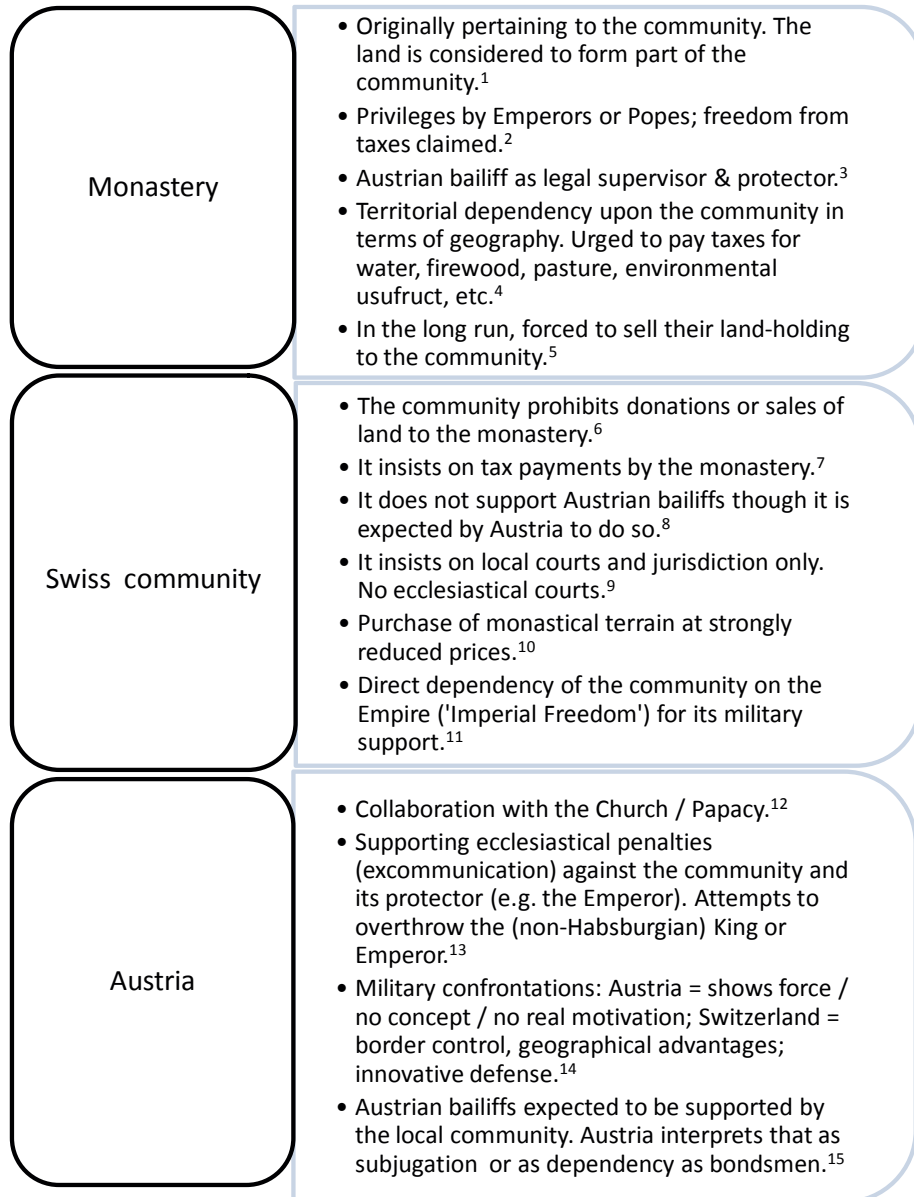
A special condition of the Holy Roman Empire consists in its *complexity* of political levels and in the *weakness* of the political power of the dynastic nobility. Thus, it is possible that territories can form (and even create alliances among themselves) on the lower level and turn to the uppermost authority for help. (This is a law-like principle known from Social Psychology). Such territories can try to strive for *autonomy* under very restricted conditions. The means thereof are: the buy-off from bond-slavery; communalization and legal homogenization of the territory (only the law of the community is accepted as valid); military resistance (successful, for example, in the case of Switzerland and one or the other city under direct imperial rule).

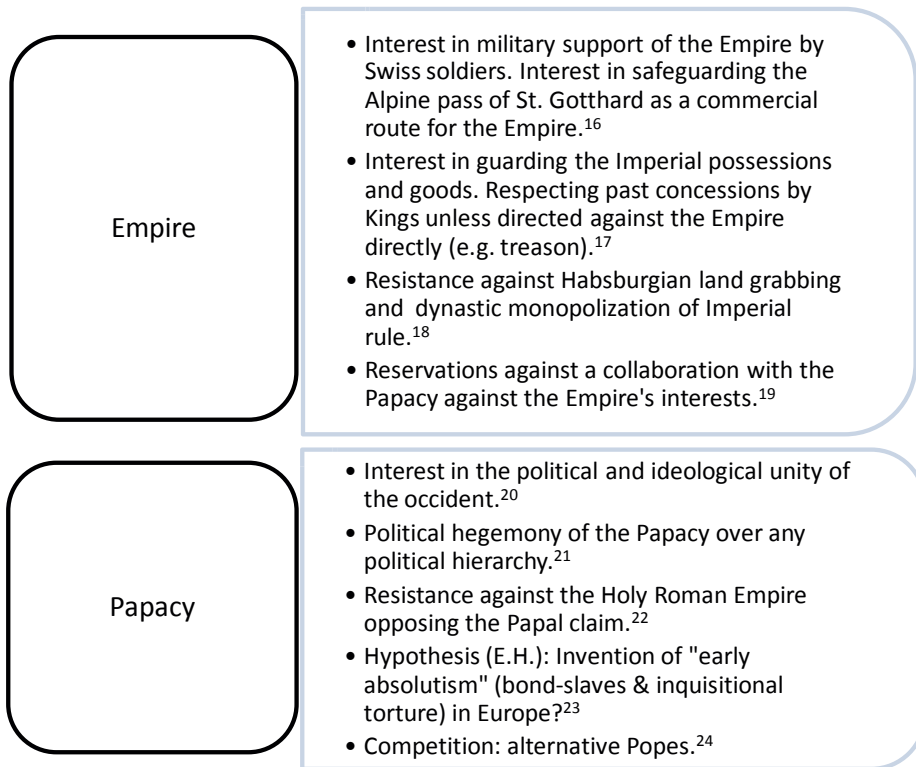
Considering the structure of the Holy Roman Empire, there is another possibility of development: *secession or, rather, political independence from the former central rule (government)*. This is the way Switzerland took *defacto* in the second half of the 15<sup>th</sup> century or, rather, in formal terms, with the Peace of Westphalia in 1648. Comparable in formal terms is the Declaration of Independence of the United States of America.

A third case consists in the *social and political revolution* that transforms an existing political system, e.g. the French Revolution, the Russian Revolution or the Nicaraguan Revolution.

### 29.3 POLITICAL (SUB)SYSTEMS

We consider the following political (sub)systems with their structural characteristics:





#### References:

<sup>1</sup> QWI/2:39 (Doc. 89, §(5)) = Hinz 2016:66 <8>. <sup>2</sup> QWI/1:164 (Doc. 349); QWI/2:88 (Doc. 191). <sup>3</sup> For example Einsiedeln, SZ. Cf Blickle 1990:46. <sup>4</sup> Cf Note 1 (Hinz 2016:66 <9>) & 2. <sup>5</sup> Cf Leo Weisz 1940:104ff. <sup>6</sup> MS. 1294 (SZ); QWI/2:39 (Doc. 89, §(1)) = Hinz 2016:66 <3-4>. <sup>7</sup> For example, QWI/2:39f (Doc. 89, §(5)) = Hinz 2016:66 <9>. <sup>8</sup> For example, QWI/2:300 (Doc. 598), cf *here* Ch 28 (1311). <sup>9</sup> Cf *here* Ch 4, 6, 7 (especially 7.2). <sup>10</sup> Cf Leo Weisz 1940:105-106. <sup>11</sup> QWI/1:197; cf *here* Ch 1.5 ('as free men who only had to respect us and the empire'). <sup>12</sup> Cf *here* Ch 1.1 (1247) and Ch 32.2.1; *here* Ch 28 (1324). <sup>13</sup> Cf Note 12. In addition, King Adolf von Nassau (1298). <sup>14</sup> For example, cf Sablonier 2008<sup>3</sup>:144, 151, 159. Cf the military expeditions against the City of Zürich by Duke Albrecht von Habsburg in 1351 (QWI/3:627, Doc. 956) and 1352 (QWI/3:702f, Doc. 998); Hinz 2016:77f, 112f; Joh. von Winterthur's Chronicle (Battle at Morgarten), e.g., Oechsli 1886:53ff. <sup>15</sup> Cf *here* Ch 28 (1210 [1240]; 1311, §[1]: 'against free people'); *here* Ch 1.1 vs. 1.5. <sup>16</sup> Indicator: Matricle of the Empire. Cf *here* Ch 1.5 (Swiss military capacity); e.g. QWI/2:602 (Doc. 1198). <sup>17</sup> QWI/1:518 (1274 Nov 19), QWI/1:616 (1281 Aug 9). <sup>18</sup> Cf *here* Ch 28 (1311, §§ [3-4]). <sup>19</sup> Emperor Friedrich II. King / Emperor Ludwig von Wittelsbach. Heinrich VII von Luxembourg inferred. <sup>20</sup> Cf the Doc. quoted in Hinz 2016:344 (App. 6.6, probably counterfeits). Cf *here* Ch 1.1 ('return to the unity of the Church') and the following note 21. <sup>21</sup> "Pope Innocent IV" <[https://en.wikipedia.org/wiki/Pope\\_Innocent\\_IV](https://en.wikipedia.org/wiki/Pope_Innocent_IV) (edited: 2017 May 20)>. Cf also Encycl. Britannica Online. <[www.britannica.com/biography/Innocent-IV](http://www.britannica.com/biography/Innocent-IV)> 2017 Jul 23. <sup>22</sup> For example, Emperor Friedrich II. <sup>23</sup> Cf *here* Ch 1.1 & Ch 32.2.1. <sup>24</sup> So-called antipopes.

*Fig. 1: The five (sub)systems 'Swiss community', '(Local) Monastery', 'Austria', 'Empire', 'Papacy': their conflictive and programmatic relations*

### 30. 'PARADIGMS' OR 'INTERPRETATIVE CONSTRUCTS'

Peter Blickle (1992) introduces the concept of “interpretative constructs”, or, rather “paradigms”. Cf *here* his precise article referred to in Introductory Ch C., ‘*The Law of the Confederates*’. Such constructs are intended to be high-level interpretations that are *coherent*:

- 1) The *integration* of different kinds of information (documents, events, programs, organizations, motives or attitudes; theoretical hypotheses).
- 2) The *centrality* of empirical and/or theoretical arguments.
- 3) Explicit *validation*: i.e. refutation (falsifiability) or corroboration (verifiability).

It becomes clear in Blickle’s arguments that this concept serves the *systematic description and explanation* of historic events or structures. In general, we assume that such interpretative constructs refer to or imply *structural contexts*, for instance,

- a) social and political institutions,
- b) economic variables and/or
- c) behavioral-motivational or cognitive variables (incl decisions).

An “interpretative construct” is, thus, best to be presented as a complex explanatory sketch or, rather, systemic model (Stegmüller 1969)<sup>58</sup>. Such interpretative constructs should facilitate the systematic description in the sense of a *heuristic* search for (meaningful) variables (in the documents), their definition and their *explanation* in relevant and coherent geographic space and temporal range. The explanation will contain *empirical laws or law-like rules (quasi-invariants)*. These may have the peculiarity that they are based on human decision-making (e.g. adopting a constitution or other regulative norms, in the sense of juridical laws or action routines) and can, thus, be changed.

Therefore, according to my comprehension, such “interpretative constructs” or “paradigms” can also be viewed as *heuristics* for the searching of facts, evidence or, rather, different types of data (including the documents themselves). We can even think of a heuristic instruction to find contradictive or, rather, refuting, evidence: form semantic-pragmatic contrasts and search for them in the texts.

More general and specific considerations of the structural framework of the Cantonal Assembly and its *operation* will be necessary (cf Ch 31.1 below). As

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<sup>58</sup> ‘Historical explanation’ and ‘explanation in terms of rational action’: cf Stegmüller 1969:424ff. Examples: (a) Sales of indulgences (1969:354, G. ‘Ablasshandel’); (b) the “Ems Dispatch”, the pointed insult as a provocation of emotions (Stegmüller 1969:415ff), the signal for starting the Franco-Prussian (Franco-German) war in 1870; (c) Medieval epidemics, e.g. the pestilence (1969:424ff): aspects of the sciences of nature, economy and society, medicine and psychology in the sense of *contexts of causation* or *ontological system levels*. Stegmüller has a systematic presentation of the Hempel-Oppenheim scheme of explanation.

an institution, the Cantonal Assembly seems to provide the social framework or, rather, constraint (hypothesized to be based on the principle of [*strong*] reciprocity) for the principle of *subjective utility* in individual action of daily life. A discussion of this social framework called “*strong reciprocity*”, a formal social model of economics, will follow.

Blickle’s “Law of the Confederates” (1992; cf *here* C., p. 10) can easily be recast conceptually as ‘strong reciprocity’ in normative (*duties*), directive-evaluative-attitudinal (*legitimization*) and behavioral (*participation*) terms. Thus, central basic dimensions of strong reciprocity emerge from his analysis. Cf 31.2.

### 31. THE CANTONAL ASSEMBLY: HYPOTHESES AND PARAMETERS

Political self-organization becomes institutionalized. In Inner Switzerland, that includes the formation of the ‘*Landsgemeinde*’ (G.), ‘*Cantonal Assembly*’ (Am.). The activities of the Cantonal Assembly make up the political participation of the [adult male] population. Some institutional features: rules for the convocation of the assembly; election of a representation, e.g. a Chairman (G. *Landammann*), councilors, judges; their legitimization and constraint of power in terms of election and election period in the Cantonal Assembly; consultation and decision-making; constitutional procedures: adopting a constitution, authorization or, rather, legitimization of decisions, appointments to offices, certification and authentication (sealing). Moreover, the creation of a committee of intermediation of the three Cantonal Assemblies for the coordination of and arbitration between the confederated polities in the sense of the ‘*Tagsatzung*’ (clearly implied in the early documents but not named otherwise as ‘messengers’ and ‘arbiters’ depending upon the task under consideration).

#### 31.1 MEMBERSHIP. SOCIOLOGICAL HYPOTHESES. SYSTEM PARAMETERS

##### MEMBERSHIP AND PARTICIPATION

The preliminary formula for ‘unmediated’ (G. ‘*reichsfrei*’) Inner Switzerland (i.e., directly dependent upon the king or the empire) reads:

*For all x holds:*

*If x lives permanently in Inner Switzerland (W) and (&) is a male human being past 16 years of age (M) then x (x interpreted as an element [ϵ]) belongs to the Cantonal Assembly L (L interpreted as a set;  $\supset =$  if... then..., i.e. implication).*

*In formal terms:*

$[W\&M](x) \supset x \in L.$



All men (adult male human beings) who live on the specific territory are self-organized in the Cantonal Assembly.

'Self-organization (x)' = *df* 'participation (x) in public or general activities, in the discussion of recognized problems and their solution (decision)'.

*df* = 'by definition'.

In terms of comparing polities, **community formation** can be based on the consideration of the *territory (and settlements), systems of markets and exchange, religion (consecration, intermediation, reconciliation or ritual crisis management), functions of public offices, social organization and legal institutions, e.g. of land tenure and environmental usufruct*. These features are regarded to be organizational and operative principles.

The adoption of the Federal Charters and other fundamental political and legal decisions by the Cantonal Assembly marks the formation of social cohesion in different existential dimensions and the determination of common interests by means of voting. Inter alia, the obligation to mutual defense and support belong to that. Here, *normative pressure* (according to Ragnar Rommetveit) is clearly emphasized as social means in the Federal Charter of 1315.

In formal terms, a quantitative or, rather, comparative *concept of the integration of the system of the allied populations* of Inner Switzerland is *explicated by the extent of their participation* (cf e.g. Lang & Hinz in Hinz 2002:238, 258 on Zinacantan, Chiapas, Mexico).

In formal terms:

*Mutual swearing of the members of the Cantonal Assembly onto each other and the constitution (Federal Charter) as a fact = E; consciousness (of alternatives, obligations, rights, etc.) = B; behavioral intention (not to become perjured) = I; behavior conforming to the constitution and to the law = V;  $p_1$  = probability of behavioral intention I;  $p_2$  = probability of behavior V; x = person (male, over 16 years of age, in the corresponding "canton");  $\geq$  = greater than or equal to.*

For all x hold:

$$E(x) = B(x) \geq p_1 I(x) \geq p_2 V(x)$$

*At least for I and V, different probabilities (p) of attitude and behavioral realization hold while B seems to be valid without exception[i.e. ( $p_1$ )I, ( $p_2$ )V; in general, ( $p_1$ )I will tend to go towards 100% of the number of inhabitants; ( $p_2$ )V will then tend to be a very tiny amount smaller]. The factual participation of the inhabitants in the swearing-in corresponds to their cognitive consciousness (to the degree of) 100% (therefore, sign of equality, =).*

## SOCIOLOGICAL HYPOTHESES

As **sociological hypotheses** we assume:

a) Mutual swearing-in and obliging oneself to help each other (obligation as an *internalized* normative pressure) lead to the foundation and formation of a **sense of affiliation** (in terms of social identity), i.e. to increased **cohesion**.

b) In general, this is conceived as being rewarding, namely on the basis of knowledge of cases of contrast.

c) This **attitude** is regularly reinforced in the (male) population (e.g. every five years).

d) Normative pressure leads to or reinforces **social behavior**.

e) According to Hinz 2016, Ch IV.2.5, **behavioral conformity to norms**, i.e. the execution of sworn behavior, is positively reinforced by means of participation in swearing. In case of doubt, behavioral conformity to norms is brought about by the “action of all confederates” (*external* normative pressure). Penalty is maximal for all perjured traitors but discussion and finding of consensus is possible within the Cantonal Assembly. In my opinion, *communicative comprehension and participation* are evaluated *positively* in the sense of learning theory.

## SYSTEM PARAMETERS OR CONDITIONING FRAMES OF REFERENCE

*The quantitative frame of reference – Demographic range in communication and decision-making:*

G (Total sample) = 50% of the adult marriageable population = *adult male population (fit for military service)*.

K (communication) = married population = 65%-80% of the adult population. This assumption is *quite hypothetical* and a bit *arbitrary* in terms of percentages.

It is assumed that decisions made by the Cantonal Assembly are discussed among married couples and that such discussions contribute to the formation of consciousness in the male and female population (in corresponding percentages). Of course, it is possible that early Swiss men did shield themselves against women as in a secret society. But this is improbable: cf the ecclesiastical, e.g. Papal, interdict and excommunication *also* against women when the corresponding Cantonal Assembly follows the excommunicated Emperor. It is possible that women participated in the Cantonal Assemblies but without voting rights. Cf Hinz 2016b, Point e).

(1) Approx. 50% of the adult marriageable population (i.e. 100% of the adult men) participated in the mutual swearing, deliberation and voting of the Cantonal Assembly.

(2) According to assumption K, i.e. to talk about and discuss these acts and to orient oneself in terms of topical contents, 65-80% of the total adult population of 16 years, or more, of age (= married persons + unmarried men over 16 years of age) are probably implied. But it does not exclude the possibility that

unmarried girls or young women who are marriageable also participate in terms of communication.

(3) Majority vote vs. unanimous vote: Considering majority votes, relatively high percentages of the adult population are still involved directly and indirectly (via marriage and communication). Majority vote: directly, at least 25% of the adult population (i.e. more than 50% of all males over 16 yrs of age) as voters, indirectly, at least between 33-40% of the adult population as communicating people.

*The qualitative cognitive frame of reference – Central norms, regulation:*

*Central norms*, their support and fulfillment or, respectively, the collective sanctioning in case of non-fulfillment or breaking, play an important role with regard to the Cantonal Assembly and its sociopolitical decisions in terms of content. The central or, rather, significant norms are listed, inter alia, in the Federal Charters. They hold *for all and reciprocally*. Examples: peace, justice, lawfulness, safety, support, common benefit.

*The socialization framework – Participation, internalization, mutual bonding:*

The *swearing* (of the male adult) population *and its participation* in decision-making generate its social identity as a cognitive construct: the *whole* population with voting rights *internalizes* decisions and rules, i.e. laws or procedures which imply solidarity, legality and the formation of resistance. This constitutes a *mutual* “social bonding” of the swearers that is meaningful and central in existential terms and is anchored in religion.

*The institutional framework – A permanent organization; its positions and political and existential functions:*

The *creation of the Cantonal Assembly*, the position of the *Country Chairman*, the *bodies of judges* and the intermediating (coordinating) commission of the communities (corresponding to the so-called ‘*Tagsatzung*’ in later documents), represents an accomplishment of the Inner Swiss population. Political, social and legal functions correspond to these institutions. Everyday life, living together, and power as legal competence or authority of decision-making, become regulated and newly defined as ‘sovereignty’ in *cognitive-behavioral terms*.

*The socio-evolutionary frame of reference – Towards local autonomy:*

The principle of liberation, equality (or, at least, mutuality) and participation is implied in the integration of the *whole* local population in the Cantonal Assembly as voting members, independent of its subordination under *quite different rules*. *Alternatively*, the population of the valley that forms the Cantonal Assembly acknowledges *only the king or, rather, emperor* as external ruler, in the sense of *Imperial Freedom (direct dependency upon the Empire)*. Cf ‘The recognition of legitimate rule’ with its different interpretative hypotheses, *here* Ch 10.2, Federal Charter 1315, § 11. *Prosocial behavior* includes, inter alia: *aid* in case of attack or criminal infringements; *retaliation* in case of attack or, respec-

tively, *punishment* in case of criminal infringement. If an individual accepts obligations towards foreign Lords (Masters) – cf FedCh 1315 – he has the duty to *inform*, to *consult with* and to *seek the agreement* of the other confederates.

*The economic framework – Does it lead to resistance and liberation?*

This frame is relatively unclear. Having one's own land or plot plays some role for many persons but not exclusively. On the other hand, persons without land of their own, e.g. tenants, and “dependents” or, rather, bond servants seem to be included in the Cantonal Assembly (cf Gersau mid-15<sup>th</sup> century). The correlation between *slavery* [100 societies sampled, of these 52 without slavery] and *subsistence type* [21 societies with shifting agriculture] (Hallpike 1986:158, after G. Murdock ‘Ethnographic Atlas’) should be noted and re-interpreted: 11 cases for the combination of *hereditary slavery* and *shifting agriculture*. I interpret bond-slaves (*or* bondsmen; G. *Eigenleute*, pl.) as ‘hereditary slavery’ and the use of fallow fields as a case of ‘shifting cultivation’. The question in the headline of this paragraph remains open.

*Social anthropological notes:*

Dynastic rule is evaluated in terms of its successful legal defense of its subjects in court, in the success of its decreed ‘peace of the country’ (absence and regulation of feuds), in the successful protection against foreign enemies (e.g. by means of fortifications).

In general, **dynastic rule** has problems of integration:

(a) It is based upon real estate which can be *dissipated in terms of territory*.

(b) It offers the inhabitants a *concept of identity* that places the Lord and his kinship based group of persons at the center, and marginalizes value and existence of the remaining persons or inhabitants.

(c) It shows competition, i.e. struggle, for power unless we deal with totalitarian, absolute power. In any case, subjects are *hardly or badly protected*, e.g. with regard to feuds, facing rape of women, arson and plundering.

(d) It is founded on the *catathymization or, rather, depression* of its inhabitants who suffer from arbitrariness and hopelessness as brought about by the action of ecclesiastical and mundane Lords, e.g. bailiffs. This holds for the so-called “*fall*” (MHG.), i.e. the confiscation of ‘property of best quality’ in the case of the death of the respective bondsman and, thus, the removal of the possibility for his family for buying off by means of inherited property. Catathymization also concerns the so-called ‘non-member marriages’ (MHG. *ungenossame ehen*) between bondsmen under different rules (i.e. affiliation with different monasteries). Under that condition, confiscation of private property, economic destruction of existence or even, as for example in Engelberg, the killing of the so-called culprit by the abbot are reported (cf Blicke 1990:174).

(e) It offers the inhabitants *terror as an instrument of rule*: hardly any institutions of law, no sufficient legal protection. An ‘order of public peace’ only seems to be too weak.

The **attractivity of the polities** (MHG. *lender* <pl.>) **organized under the Cantonal Assembly**, or the Citizens' Assembly in the Cities, is based upon the fact of matching these critical points<sup>59</sup>. In particular, the highest-level values as determined in the preambles of the Federal Charters, e.g. 'common good' or, rather 'public interest or utility' and 'peace' regulate tendencies of freedom and equality, or at least mutuality, within the (adult male) total population. The potential monopoly of power of particular families and tyrannical degeneration are thus controlled. The exercise of power is determined in terms of the assembly as an institution, (the right of) participation therein, voting (mode of decision-making) as well as the temporal rhythm of assembling, election of the representatives (of the assembly, including the judges) and mutual swearing to each other. The difference between general rights of voting and decision-making as urban Citizens' Assemblies or rural Cantonal Assemblies on one hand and the tasks as (elected) counselors (organized either in terms of guilds [Zürich] or tasks as judges) on the other is characteristic of and determines the sociopolitical development of the confederation (i.e. the division of power as a characteristic, and the balancing of power as a permanent legal process).

### 31.2 CANTONAL ASSEMBLY: STRONG RECIPROCITY AND SUBJECTIVE UTILITY

*Presumably, the oath generates strong reciprocity:*

Normally an oath is sworn to a lord or ruler (in the political hierarchy one level up: the cantons swear an oath to the king or emperor or his representative *only, and not to local lords* and thus express their homage of vassalage). Inner Switzerland makes a social invention: one swears an oath to each other, and promises to help each other. Note that this oath is considered to have priority over any other oath. The standard form is the *collective oath* of all the male population past 14 or 16 (later, in Zürich, even 20) years of age within the Cantonal Assembly, (a) on the Country Chairman, (b) the Cantonal Assembly (i.e. mutually among the people themselves) and (c) the "country" or, rather, "constitution". This oath to the Cantonal Assembly is to be distinguished from an oath on each of the different Federal Charters which are read out (in this case, a German version seems to be needed). Such an oath is sworn every five years (or also every 10 years) by the different Cantonal Assemblies on the different Federal Charters. Corresponding explicit mentions are to be found for example in the Federal Charters of 1351 (with Zürich), 1353 (with Bern) or 1501 (with Basel) but already in the treaty between Fribourg and Bern in 1243 and 1271, too.

By means of the collective oath, a new concept of sovereignty is introduced: the Cantonal Assembly, i.e. the people, as the *sovereign*. This is meant to be a *direct* democracy in contrast to a representative democracy based upon elected delegates.

We accept the explanatory principles of 'subjective utility (benefit *or* interest)' from Opp's paper and 'strong reciprocity' from Fehr's et al paper.

Early Swiss Federal Charters appeal to the principle of *public utility* (public benefit) or interest (incl peace and tranquility) but also focus on *individual* life,

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<sup>59</sup> Cf "Values and norms of a rural-civic society" in: Blickle 1990:170ff, in detail.

or body, and property as existential goods. Thus, the Federal Charters and at least some of the decisions taken by the Cantonal Assembly seem to appeal to *subjective utility* too.

#### DEFINITIONS AND CONCEPTUAL EXPLICATIONS

**'Subjective utility'** is implied in the general principle: People look after themselves. They act in their own interest. They optimize (or even maximize) subjective utility (benefit). Opp writes (2014:486; bold type E.H.):

*"If individuals have good reasons for accepting a (descriptive or normative) belief, an attitude, a goal or an action, or if there are irrational factors, then individuals accept the belief, hold the attitude or goal or perform the behavior."*

Opp exemplifies the application of Balance Theory (BT) and Value Expectancy Theory (VET) in reconstructing arguments offered by Boudon. For example, with regard to BT (cf Fritz Heider), Opp emphasizes the *Like-Dislike* relationship with other people<sup>60</sup> or the *Unit* relationship among cognitive structures (e.g. the correspondence to norms). These relationships are supposed to explain the (acceptance of) beliefs, attitudes, goals, preferences, or behaviors implied.

According to Opp, Value Expectancy Theory predicts: A person chooses the behavioral alternative that has the highest subjective expectancy utility (SEU). As the implicit background theory, a *wide version* of 'Rational Choice Theory' (RCT) is to be assumed. RCT refers to a *family of theories*, e.g. a narrow or wide version.

For example, a *narrow* neo-classical version implies:

(a) Only egoistic preferences matter. (b) Reality is perceived as it is as utility maximization objectively best from an omniscient perspective. I think that (b) is incompatible with the perspective of *empirical* science.

A *wide* version of RCT implies, inter alia:

(a) Altruistic preferences are admitted. (b) Goals can follow internal norms. (c) Social sanctions are admitted. (d) The best alternative is chosen from the actor's viewpoint.

**'Reciprocity'** might refer to a 'custom of exchange of objects (incl women in marriage alliances) or favors *more or less equal* for those participating in the exchange'. Cf Marcel Mauss, Claude Lévi-Strauss, Roy Rapaport, etc in anthropology.

**'Strong reciprocity'** according to Fehr/Fischbacher/Gächter 2002 (bold type, E.H.) refers to an attitude, an organization, a mechanism and/or a behavior:

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<sup>60</sup> Cf in this context the meaningful statement in the Federal Charter of 1351, §2-3: "...for an *eternal alliance and friendship* (sic! E.H.)... we give each other recognizable evidence of *this society joined in loyalty and [of this] eternal alliance.*" Take 'evidence' as 'overt behavior' or 'attitudinal expression'. It sounds like a direct translation of Balance Theory into naïve but innovative social thought.

1. "The essential feature of **strong reciprocity** is a willingness to sacrifice resources for rewarding fair and punishing unfair behavior even if this is costly and provides neither present nor future material rewards for the reciprocator. However, we also provide evidence indicating that there are **social structures** in which the interaction between reciprocally fair persons and purely selfish persons induces the majority of people to cheat..." [p. 4\* = p.2].

2. "This highlights the **importance of social structures** for the achievement of stable cooperation..." [p. 4\* = p.2].

3. "In addition, we show that **strong reciprocity** also is a **powerful norm enforcement device**. Therefore, strong reciprocity may help explain the enforcement of food-sharing norms and norms that prescribe participation in collective actions..." [p. 4\* = p.2]

4. "...if player B is a strong reciprocator she **defects** if A defected **and cooperates** if A cooperated because she is willing to sacrifice resources to reward a behavior that is perceived as kind..." [p. 5\* = p.3].

With regard to social structure, I hypothesize that 'strong reciprocity' involves an 'authority to which one can appeal, e.g. a judge or a body of control, or written norms [e.g. a *constitution*; a *contract*; *laws*]'. It is a formal bonding for participants in exchange, interaction or, simply, living together. It stipulates behavior that is more pervasive than only one form or one-shot situations of behavioral exchange or transaction of goods: People act on the basis of strong reciprocity if threatened (by enemies from outside) or when considering the *public utility of mutuality* in legal and existential spheres (inside of their territory). I.e., people look for *continued benefits*. One-shot experiments tend to produce experimental *artifacts*. Benefits and punishments are included in the principle of strong reciprocity.

*Strong reciprocity* forms the *social frame* within which *subjective utility* operates, is permitted and controlled as a norm. The Cantonal Assembly is assumed to provide such a social frame as an organization (or institution).

The organization (the Cantonal Assembly) appears to be *optimized*: parsimony or, rather, simplicity, efficiency, completeness (comprising nearly all existential domains), demographic integration. Thus, unity, strength in terms of motivation and manpower, and cooperation result. The 'Diagram: Causality and Functional Effects' (frontispiece) on the cover of this book synthesizes the ideas of *strong reciprocity*, *political self-organization*, and *historic development*. The organization, or institution, serves permanent tasks. Task perception leads to problem-solving behavior.

#### CONJECTURES ON THE BIO- AND SOCIOEVOLUTIONARY BASIS OF RECIPROCITY

On a very basic level, **human (basic) needs** seem to *operate on the principle of, and underlie, reciprocity*.

(1) *Need for physical survival*: refers to life, death or health, thus, the *need for subsisting* (e.g. food collecting, etc). This need leads to 'better living', self-determined vs. hetero-determined: *perceived capacity (and opportunity) of acting* as a stabilizing, health- and life-supporting factor. Cf "sense of coherence" ac-

ording to Aaron Antonovsky<sup>61</sup> defined as personal challenges and potentials; the perception of one's own helplessness is potentially lethal according to the Psychology of Chance<sup>62</sup>.

(2) *Need for prevention / need for restitution*: The experience of loss or deprivation caused by other people. Cf Point (g) *justice and protection* below.

(3) *Need for social organization, based on help, creating a system of support*: The care for one's offspring and family (e.g., close kinsmen); affiliation; the experience of need, help and helping others.

In terms of *functional neuroanatomy and neurophysiology* we refer to the following facts<sup>63</sup>:

(a) *Affects* are a (reflex-like and/or syncopated) *response mechanism* that is *prone to reciprocity* or even *strong reciprocity*. *Positive affects* are elaborated in primates. They are based upon *hormones* and their effects. A succinct and illuminating example that elucidates the unity of affect, learning and cognitive contents is the hormone **dopamine**<sup>64</sup>: *learning and memory formation*<sup>65</sup> *implying contents; reward vs. punishment in terms of differential hormone quantity; joy, success*). What brings that hormone down? We point, for example, to submission by other people, humiliation, injustice (social factors), violence, torture, pain; drugs (leading to the depletion of hormonal receptors and deficient protein synthesis<sup>66</sup> after some time of abuse).

(b) *Consciousness, especially conscience*, involving a comparator (or even *social map integrator or organizer of conscious contents*)<sup>67</sup> has been established in primates in specific parts of the brain.

(c) (*Social*) *learning* refers to language, rules or norms, facts or episodes implying capacitation and self-control. E.g.: specialized *areas* and/or mechanisms

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<sup>61</sup> Antonovsky, Aaron: "Unraveling the mysteries of health. How people manage stress and stay well". San Francisco and London 1987: Jossey-Brasser Publisher.

<sup>62</sup> Langer, Ellen: "The psychology of chance". MS 1974 (Yale University, Dep. of Psych.)

<sup>63</sup> Hinz, Eike: "Outline of a Philosophical Anthropology", Ch C [2.2: Consciousness] and F [6: Conscience]. Hamburg 2006: BoD.

<sup>64</sup> Schultz, Wolfram: "Neuronal reward and decision signals: from theories to data" (in: *Physiol Rev* 95:853-951, 2015). DOI: 10.1152/physrev.00023.2014.

<sup>65</sup> Pohle, Wulf & L. Acosta & H. R  thrich & M. Krug & H. J. Matthies: "Incorporation of [<sup>3</sup>H] fucose in rat hippocampal structures after conditioning by perforant path stimulation after LTP-producing tetanization" (in: *Brain Research*, 1987, Vol. 410:245-256). [*Long-term memory formed by building in fucose under the influence of dopamine*].

<sup>66</sup> As an early example cf David Self & E. J. Nestler, "Molecular mechanism of drug reinforcement and addiction" (in: *Annu. Rev. Neurosc.* 1995, vol. 18:463-495): deficient synthesis of so-called immediate early genes, the third cellular messenger system.

<sup>67</sup> Gray, Jeffrey: "The contents of consciousness: a neuropsychological conjecture" (in: *Behav. & Brain Sciences* 1995/18:659-722). *The Subiculum, the presumed comparator as the central component of consciousness (and conscience), is complex in endocrine terms*.



in the *brain*. For example, “*Mirror neurons*”<sup>68</sup> might form one basis for *comprehension* but also of *mutuality* or (*strong*) *reciprocity*: observing-the-other vs. doing-it-oneself. Identical neurons are used in both cases. Their use is established by single neuron studies. In terms of biosocial evolution, planning of psychomotor action (localized in the ventral premotor area of the monkey’s brain?) might have become developed into language structures (Broca’s area): tradition is based upon communication and social evolution. *Communicative areas in the brain* are elaborated in Man (e.g. Broca’s and Wernicke’s areas). Hearing (the ‘other’) and speech-motor production (‘ego’) coordinate thought or, rather, converge in communication, interaction or problem resolution (incl decision-making). This seems to be a mechanism that *subserves* mutuality or even (strong) reciprocity.

Bridging biological and sociological dimensions:

(d) *Dependency vs. equality*: That implies the relational, i.e. social role, distinction between parent and child, teacher and learner. This view shows the transition from biological age phase to social agency: The need for help vs. independence or self-organization in life, i.e., childhood vs. adult age (age phases). *Needs become developed in bio- and socioevolutionary terms*. The social relation might become extended along the dimension of ‘boss vs. employee vs. serf’, ‘co-citizen’ or ‘fellow human being’.

(e) *Sexual deviation*: (homosexual and heterosexual) incest; pedophilia or pedophobia; homosexuality; role of eunuchs in education and as role models; hard drugs: the road towards, or, rather, facilitation of, tyranny and stratification. These factors, partially kinship-related, seem to be spectacular in the emergence of early state societies.

(f) *Benefit, advantage*: implying togetherness vs. individualization when making gains (profits). Gains, or benefits, with the implied dimensions: cooperation vs. domination or monopolizing, i.e. sharing vs. owning or hoarding.

Pro-social and anti-social *behaviors*. (Cf Bunge 1989:30, Tab 1.1.). My conceptual contrasts: ‘selfish’ (a behavior is anti-social if it is directed against other people’s needs or interests and accepts egocentric motives only) vs. ‘supportive’ (a behavior is pro-social if it promotes other people’s needs and interests) vs. ‘reciprocal’ (a behavior is mutual or balanced or just if it is fair for both or, rather, any side involving rewards or punishments as a balancing mechanism). A behavior might be ‘neutral’ in relation to other people. With regard to *experimental data* acquisition, we differentiate the following dimensions: permanent (social group) vs. situative (two-person interaction), togetherness vs. isolation, repetition vs. one-shot situations (Fehr et al 2002:5\* = p.4)<sup>69</sup>. As reported, one-shot experiments tend to yield *artifacts*.

(g) *Justice and protection* as concepts and needs (motivations, sentiments: see above) seem to involve a balancing mechanism or a principle of comparison.

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<sup>68</sup> Cf the various publications by G. Rizzolatti and V. Gallese (website University of Parma) who also emphasize the capacity of *attributing an intention* to the other person or monkey.

<sup>69</sup> “The evidence suggests that subjects are well aware of the difference between one-shot and repeated interactions because they behave quite differently in these two conditions.”

The cerebral suborgans of functional comparators (Gray, Vinogradova), e.g. the subiculum or the hippocampus, may constitute consciousness and conscience in general (Hinz 2006:57ff). Cf (a): physical and mental harm, or even violence, are disequilibrating experiences for the victim. *Strife for justice and a system of justice (jurisdiction)* are likely based on strong reciprocity. Cf ‘Definitions...’ above, Point 2, in the quote of Fehr’s et al. 2002 article on strong reciprocity: cooperation ensured by means of social structures or, rather, (*legal*) institutions.

### 32. EXPLANATORY MECHANISMS RELATING EVENT AND THEORY

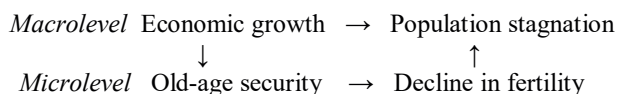
It should be noted that we always explain *aspects of events* and not events in their *totality*. Otherwise we would have to explain the ‘whole’ universe<sup>70</sup>. We can, thus, be interested in the explanation of different aspects of the same events or structural contexts and the different explanations offered may be quite *compatible* with each other.

Special attention will be paid to the so-called *Boudon-Coleman diagrams* that allow for the *explanatory* combination of low-level and high-level hypotheses. Writing this chapter was originally inspired by M. Bunge’s works. Cf also Opp 2005 (on explanatory mechanisms) and 2014.

#### 32.1 ON THE RELATIONSHIP OF MICRO- AND MACROLEVELS IN EXPLANATION: BOUDON-COLEMAN DIAGRAMS

I extend this discussion to Bunge’s programmatic ideas on “*systemism*” that *interrelate micro- and macrolevels in explanations*<sup>71</sup>, i.e. single events such as behavioral actions and systemic or institutional constraint.

The following so-called *Boudon-Coleman Diagram* (Bunge 2000:150) explains an interrelation between social policy and demography on the systemic as well as on the individual level (→ = causation). I.e., individual decreasing interest in a larger family because of old-age security independent of children (cumulative effect; my reconstruction).



*Fig. 2: Micro- and macrolevel of the interrelations between economic growth, social policy and demography*

<sup>70</sup> A strongly abridged argument: Imagine the explanation of the presence of certain archaeological ceramics at a certain site and time. A ‘total explanation’ would have to address the cause for all the different chemical elements or for the existence of Man in principle.

<sup>71</sup> Mario Bunge, “Systemism: the alternative to individualism and holism” (*in*: The Journal of Socio-Economics 29 (2000) 147-157. See Karl-Dieter Opp 2014 for a critical discussion and re-evaluation of this concept in sociological and epistemological terms.

Our task is to explain (a) the actions of the Cantonal Assembly and (b) the interactions between the Confederation, Empire, Austria, and Church.

### 32.2 POLITICAL PROGRAMS AS EXPLANATORY SCHEMES UNDER WHICH TO SUBSUME SINGLE EVENTS

I represent the “Early Phase of Sociopolitical Development in Inner Switzerland” as a structural context, analyze and explain it. The explanatory model used can be *contrasted* with other constructs. Cf Fig. 3. I introduce a *system mechanism* which consists of different *programs of the exercise of power and / or self-organization* in politics, society and economy. Power can be conceptualized along a dimension of ‘democratical (based for example on annual confirmation by the communal assembly) to authoritarian-tyrannical (based upon dynastic succession or life-long and intergenerational fief)’, with differential distributions of advantages and disadvantages for the populations and its different segments. These programs show a certain *long-term effect* (‘duration’) and a certain *degree of coherence* (‘domains of application’). *Within the framework of these programs, with their different claims of validity, political actors act in a goal-conscious manner.*

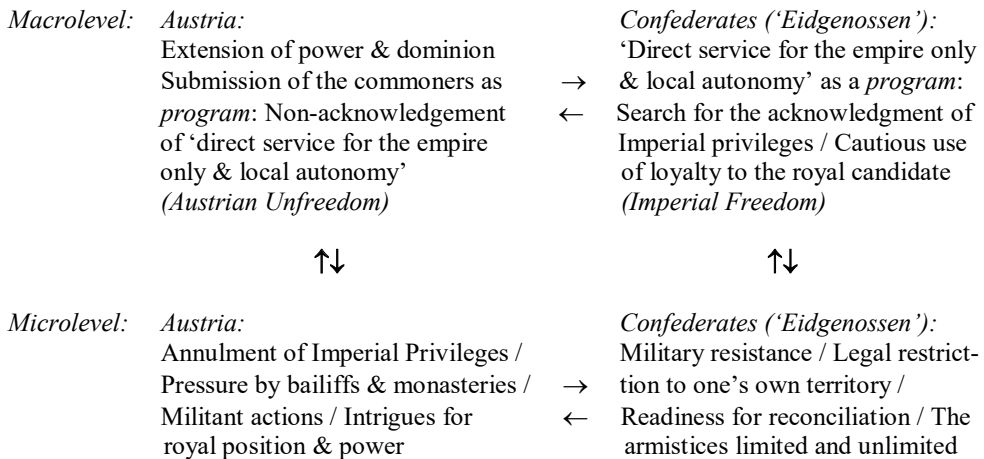
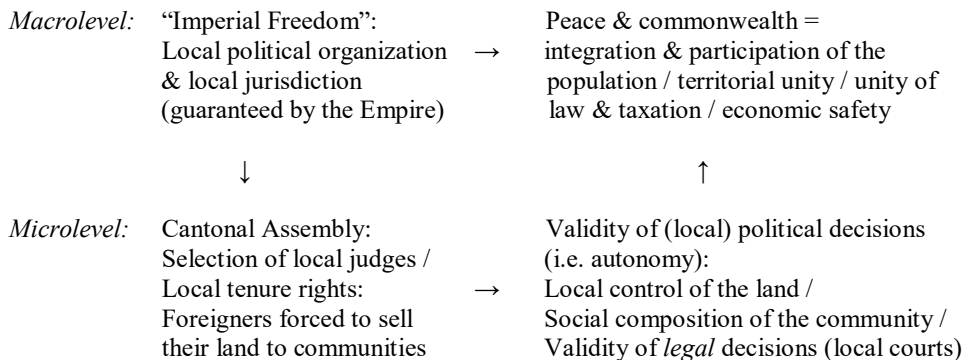


Fig.3: Boudon-Coleman Diagram of the sociopolitical development of Inner Switzerland:  
*Program of Austria and the Swiss Confederation in the 13<sup>th</sup> and 14<sup>th</sup> centuries.*

[Causation: ←, →; ↓↑ = ‘leads to’, in both directions].

Fig. 4 details the Early Swiss Program in terms of a Boudon-Coleman Diagram.



*Fig. 4: Boudon-Coleman Diagram of ‘Imperial Freedom’ and autonomy*  
(→ : causation)

*Criteria or features of such programs* (also when compared):

- (a) Long-term perspective.
- (b) Certain degree of coherence (i.e. value orientation implying preferential action, swearing-in, majority vote).
- (c) Different claims of political or societal validity (legitimization).
- (d) Goal-determinedness in the action of pertinent actors.
- (e) Different programs can imply: antagonistic actions of actors on the basis of different and contradictory claims of political validity.

The assumed “teleology” of the process of history can be *rationaly reconstructed* as program-conscious actions of political actors (cf Hinz 2016:20-21, Overview, Point 11). Historical explanation consists, then, in the subsumption of an event under such programs of the exercise of political power. For instance, the event X is meant to serve the exercise of power, i.e. the conservation or extension of Habsburgian rule, or the self-organization and securement of the autonomy of the (Swiss) Confederation.

The Points (b) and (c) should safeguard against the arbitrariness of abusing the different *Programs* as subsuming everything under them, i.e. of emptying them of their empirical value. I emphasize their value as a *covering law-like statement* in accord with C. G. Hempel under which to subsume single events or, rather, actions. On the other hand, I emphasize their *systemic and mechanismic* character in accord with M. Bunge: *Programs* serve the organization and execution of tasks and of corresponding activity or action.

I hypothesize that a *monopolization of subjective utility* in favor of the nobility or, rather, the dynasty of Habsburg *plus a centralization* of its power underly the Austrian program. Thus, we can hardly expect any form of strong reciprocity. An experiment in thought: try to generalize this hypothesis over an economic caste, a professional elite, etc and look for clues of strong reciprocity over the whole population (cf here 31.2).

Moreover, I hypothesize that the *institutionalization of strong reciprocity* in favor of the total rural population *plus universal voting (majority vote)* underlies the program of the Cantonal Assembly. Thus, the principle of *subjective utility* (in contrast to public utility) is expected to operate on the individual level only (or mostly). Suggestion: look for collective corrections of individual digression.

Both of these empirical claims should support the empirical and theoretical significance of the corresponding programs in explanations. Thus, a degeneration of the concept of “programs” into an empty formula is thought to be counteracted. Cf the *formulas of justification* (in terms of viewpoints):

- *Papacy*: ‘Unity of the church’; ‘universal power [of the Pope]’ (Innocent IV).
- *Habsburg*: ‘That the Habsburgian rule shall stay in all its rights’. Cf Hinz 2016:380, Note 233 & App 6.6; cf *here* Ch 28: 1240; 1311; 1326, 1334.
- *Swiss Confederation*: ‘We, the countrymen by means of (public) counsel and decision’; ‘To the utility and needs of our country’; ‘And what will become the majority vote of a Cantonal Assembly in Wisserlen, on the [assembly] field, to that we want to adhere even if it turns out against us’.

It is unclear if the Cantonal Assemblies derive from parish assemblies comprising the whole (adult) population. The struggle for the respect of the communal boundary markings (G. ‘Landmarchenstreit’) might point to the minimal date of the formation of the Cantonal Assemblies.

### 32.2.1 A MECHANISMIC EXPLANATION OF AUSTRIAN POLITICAL ACTION

The confrontation between Pope Innocent IV and Emperor Friedrich II seems to be influenced by the Pope’s claim of territories in Italy for the Papal States, e.g. Lombardy, Sicily (cf ref “*Innocent IV*” and internet: “Pope Innocent IV”, <[https://en.wikipedia.org/wiki/Pope\\_Innocent-IV](https://en.wikipedia.org/wiki/Pope_Innocent-IV)>, edited: 2017 May 20). *My hypothesis*: Pope Innocent IV made several proposals to the Habsburgians. (a) He legitimized a *legal change* from the Imperial right of fief conceded in exchange for loyalty (in support of the Empire) to the law of inheritance of real estate and forced labor in favor of the high nobility (with the concomitant consequence of converting free people to serfs or, rather, bondsmen). (b) He formed a (permanent) *alliance with the Habsburgian nobility* in fighting against the Emperor, thus paving the way to an *early form of absolutism*. This would imply papal hegemony over the Holy Roman Empire. (c) We would then deal with a *mechanism* of recruiting exploitable slaves or bondsmen for forced labor on such territories. (d) The papal invalidation of Imperial action and corresponding pro-Swiss documents seems to lead to Habsburgian attempts on their *destruction or cancellation*. Cf Ch 3.

### 32.3 EXPLANATION IN TERMS OF INTERNAL AND EXTERNAL MOTORS OF SWISS HISTORICAL DEVELOPMENT

I proposed (Hinz 2016, Ch. IX.1) that we consider *land tenure rights and the territorial formation of the communities as the internal motor (Fig.3)* and *Habs-*

burgian military and political pressure on the communities as the main external motor (here Fig. 5 below) for the formation of the alliances of the Swiss Confederation.

Two foci counteracting Swiss community development are discernible: the Monasteries privileged by Imperial and Papal concessions and the Dukes of Habsburg with their dynastic ambitions and Papal support. Swiss community development is based upon the foci of *Imperial Freedom* (service for the Empire only) and *territorial and demographic unity*.

Fig. 5 shows the *conceptual interrelationships* of sociopolitical factors representing corresponding causal processes (hypotheses).

Explication: Down-arrow: causal (?) flow of processes; equivalence-arrow  $\Leftrightarrow$  (holds between the two whole columns): matching the internal and external factors of Inner Swiss development; equivalence-arrow blocked:  $\blacktriangleleft\blacktriangleright$  = antagonistic development in Early Austria and Inner Switzerland.

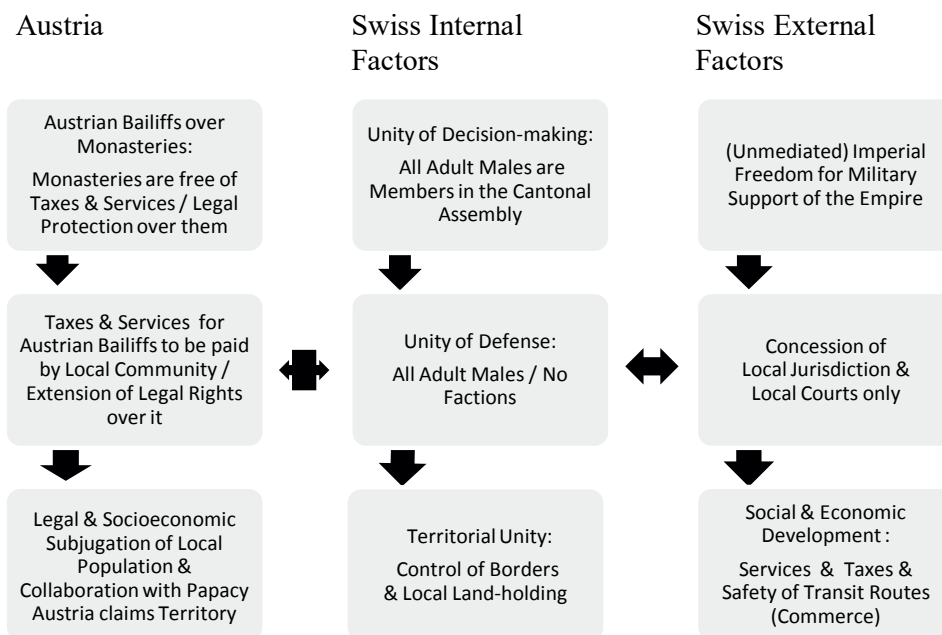


Fig. 5: Sociopolitical factors determining Inner Swiss and Austrian development

### 33. POLITICAL SELF-ORGANIZATION AND THE EMERGENCE OF THE STATE

(1) Here I consider the formation of new political units (*nucleation, territorialization, communalization*) and/or their *segregation, fission or independence*

from other larger units or, otherwise, *their incorporation (incl. subjugation) and hierarchization in terms of growing complexity.*

(2) The functions of the formation of settlement units comprise, e.g., dimensions of existence: personal life, family, choice of the sexual partner; property (real estate, cattle, house); labor (dependency: services, rent of land); living together with other people (shared rights: usage of wood, water, pasture, etc.); conflicts and anomy, their legal regulation; security against raids or feuds.

(3) The differentiation of institutions into social, economic, political, religious, and military characterizes the formation of complex societies. In accord with K. Flannery (1972) I introduce *organizational specialization* and, in complementary contrast, *organizational generalization* as evolutionary processes<sup>72</sup> of the emergence or formation of institutions. Moreover, I introduce another trait from *Political Anthropology*: the *number of levels of decision-making* within the political organization of a society. *Three* levels = *chiefdom* [household + central place + confederation]; *four* levels = *state* [household + villages / hamlets + central place + confederation]. Thus, the anthropological concept of state requires the existence of four levels of decision-making.

The theoreticians of the emergence of the state include, for example, Carneiro and Wittfogel. *Valley organizations* in the sociodemographical sense also form central components in their respective theories. The trait of *intermediation in conflict* has been put forward as a central cause for the emergence of the state by Flannery (as, for example, assumed in the case of the Zapotec priesthoods in Monte Albán in ancient Mexico with regard to the three main Valleys of Oaxaca). Carneiro considers *war-like conflicts or threats* (inter alia, feuds) as main causes of state formation. Wittfogel considers as a main cause *the allocation or control of water* (In the case of similar theories, *the procurement and distribution of other critical resources* are considered.).

According to Carneiro, *circumscription* as confinement in geographical and environmental terms, i.e. by other populations, systems of political power and systems of ecological usage, leads to political (e.g. violent) integration, to the formation of resistance and/or to sociopolitical innovation. Hierarchical subordination under existing or newly created political organizations are to be contrasted by attempts of self-organization, maintenance of autonomy and becoming independent, e.g. secession or fission of villages.

(3a) According to Carneiro's Theory of the Origin of the State, Inner Switzerland can be characterized in terms of:

- Environmental circumscription: valleys, relatively complex local territories of rule in the environment (Dukedom; monasteries and the universal religion of Catholicism). Perceived 'carrying capacity' of the usable land is a relevant variable.
- Homogeneity of rights or legal order.

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<sup>72</sup> Cf Hallpike 1986 in general and Ch V [The direction of evolution], p. 208ff.

- Hierarchy of oaths: definition of sovereignty and political autonomy; affiliation and loyalty.
- Military institutions (inferred). Feuds and maintaining independence.
- Resource analogs: Saint Gotthard Pass (trade route); professional specialization as soldiers.

(3b) According to Flannery's Theory of the Emergence of the State, the confederation of Inner Switzerland can be characterized by:

- The creation of a committee of intermediation or, rather, coordination of the polities of the Valley (*MHG. laender*, or cantons): later called *G. 'Tagsatzung'*.
- The institution of decision-making: Cantonal Assembly (*L. universitas*, *MHG. Landlüt gemeinlich*).
- Resources: not in the sense of procuring resources, e.g. by trading expeditions, but in terms of enabling them, by safeguarding the trade routes as an advantage for the entire Holy Roman Empire, that means, securing local autonomy in exchange for safeguarding the transit route or, rather, routes of commerce. This means *economic-political interdependence* between Inner Switzerland and the central authority of the Holy Roman Empire.

(3c) Following Wittfogel, we can also characterize the Inner Swiss confederation as a *hydraulic* society (with the construction and / or control of 'water works') by:

- The significance of the water route, of Lake of Lucerne or Vierwaldstäten as a route of transport (control).
- The Flüelen toll for using the water route.
- Cutting down trees: troughs for water supply (cf Decision taken by the Cantonal Assembly Schwyz 1342 May 15). Taxes for water, wood (cf Decision taken by the Cantonal Assembly Schwyz 1294).

### 34. ADDENDUM:

#### THE PHILOSOPHICAL SUBSTANCE OF THE FEDERAL CHARTERS

*Note: The following text is taken from my book "Landsgemeinde" (Hinz 2016:238ff).*

I examine the *formation of basic legal, political and social concepts* that allow for the reconstruction of the legal and social philosophy underlying the Federal Charters and the operation of the Cantonal Assembly. This holds, for the time being, in the sense of a protophilosophical development of legal and social principles. Thus, the people of Inner Switzerland helped to define procedurally a political (or, rather, state) theory, or, since relying upon procedural definitions, of a political (or state) praxis and codified it in the Federal Charters of 1291 and 1315. This chapter does not replace Blickle's paper (1992; cf *here* C.).



### 34.1 TOWARDS A PROTOPHILOSOPHY OF LAW

A concept of justice, the concepts of legal security and legal peace are outlined in the sense of a *philosophy of law*. The norms for the appointment of judges show political independence and *legal supervision* by means of the Cantonal Assembly. Judges are elected (?), and are not allowed to have purchased their office, and must be fellow countrymen. In contrast to these points of view, “obedience” to, or the obligation towards, compliance with the judge, is of self-evident but subordinated import: *security and peace under the law* are brought about by the confederates. Legal judgements are to be acknowledged and are eventually pushed through by the confederates in terms of normative pressure.

Furthermore, interesting in terms of social evolution and political philosophy are the *codification of law*, the creation of *rules of legal procedure* as well as the establishment of *security and peace under the law* by means of detailed social norms of action. The acceptance of lords from without is always bound to the agreement of the Cantonal Assembly. As emphasized, the Cantonal Assembly issues a prohibition against foreign, bought or, rather, bribed judges. These are first steps towards *the exercise of power and legal supervision* (e.g. documented in 1309 in consensus with the Imperial Plaintiff) by means of the Cantonal Assembly. In the Federal Charter of 1332, even a plurality of different legal orders is accepted.

The codification of law shows the following *concept formation(s)*: *transgressions* against life or body and property, together with the factual *legal authority to exercise the death penalty* in the case of murder, *restitution by the order of a judge*, arranging individual and intercommunal quarrels (e.g., feuds) *in mutual agreement* (‘in accord with harmony’, G. ‘nach Minne’) or *by means of a formal decision by a judge* (‘according to law’, G. ‘nach Recht’), *the obligation of compliance* with the judge and the court. Penalties include the *death penalty* (murder), *banishment* (and, eventually, *lifting of the banishment*) and *finer or restitution of the damage*. Fundamentally, control and supervision rest with the Cantonal Assembly as an institution that sets and enforces the law, in the sense of ‘All power originates with the people’.

The concession of Imperial Freedom can be constrained by certain conditions (eventually, giving account before an Imperial Plaintiff and/or the Imperial Court of Justice).

Acts of political self-determination, solidarity and, especially, the obligations of observing the alliance and consulting with each other, are subsumed under this *concept of law* politically created by and anchored in the Cantonal Assembly. Cf *here* ‘Abstract’ 5.a, legally or, rather, constitutionally anchored solidarity, right to decision-making and self-determination [Fed Ch 1332 (§6) and “Letter of Wisserlen of 1470” (cf *here* Ch 21)].

## 34.2 ON POLITICAL PROTOPHILOSOPHY

In the sense of a *political philosophy*, a concept of power (or government) is outlined. This is still a bit vague: no power to be exerted by foreign lords or lords from outside without consent of the Cantonal Assemblies (Federal Charter of 1315, §10). This is a *methodical or operational definition of power* determined by the procedure of decision-making as a conscious acknowledgement by the people, i.e. the Cantonal Assembly, and that means, as *legitimized rule or, eventually, in case of conflict, as rule by the people in dissention*.

The people, i.e. the Cantonal Assembly (the ‘countrymen as Cantonal Assemblies of Schwyz, Uri, Unterwalden’, MHG. ‘die Landlüt gemeinlich’) assure themselves as the *sovereign*: ‘we discuss, decide, order’. This interpretation has certainly its *limits* that consist in finding the balance with the King or the Holy Roman Empire and the convergence of claim and realizability. The latter is a question of the political program: only local validity.

It is interesting to note that ‘*unjust power*’ is defined and is barred in the form of a prohibition of rendering services. It is not only the right to resistance against unjust rule but the *prohibition of obedience to services* in the face of unjust power – such is undoubtedly the wording in the proclamation (Federal Charter of 1315). In terms of the inversion of an argument, the features of *just power* appear as precisely defined: ‘no forced slave-labor’ or ‘inhuman treatment’ and ‘morally acceptable’. Cf *here* Ch 10.3.

I want to go one step further: in terms of a social philosophy, this also seems to be the key in understanding the *behavior towards other human beings*, also facing potential economic inequality and relative dependency [cf Federal Charter of 1315: MHG. ‘ze ere’ = ‘for (self)respect’]. The *obligation towards resistance* in normative terms is tied to the concept of ‘unjust power’. Moreover, one should note that *free from violence* is emphasized as a feature of ‘just power’. Put differently: *active resistance is directed against violent and unjust power on one’s own territory*.

This passage acquires *political* significance through the decision of the Cantonal Assembly to convert it into part of the constitution (Federal Charter of 1315) and to apply it in case of need. In terms of content, it also acquires a principally *social and legal* meaning: in the sense of a *basis of society or, rather, social association*.

The countries vigorously defend any *freedom once achieved*, in the sense of Imperial Freedom being directly dependent upon the King or, rather, the Empire. The authors of the Federal Charter of 1332 abstained from mentioning any duty to personal services in the Waldstätten cantons. I point out the decisions by King Ludwig’s Imperial Court of Justice to end bond-slavery and any form of service for the Austrian Dukes or their representatives and replace them by services for the King and for the Empire in 1316, renewed in 1324 (Hinz 2016, Anh. 6.4). King Ludwig’s decrees concerning *adequate behavioral norms for*

*plaintiffs* (1318 and 1329) coincide with the concept of rule as expressed in the Fed Ch of 1315. Cf Hinz 2016, App. 6.7.

### 34.3 TOWARDS A PROTOPHILOSOPHY OF THE SOCIAL

In the sense of a protophilosophy of the social we can understand *mutual swearing on each other* (in contrast to an oath of a commoner on his “Führer” i.e. leader), by all the members of the Cantonal Assembly, as *generating social-territorial identity and bonding in a community of solidarity*. In addition, this community of solidarity is constituted by means of the swearing on the constitution or, rather, the alliance (i.e. the respective *Federal Charter*) and is to be considered as *constitutional*.

The norm of *mutual aid in case of attack against life and body and property as the basis of existence* characterizes this concept of a community in solidarity. Thus, especially the norms of *protection* against an attack from without and terror from within [e.g., Federal Charter 1291, §§ 7-17] co-define this concept of a community in solidarity. *Common utility, (self)respect and peace* are among the central values that **emphasize mutuality or (strong) reciprocity** in terms of social relations.

In contrast to the modern social state, this type of community in solidarity does not yet seem to know the concept of ‘social compensation (of poverty, misery and neediness)’. However, when dealing with crimes (against property), this feature seems to be addressed to a certain degree in the sense of *restituting* as much as possible [Federal Charter of 1291, §§ 24, 27]. The value of *public good or common utility* marks the orientation in the social action of the communities or countries (cantons) or Cantonal Assemblies.

The Federal Charter of 1332, § 11, specifies ‘against noblemen / lords’ (MHG. ‘*wider herren*’) as possible enemies whom the alliance shall protect against. We read in the “Luzern Ratsbüchlein” (cf QWI/3:316 = Doc. 484) for 1343 Nov 16: MHG. ‘*ein mengi richer und armer ze Lutzerren*’ (= Am. ‘*an assembly of the rich and poor in Luzern*’) who had organized themselves, under oath, together with the city councilors against an attempt by the Austrian-Habsburgian faction to overthrow the citizens’ rule.

The conceptual peculiarities of the Fed Ch of 1351 with Zürich are outlined in the following paragraphs, under “value orientation”.

In terms of a social philosophy, I consider it to be outstanding that the *criteria for services* in favor of so-called lords are ‘gentle with regard to health’ and ‘morally acceptable’ (cf FC 1315; *here* Ch 10). The *social ideal* corresponds to the features ‘just and without violence’ as already described and ‘respecting common good’ and ‘self-esteem’. Perhaps one can refer to the latter values simply as being ‘in agreement with human dignity’.

### 34.4 THE CANTONAL ASSEMBLY AS AN ORGANIZATION AND “[ACTION] PRAXIS”

In my opinion, the concept of the Cantonal Assembly is mentioned or implied in the texts of the constitutions analyzed here.

Federal Charter of 1291: § (3) *homines; universitas; communitas hominum* [‘the people/male persons’; ‘the Cantonal Assembly’; ‘the Communal or Cantonal Assembly of the people/male persons’]; § (20) *communi etiam consilio et favore unanimi promissimus* [‘we also promised in joint consultation and by unanimous vote’].

Federal Charter of 1315: §(3) *wir die lantl(i)ute von Uri, Schwyz und Unterwalden* [‘we, the countrymen of Uri, Schwyz, Unterwalden’]; §(6) *daz wir bi unseren tr(i)uwen und bi unseren eiden gelobt und geschworn han, einanderen ze helfenne* [‘that we have promised and sworn in our vows of loyalty and in our oaths to help each other’]; §(19) *in die eitgenozen mit gemeinem rate wider inladent* [‘(until) the confederates invite (i.e. admit) him again on the basis of joint consultation and vote’]; §(25) *wir die vorgehenden lantl(i)ute und eitgenoze von Ure, von Switz und von Unterwalden* [‘we, the aforementioned countrymen and confederates of Uri, Schwyz and Unterwalden’].

Federal Charter of 1332: §(5) and (6); §(7) *MHG. wir der schulthess, der rat und die burger ze Lutzern* [‘we, the Schultheiß (Mayor), the council and the citizens of Luzern’]; §(8) *MHG. wir die vorgehenden lantl(i)ute ze Ure, ze Switz und ze Underwalden* [‘we, the aforementioned countrymen of Uri, Schwyz and Unterwalden’]; §(10) ‘they shall realize, under oath, if injustice is done to them, and if the majority among them realizes that injustice is done to them’. ‘Under oath’ and ‘the majority’ seem to point to the intervention or action of the Cantonal Assembly.

We are partly dealing with an implicit philosophy, following Pierre Bourdieu, with a “Theory of [Action] Praxis”, or R. Schank & R. Abelson, with an integrated network of beliefs, high-level goals and routines (scripts). The action rules for the foundation or constitution of the Cantonal Assembly as a basic institution of the respective population for tasks of self-organization are not specified in the early Federal Charters but are to be inferred from the later Books or, rather, Compilations of Country Laws (partially events or agenda that can be precisely dated back to the 13<sup>th</sup> and 14<sup>th</sup> centuries). The rules are explicitly mentioned as late as the Federal Charter of 1351 with Zürich. Cf Hinz 2016, Ch I.1.7, and *here* Ch 15.

#### OVERVIEW: CHARACTERISTICS OF THE CANTONAL ASSEMBLY (cf the graphics in Blickle 1990:97,101,103,106,124)

- *Members with voting rights*: the male population past 14 or, rather, 16 years of age (sometimes 20 yrs – e.g. according to Brun’s constitution). This segment of the population becomes sworn in: on the Chairman

(MHG. *[land]amman*), on the constitution (Federal Charters) or, rather, the country, on the Cantonal Assembly.

- *Periodicity of the swearing*: Every 5 [according to the Federal Charter of 1353 with Bern] to 10 yrs [e.g. Federal Charter of 1351 with Zürich].
- *Periodicity of meetings*: At least, once a year, in May; when required.
- *Position of the Chairman of the Cantonal Assembly*: He is elected for one year by the Cantonal Assembly, or for half a year by the urban Citizens' Assembly (re-election possible). He acts on behalf of the Cantonal (or, respectively, Urban) Assembly. *He invites or calls up the Cantonal Assembly*. He also accepts legal complaints or reports.
- *Position of the judges*: Yearly election as a council by means of the Cantonal Assembly. Councils are documented in the treaty between Fribourg and Bern 1271 (or, respectively, 1243), between Bern and the Valley of Hasli 1275, and for the City of Luzern in the Federal Charter of 1332 as well as in the Council's Booklet in reference to the Luzern Upheaval of 1343. The election of the councilors in Luzern shows peculiarities (cf Historisches Lexikon der Schweiz [HLS], Luzern [Gemeinde 2.]). Cf Hinz 2016, App 9; Federal Charters of 1291 and 1315.
- *Functions of the Cantonal Assembly*: Cf here, for example, the chronologically ordered register of decisions taken by the Cantonal Assembly of Schwyz).

#### VALUE ORIENTATION

Thanks to Blickle (1990:170-202, bes. 199ff.) the value orientation as contained in the Federal Charters became the focus of attention and analysis. The value of *common good* is traced by him in a number of documents from the 13<sup>th</sup> and 14<sup>th</sup> centuries (Blickle 1990:200f). The philosophical accomplishment of the authors of the Federal Charters rests also in the characterization of the value orientation in the respective preambles.

- Federal Charter of 1291, §1: *honestati... et utilitati publicae* = 'for the respect and the common good (public utility or interest)'; *pacta quietis et pacis* = 'pacts of tranquillity (quietness) and peace', i.e., an order of peace; §5: defense of oneself and one's property.
- Federal Charter of 1315, §2: *MHG. den l(i)uten ze fride unde ze gemache (und) ze nutze und ze eren* = 'for the people's (in the sense of the public) peace and well-being, utility (or advantage) and (self)respect'; §8: life and goods (property); §11: services respecting health and moral standards; §12 [implied by the inversion of an argument]: absence of violence; justice; §13: when entering in negotiations with lords from without or when swearing on them informing the Cantonal Assembly/-ies [plural] and asking for the cantonal and the countrymen's mutual permission is necessary. Cf here Ch 9 & 10.
- Federal Charter of 1332, §2: *MHG. den l(i)uten ze fride und ze nutze, ze gemache und ze eren* = see above Federal Charter of 1315; §4: Life or goods

(property); §7: *MHG. dienste... durch recht* = ‘services ... according to law (legal order)’; §8: *MHG. rechtung* = ‘legal obligations’; §15: no binding through swearing on lords [from outside the country].

- Federal Charter of 1351, §2: ‘with meaningful (apt) preliminary reflections for [a] good peace and [b] protection [b.1] of our life and property, [b.2] of our city, our countries and [b.3] people, for [c] the utility and [d] well-being of the total country, for [e] an eternal alliance and for [f] [eternal] friendship’; §3: ‘we, thus, give ... each other recognizable evidence of this society joined in loyalty and [of this] eternal alliance’. For the first time, the concept of “*society*” emerges, in connection with “*friendship*” and “*well-being for the [whole] country*”. This society is “*joined in loyalty*”, *i.e. is constituted by the mutual or reciprocal oath of loyalty as an alliance.*

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