

Constitutionalism in Post-1814 Europe: Monarchy, Parliament and Sovereignty

MARKUS J. PRUTSCH

1. Introduction

The challenges of the post-Napoleonic age were manifold, ranging from economic consolidation, via social integration to political reconciliation. An overarching concern was the legitimacy of rule and rulers; more particularly: the question how after the experiences of the Revolution the issue of “sovereignty” could be tackled, and regimes be legitimised and put on a solid basis. Perhaps the main problem in this regard was how to reconcile European princes’ claim to preserve their monarchical sovereignty with post-revolutionary societies’ expectations, in particular their hopes for a constitutional state¹. At the Congress of Vienna – and in contrast to the widespread perception of the age after 1814 as having been “reactionary” – it was generally felt that the Spanish approach of rigid neo-absolutism was denying the *zeitgeist* and was therefore not a long-term solution². In comparison, the

example of the French Restoration under Louis XVIII (1755-1824), who was willing to provide constitutional guarantees in order to achieve a lasting settlement, seemed a more appropriate and reasonable solution. It therefore comes as no surprise that the Bourbon Restoration project in 1814 was, as the Revolution itself had been, an act of utmost importance for Europe.

The *Charte constitutionnelle* (“Constitutional Charter”) played a pivotal role within this context, laying the foundations for the new regime and putting forward possible solutions to bridge the diverging aspirations of rulers and post-revolutionary societies³. Indeed, the new system made the monarch the dominant political power and declared him the sole holder of the *pouvoir constituant*, while at the same time restricting the sovereign by a written constitution which provided civil liberties and allowed citizens to partake in the political and legislative process. For this reason, the “constitutional monarchism” exemplified by the French *Charte*, which might also justifi-

ably be termed "monarchical constitutionalism"⁴, has frequently been considered to be a central model for post-Napoleonic Europe.

It is, however, worth ascertaining how far this claim holds true. With this in mind, the following questions are to be answered:

How far can the French *Charte constitutionnelle* and the concept of "constitutional monarchism" be claimed to have been a constitutional innovation?

What role did constitutional monarchism play as a model in nineteenth-century Europe?

What were the prospects of institutionalising constitutional monarchism in the longer term, and how can its status be assessed within the context of European constitutional developments, especially vis-à-vis the alternative of a parliamentary monarchy?

2. *The Charte constitutionnelle of 1814*

Wise enough to realise that «the restoration of the ancient line can mean any thing [sic] else but the restoration of the ancient constitution of the monarchy»⁵, in spring 1814 Louis XVIII managed to reinstate the Bourbon dynasty with no intention of going straight back to the *Ancien Régime*. He withstood the temptation to restore the monarchy with all its previous powers. Instead, the *Charte constitutionnelle*, which had been set up under Louis' personal direction as the new constitution of the country and was formally proclaimed on 6 May 1814, incorporated the legal achievements of the previous decades and established a modern representative system involving the French

nation in the political process. In this respect, the *Charte* included many of the liberal aspirations laid down in the constitutional draft prepared by the French Senate in the wake of Napoleon's deposition, which had been intended as the legal grounds for the restoration of the Bourbon Monarchy. At the same time, however, the Charter was based on a completely different ideology than the "Senatorial Constitution", namely on the doctrine that the *pouvoir constituant* and all state authority resided in the person of the king, thus, at least theoretically, rejecting a separation of powers⁶. The most obvious expression of "monarchical sovereignty" was the way the *Charte* was enacted, namely by royal *octroi*, neither voted upon by a parliament nor confirmed by a popular plebiscite. The affirmation of the "monarchical principle"⁷ was the demarcation by which the new Constitution was clearly distinguishable not only from its revolutionary predecessors, but from the English constitutional system as well. Rather, the *Charte* was in the tradition of Samuel von Pufendorf's (1632-1694) panegyric for a *monarchia limitata*, which he had sharply differentiated from *res publica mixta* in *De jure naturae et gentium* (1672)⁸ by resorting to Hugo Grotius' (1583-1645) concept of "limited monarchy"⁹. For Pufendorf, the *res publica mixta* and the division of sovereign power, in his eyes a "typical *faux pas* of Political Aristotelians"¹⁰, exemplified the *res publica irregularis*. The only "regular" polity was the *monarchia limitata*, in which the monarch was bound to certain laws and the consent of the nobles and the representatives of the nation, but still continued to embody undivided sovereignty¹¹.

The obvious contradiction in terms between constitutional government and the

monarchical claim for undivided power manifest in the *Charte* was overcome by the distinction of *ius* and *exercitium*, that is the idea that political power is monopolised by the crown, but its execution in part left to other subordinate constitutional institutions. While the provisions of the new Constitution were nothing short of a full concession to the existing political and legal realities, at least in argumentative terms the monarch was able to keep up the appearances of constitutionalism as an act of voluntary grace and as an uncontested variation of monarchical rule. In line with this logic, it was, therefore, natural that the constitution's founding fathers avoided using the term *Constitution*, with its revolutionary connotations. Instead, they sought an alternative and finally agreed upon *Charte*¹², rooted in the language of the Old Regime and thus stressing both awareness of tradition and the fact that the new order was not a mere continuation of existing constitutional documents, but was in fact a phenomenon *sui generis*.

While the term "constitutional monarchism" seems to squeeze two seemingly contradictory concepts together at first glance, a closer examination reveals that it is exactly this seeming contradiction which is the soul of the *Charte* system. The Constitutional Charter was created out of a necessary compromise between "old" and "new" France, and for that reason it ultimately served as a potential means to overcome the political fragmentation of post-Napoleonic France. Its characterisation as "a considerable regression"¹³ when compared to former constitutions is therefore not quite appropriate. What is true is that the *Charte* does mark a clear backward step when considered from the point of view of

democratisation – especially regarding the actual number of those who received the franchise – when compared with the constitutions drawn up during the Revolution and also with the Senatorial draft. But taken as a whole and given the contemporary political challenges, the *Charte* was in some aspects more "balanced" and "viable" than its predecessors. There can be no doubt that the crown was not only the sole holder of executive power, but also had a dominant position in the legislative process, disposing of a set of constitutional tools to exert influence on the composition and activity of the parliament as well as the judiciary.

Nevertheless, monarchical power was far from unrestricted, and despite the king's leading role, he could no longer rule devoid of parliament without violating the provisions of the constitution. Many of the royal prerogatives such as the right of initiative in the legislation and the right to dissolve the second chamber were certainly powerful, but they could not obscure the fact that every bill and every budget proposal required the approval of both chambers. Moreover, the catalogue of fundamental rights set down in the *Charte* codified a sacrosanct legal space, which could, at least in theory, not be violated by the executive power. Critics might still object that the new constitutional system was unable entirely to satisfy any particular political group in France, but it is exactly this impartiality which could also be considered to be its very advantage.

In summary, it can be argued that constitutional monarchism as put into practice by the French *Charte* was a genuine innovation, representing a fragile but appropriate response to the demands of the post-Napoleonic age. However, this is with the important proviso that "innovation" should not

and must not be seen as an “unprecedented novelty”, but a sagacious re-shuffling of existing doctrines and institutions: natural and positive law, “revolutionary” and “classical” constitutionalism, liberalism and conservatism, parliamentarism and monarchism, representative government and monarchical sovereignty, civil rights and royal prerogatives.

With the proclamation of the *Charte constitutionnelle*, an archetypal constitutional model undoubtedly saw the light of day. But which role would *Charte*-constitutionalism, shaped by and developed under its own unique “French” conditions, be likely to play beyond the borders of France? This leads us to the question of the impact of the *Charte* on nineteenth-century constitutionalism in Europe compared to other potential models, and the challenges of actual constitutional reception and transfer.

3. Reception and Transfer: Constitutional Monarchism as a European Model?

The potential appeal of constitutional monarchism was the way in which it provided a viable alternative to revolutionary constitutionalism, offering a somewhat fragile, but functional compromise capable of mastering the political challenges of the post-Napoleonic age. In particular, the crown – while defending claims to being the sovereign and the institutional power hub – could position itself in a tradition of “royal adaptability” and “modernity”, thus making “Restoration” a dynamic adjustment concept rather than a synonym for outward repudiation of the revolutionary and Napoleonic legacy¹⁴. And indeed, a large number

of European nineteenth- and early-twentieth century constitutions can be classified as following the model of “constitutional monarchism” as represented by the French *Charte*. Among them are those of the United Netherlands (1815), the Kingdom of Poland (“Congress Poland”; 1815), the Southern German states of Bavaria, Baden and Württemberg (1818 and 1819 respectively), Spain (1834), Greece (1844), Denmark (1849), Austria (1861/1867), the German Empire (1871) or Russia (1906), to name but a few.

Yet it would be misleading to infer that there was no alternative to constitutional monarchism, or even that there was an immediate and linear “transfer” of the French *Charte* to those countries eventually opting for a monarchical-constitutional legal framework. Rather, evidence shows that throughout the entire nineteenth century constitutional monarchism remained but one – although certainly prominent – option among others. Besides (state) absolutism and autocracy as the most obvious counterpoints to constitutionalism¹⁵, a number of constitutional options existed for nations with monarchical forms of government (leaving aside the radical path of republicanism): British parliamentary constitutionalism; specific national variants of constitutional government such as parliamentary-corporatist constitutionalism (Swedish Constitution of 1809); and in particular parliamentary-monarchical constitutionalism, represented by constitutions such as the Norwegian of 1814, that of Naples 1820/1821, but also the revised *Charte constitutionnelle* of 1830 in the wake of the July Revolution, the Belgian Constitution of 1831, and the Spanish of 1837.

At the same time, it is evident that even within states opting for constitutional mon-

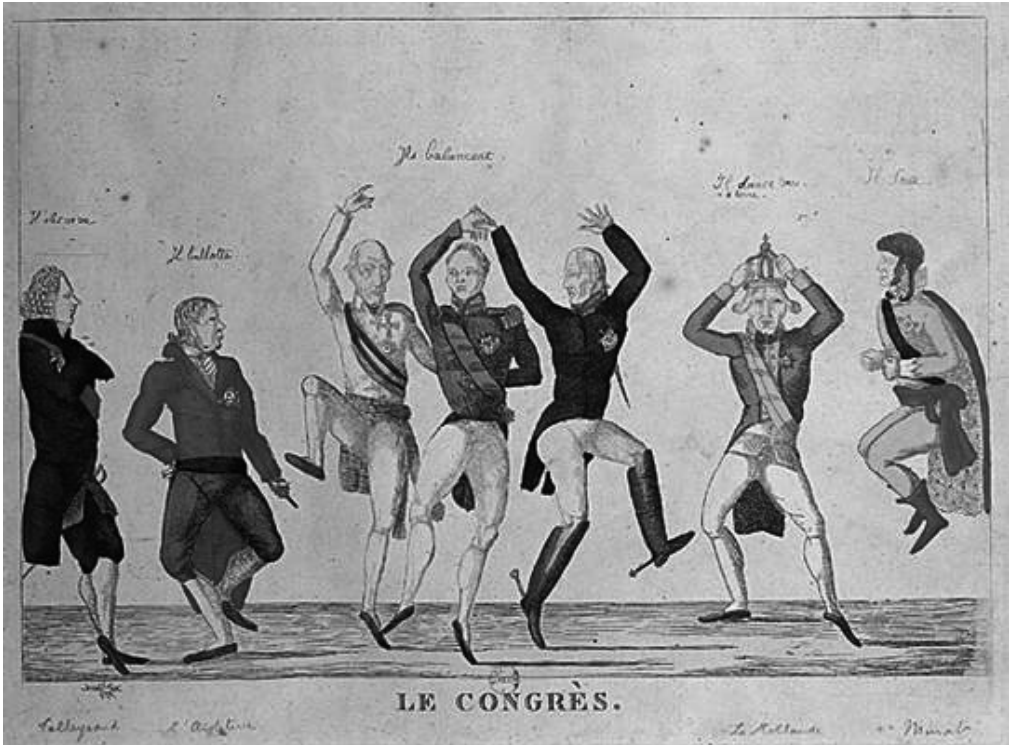
archism there was hardly ever a simple imitation of already existing constitutions and of the *Charte* in particular. In fact, attitudes towards any constitution were nuanced, as were motivations for constitutional takeovers. All in all, perception and transfer of constitutional ideas and texts was an intricate process – and often much less “informed” than one might expect. Germany, a keen implementer of constitutional monarchism and later one of the most consistent defenders of this system until the First World War, is a case in point, and at the same time characteristic of the often diverging dynamics of public discourse and governmental politics. A closer look at the German case might therefore be revealing.

When considering public constitutional discourse in Germany around 1814, one can observe that among the middle-class(es) an interest in constitutional matters had been gradually growing since the second half of the eighteenth century. The *Befreiungskriege* in particular had served as a catalyst, and after the victory over Napoleon *Verfassung* was on everyone’s lips. Conflict over “constitution” and “non-constitution” became the distinguishing hallmark of *Vormärz* Germany. Most contemporaries were aware that constitutionalism was not an issue specific to Germany. Instead, across Europe the *Zeitgeist* of the period begged for some kind of “harmony” between monarchical power and the widespread desire for freedom and liberty:

Since [...] the social order in all realms and states of Western Europe is, with minor variations, basically the same, they are all facing the same task. One might certainly argue as to the nature of this task; but what always really matters is to harmonize princely power and liberty in such a way that they are no longer in conflict¹⁶.

However, one would be wrong in presuming that awareness of the “international” nature of the constitutional question resulted in some kind of “pan-European” discourse, or an unbiased approach to foreign constitutional alternatives. Despite the intensity of intellectual debate in Germany, the perception of foreign political and constitutional “models” – the number of which had sharply increased since the late eighteenth century – was characterised by a lack of information, selectivity and widespread scepticism. Many non-German constitutional documents available at the time were more or less disregarded in public debate. This holds true for the constitutions of the Nordic countries (the Swedish Constitution of 1809, the Norwegian Constitution of 1814), the United Netherlands (1814/1815) and Congress Poland (1815), but also, with certain reservation, for the Spanish Cádiz Constitution of 1812 and the United States Constitution of 1787. Rather, the German *Bürgertum*’s interest in foreign constitutional systems was predominantly focused on two countries: France and Great Britain.

Public interest in these two nations was considerable, but knowledge of them could not by any means be regarded as comprehensive¹⁷, and the way these two systems were perceived was anything but unanimously positive. French revolutionary constitutionalism based on popular sovereignty was met with open hostility and regarded as a negative counterpoint to the understanding of a “good” and “balanced” constitution. In matter of fact, the Constitution of 1791 and even more so the constitutional documents of 1793 and 1795 as well as the Napoleonic Constitutions of 1799, 1802 and 1804 could be taken as classic examples of “negative reception”. French revolutionary



Forcéval, "The Congress dances", satirical print, 1815

constitutionalism was a handy enemy concept not only because Germany lacked the experience of revolutionary turning-points and sudden new beginnings of state order, but also since antipathy against the Revolution could be conveniently combined with general anti-French resentments nurtured by the experience of the Napoleonic Wars: «If one asks [...] what general opinion agrees upon unconditionally and unanimously: it is hate and contempt of France»¹⁸. Rejection was common among both conservatives and liberals. Many of the latter certainly accepted a number of the fundamental principles of the (French) Revolution, such as the limited monarchy, a

written constitution, the abolition of feudal privileges, and guarantees of civil rights. However, more often than not, liberals disclaimed any association whatsoever with the Revolution and rarely would they come out wholly in favour of revolutionary constitutionalism. In contrast, the English Constitution enjoyed a good reputation amongst most political camps in Germany. However, while some liberals deemed Britain's constitutional system a worthy model for the constitutionalisation of Germany, most contemporaries, especially conservatives, argued that its "home-grown" nature made it non-transferable. Above all, the British parliamentary system was considered to be

incompatible with German historical traditions, particularly strong executive power.

Against this background, the *Charte* seemed to present a more favourable model, since it actually incorporated many worthwhile elements of the English Constitution, for example bicameralism, yet preserved monarchical sovereignty. Still, enthusiasm for the French Charter among the German intelligentsia remained subdued. There were favourable comments on the constitutional text and recognition that the *Charte* was a useful means for pacifying the country under the restored Bourbons monarchy and was probably the best constitution France had manufactured so far. But any unreserved acknowledgement of the Charter as a model for Germany was foredoomed to failure simply on account of its French origin and widespread Franco-phobia.

Biased reception and only fragmentary knowledge of foreign constitutions and political systems – characterised moreover by a frequent confusion of constitutional ideal and existing practice – made foreign constitutions mainly serve the purpose of a stockroom of arguments for political debate, not legal models for lasting institutional solutions. At the same time, the language of *landständische Verfassung*, which swamped the press around 1814/1815, embodied the emerging trend of self-referential political discourse. The term *landständische Verfassung* itself was very vague, but even without much agreement as to what it actually meant, without even a clear understanding of the distinction between “representative” and *landständische* constitutions, it did suggest German genuineness and originality, thus satisfying growing demands for “national constitutions”¹⁹. These demands

went hand in hand with doubts about the transferability of constitutions in general. There was suspicion as to whether constitutions generated in one country could be implemented in another. The historico-genetic argument was that differing political, social, economic and cultural contexts would hinder any such implementation. Such arguments were often put forward regarding the English Constitution given its common-law character²⁰, but could also be generalised:

The actual wording of a constitution and legislation may be the same in different nations; but they never produce the same results, which are more the outcome of the spirit and character of the people. Words can be transferred but not the spirit, which only develops and evolves in and through life²¹.

The idea that a constitution was the product of specific national conditions was to remain a – if not *the* – most crucial element in public constitutional discourse over the next few decades, both in Germany and beyond.

Public constitutional discourse, however, was just one side of the coin; practical politics the other. Despite the fact that most German intellectuals were themselves closely involved in state administration or worked for politicians, the ideas and objectives of intellectuals and state authorities were by no means the same. The former tended towards the legalisation of state power and the extension of political rights. The latter, however, wanted consolidation of rule, which had to be accomplished with a minimum of political concessions.

For the ruling class, the need to transform politics and polity had become clear during the Napoleonic age, resulting in a range of reform processes throughout Eu-

rope including Germany. Demands for reform, however, had not been fully met, and at the end of the Napoleonic era, German rulers could no longer turn a blind eye to the "constitutional problem". During the Congress of Vienna, the promise to set up constitutions in all German states was finally put down in writing in the German Federal Act (*Deutsche Bundesakte*) of 1815. This promise, however, was so vaguely expressed – «All Confederal states will be given a *landständische* constitution» (Art. 13) – that it was neither clear nor certain when, how or if it would be fulfilled at all²². Nonetheless, prospects for constitutionalisation were better than ever before, especially in those German states confronted with burning domestic and foreign policy challenges like the Southern German *Mittelstaaten* («medium-sized states») of Bavaria, Baden and Württemberg. The question which remained was what these new constitutions should actually look like. While it was certain that "revolutionary constitutionalism" would attract the ruling classes even less than the intelligentsia, monarchs were presumably more open to foreign models in general and French-style constitutional monarchism in particular. This was due to the fact that for them the constitutional question was above all a pragmatic one, and "(monarchical) class consciousness" after all more important than "national consciousness". With pragmatic considerations of securing and stabilising political power prevailing, the appeal of the *Charte* is not particularly surprising. Considering that the English Constitution could be regarded as being either too "home-grown" or passing over too much competence to parliament, and *landständische Verfassung* more of a slogan than a fea-

sible model, constitutional monarchism as exemplified by the *Charte* was simply "constitutional common sense" – and hence the only real alternative, if a formal written constitution maintaining the principle of monarchical sovereignty and granting continued political preponderance of the crown was the ultimate goal.

4. *Prospects of Constitutional Monarchism and its Role for European Constitutionalism*

This observation leads us to the final question concerning the long-term "potential" of constitutional monarchism and its role within the context of European constitutional history, especially in relation to the alternative of a parliamentary monarchy.

Constitutional monarchism can be argued to have been a universal constitutional model. It found implementation in many different national contexts throughout Europe, representing a broad range of social, political and cultural traditions. At the same time, not only were the motives for setting up monarchical-constitutional systems most diverse – securing the restoration of the monarchy (France 1814), consolidating rule in newly formed states and demonstrating foreign-political sovereignty (Southern Germany in 1818/1819), or making concessions to revolutionary movements (Prussia 1848 or Russia 1906); the various monarchical-constitutional systems also kept their distinctive features. They thus differed not only regarding the setup of the political institutions, civic rights granted, or franchise, but even regarding the definition and interpretation of the monarchical principle itself: the

very nucleus of constitutional monarchism, which could be formulated more or less rigidly. In terms of performance, constitutional monarchism has encountered criticism both from contemporaries and in later scholarly research. This is not least because of a structural antagonism – and thus a potential source of fundamental conflict – between monarchical power on the one hand, and parliament on the other, considered immanent to such political systems. Nevertheless, their legislative output in the nineteenth and early twentieth century was not necessarily bad, and in many cases constitutional practice actually proved that such systems were able to tackle political, social and economic reforms effectively. More than is the case with most other forms of constitutional government, however, it was the model of constitutional monarchism that was challenged by the ongoing radical shifts in the way political power was legitimised and exercised.

Since the late seventeenth century, the general trend had been towards democratising, legalising, functionalising and mediatizing political rule, a process which intensified and accelerated in the course of the nineteenth century. The democratic principle gained importance, which was manifest in growing demands for political participation, for civil rights to be granted, and franchise to be introduced or extended. It became progressively more difficult to argue for and justify the unrestricted political powers of the princes, whose role gradually changed from “ruler” into responsible “regent”²³. This was all the more so since the political field was increasingly subjected to laws and left fewer and fewer legal “black holes”. Accordingly, it became all the more problematic, particularly for monarchs, to

solve constitutional conflicts²⁴ without recourse to juridical arguments. During the Revolutionary age, political confrontation had become radicalised in style and approach, and a number of constitutional conflicts were solved by open coups (France, Italy, the Netherlands, Switzerland). But after 1814, even in monarchical-constitutional systems any assaults on existing constitutional regimes had to be strengthened with legal arguments, as demonstrated by the attempts of King Charles X in France to justify the July Ordinances of 1830 and hence the de facto repeal of crucial constitutional provisions by referring to Article 14 of the *Charte*²⁵. In the second half of the century, constitutional conflicts were rarely solved by unilateral action on the part of the monarch. Long-drawn-out political and juridical struggles between monarch and parliament as in Prussia 1862-1866 and Denmark 1884-1894 became the rule.

Parallel to the process of “juridification” of the political realm was a drastic downgrading of established concepts of legitimacy. “Tradition”, the idea of an “authority of the past”, had been characteristic of the pre-modern age and served as a regulator for political life. In the modern age, however, tradition was to be replaced by functionality²⁶ and originality as main categories, thus fundamentally changing the nature of politics. It was no longer possible to base political rule exclusively upon conviction about what had previously existed. Political institutions were forced to reassert their legitimacy through continuous activity and innovation. The concept of the “divine right of kings” was no longer a solid basis for monarchical legitimacy. Favoured by their legal abstraction into “constitutional bodies”, the monarchs – no matter how

powerful they might be – were increasingly seen and judged rationally, and former awe for the office holder was now replaced by respect which first had to be earned, notably by assuring “good governance”:

no one any longer believes in the divine origin of the regent, no one any longer fears his physical power – thus there remains only the regard for him, the belief in the excellence of his intentions and the allegiance to institutions whose guardian he is and of which he is a part²⁷.

But the more rational the understanding of political institutions was, the clearer it became that monarchs too were replaceable, especially if they did not live up to public expectations. In former times, monarchs might nobly and convincingly write about freedom or constitutional government, and yet continue to govern like despots. In the nineteenth century, «the royal amateurs would now be taken at their word, and their pleasant speculations turned into anxious realities»²⁸. In fact, Louis XVIII’s Restoration project was essentially based on the promise that the Bourbon monarchy was a better guarantee for the future development of the country than any other political alternative: one crucial, if not the only, foundation stone on which Louis could confidently base his rule. All the more disastrous, then, if this promise was not kept.

A no less demanding challenge for monarchical rule was the burgeoning “mediatisation” of Western society. The increasing importance of the press as (mass) medium from the eighteenth century onwards ran parallel with the politicisation process among broader parts of the population and helped make politics an accessible “mass market”. During the nineteenth century, political rule became more public – though not automatically more transparent – than

ever before and increasingly dependent on popular opinion created under the influence and within the framework set down by the press. Its capacity to set the “political agenda” was clearly demonstrated during the French Restoration, when the press became one of the central players on the political stage. In such an environment, it became increasingly important for political actors to win over the press or suppress it, to consider the impact their political decisions would have on the media, and to develop strategies on how to “sell” and “market” themselves and their political programmes. In this respect the legitimacy of monarchical rule underwent crucial changes, too. Whether they liked it or not, the princes were now forced to live up to the expectations of the public. They were no longer free agents, and were controlled rather than independent in their decisions and actions. By the end of the nineteenth century, the ideal of an autonomous monarch had lost most of the foundations it may have once had.

Faced with such obstacles, the long-term prospects of constitutional monarchism were limited, even if the monarchical power maintained the ability and will to reform. It is certainly true that the monarchical-constitutional systems established in France, Germany and other parts of Europe were not doomed to failure *a priori*, but had some potential for development. In spite of this, however, the adaptability and reformability of these systems had clear limits. The more politics developed into a mass phenomenon and the more omnipresent the public desire and need to be actively involved in the political process was, the more anachronistic the concept of unrestricted monarchical sovereignty and authority became. As

tradition lost its role as a cohesive element of monarchical rule, the more unstable the legitimacy of that rule became and the more exposed the monarch was likely to be to public discontent and criticism.

The dilemma was, basically, that in order to equip monarchical-constitutional systems to stand up to and surmount the challenges of the time through reform and evolution, the only reasonable way to go about it was by allowing uncompromising democratisation and parliamentarisation, and by withdrawing the monarch from the political frontline. Indeed, the need for such parliamentarisation and de-politicisation was recognised in contemporary political thought by writers such as Benjamin Constant, François-René de Chateaubriand, or Robert von Mohl²⁹. If consistently applied, however, this meant that monarchs had to forgo their dominant political position, the typical feature of constitutional monarchism. Or to put it in another way: the only way to reform constitutional monarchism in the long term was by means of a change of regime, which would inevitably deprive the system of its very soul.

In this respect, constitutional monarchism – while giving the notion and practice of monarchy new vigour and perspective after 1814 – was forced to be a transitional phenomenon, representing neither a “zero hour” nor “the end” of European constitutionalism. In many cases, monarchical-constitutional systems paved the way for parliamentary forms of government. In these systems there might still be place for princes, but predominantly in the role as head of state with a representative function, as a symbol of national unity, as moral instance, or a moment of stability. They were, in any case, less and less an “efficient

part” of the constitution³⁰. Parliamentary monarchies were more attuned to the “rational principle” gaining ground in the nineteenth century, the progressing functionalisation of monarchy, and in particular the growing political aspirations of the middle classes. At the same time, for most contemporaries parliamentary monarchy represented a potentially more appealing and stable alternative to republicanism, which continued to be negatively connoted throughout most of the century.

The revision of the French *Charte constitutionnelle* during the July Revolution of 1830 is a paragon for the structural shortcomings of constitutional monarchism, and the transition from monarchical to parliamentary-monarchical constitutionalism³¹. The revolutionary crisis of 1830 culminated in the toppling of King Charles X and a regime change, yet one characterised not by a revolutionary transformation of the political system, but merely a fundamental redesign of the monarchy, which was preserved as such. The revised *Charte* of 1830 reversed the power relation between crown and parliament, with the new king Louis-Philippe becoming a *pouvoir constitué* with clearly limited prerogatives. The renunciation of the principle of monarchical sovereignty became manifest not only in Louis-Philippe’s taking the oath to the new constitution at the Chamber of Deputies as a prerequisite for his ascending to the throne, but also his being termed *Roi des Français* rather than the traditional *Roi de France*. Notwithstanding the re-definition of the monarchy, the defensive character of the regime change was beyond question. The dynastic rupture was kept to a minimum, with the Orléans branch succeeding the ruling Bourbon dynasty, and while the

founders of the July Monarchy in 1830 were keen to limit royal power, they were anxious not to substitute the monarchical with the popular principle. Accordingly, it was the language of “national” rather than “popular sovereignty” that was used, and a strict census suffrage was kept.

In as much as the French Revolution of 1830 inspired the uprising of the Southern Provinces of the United Kingdom of the Netherlands, there is an intrinsic link between the revised *Charte* of 1830 and the later Belgian Constitution of 1831 both with regard to their respective formation and their content. Yet while the July Monarchy collapsed in 1848, the Kingdom of Belgium – together with other cases – demon-

strated the potential of parliamentary-constitutional monarchies to endure even in the long run, in many cases to the present day. This was provided that an evolutionary constitutional development towards increasing parliamentarisation and democratisation could be guaranteed, with the crown withdrawing from day-to-day politics and contenting itself with the role of an “authority in reserve”.

¹ For a detailed assessment of “constitutional monarchism” (and “monarchical constitutionalism” respectively) in post-Napoleonic Europe see M.J. Prutsch, *Making Sense of Constitutional Monarchism in Post-Napoleonic France and Germany*, Basingstoke, Palgrave Macmillan, 2013. See also M.J. Prutsch, “Monarchical Constitutionalism” in *Post-Napoleonic Europe*, in K.L. Grotke, M.J. Prutsch (edited by), *Constitutionalism, Legitimacy, and Power: Nineteenth-Century Experiences*, Oxford, Oxford University Press, 2014, pp. 69–83.

² In his final report on the Congress of Vienna, Talleyrand described the unanimous disappointment felt by the European powers at the neo-absolutist way in which Ferdinand VII had returned to the Spanish throne in 1814: «Je n’ai vu aucun Souverain, aucun ministre, qui, effrayé des suites que doit avoir en Espagne le système de gouvernement suivi par Fer-

dinand VII, ne regrettât amèrement qu’il ait pu remonter sur son trône, sans que l’Europe lui eût imposé la condition de donner à ces États des institutions qui fussent en harmonie avec les idées du temps.» ‘Rapport fait au Roi pendant son voyage de Gand à Paris’ (June 1815). In G. Pallain (edited by), *Correspondance inédite du Prince de Talleyrand et du Roi Louis XVIII pendant le Congrès de Vienne, publiée sur les manuscrits conservés au dépôt des Affaires étrangères avec préface éclaircissements et notes*, Paris, E. Plon et cie [etc.], 1881, p. 474.

³ *Charte constitutionnelle* (4 June 1814), in *Bulletin des lois du Royaume de France*, vol. 1 n. 133, pp. 197–207. As regards French works on the *Charte* of 1814 and its later revision in 1830, see especially P. Rosanvallon, *La monarchie impossible. Les Chartes de 1814 et de 1830*, Paris, Fayard, 1994. In general, however, French historiography has paid only limited

attention to the constitutional history of the Restoration period, which continues to be largely considered as a “transitory period” only.

⁴ E.N. Anderson and P.R. Anderson, *Political Institutions and Social Change in Continental Europe in the Nineteenth Century*, Berkeley, University of California Press, 1967, pp. 39 f., 78 f. The use of the term “monarchical constitutionalism” has a long tradition especially in German constitutional law (*monarchischer Konstitutionalismus*), above all to describe the constitutional development of Germany and particularly Prussia throughout the nineteenth century. See, e.g., O. Hintze, *Das monarchische Prinzip und konstitutionelle Verfassung*, in «Preussische Jahrbücher», vol. 144, n. 3, 1911, pp. 381–412, here pp. 360 f. More recent studies have taken a wider view of the meaning of these terms – see, e.g., M. Kirsch, *Monarch und Parlament im*

Prutsch

19. Jahrhundert. *Der monarchische Konstitutionalismus als europäischer Verfassungstyp – Frankreich im Vergleich*. Göttingen, Vandenhoeck & Ruprecht, 1999 – to also encompass Bonapartist regimes and constitutional monarchies dominated by parliament (such as the English system from 1689). Here, however, the terms are used solely to characterise constitutional systems with a dominant monarchical power (“monarchischer Konstitutionalismus mit Vorrang des Königs”; ivi p. 7).
- ⁵ *State and Prospects of Europe*, in «The Edinburgh Review», vol. 23, n. 45, April 1814, pp. 1–40, citation pp. 14 f.
- ⁶ *Constitution française* (6 April 1814), in «Bulletin des lois du Royaume de France», vol. 1 n. 13, pp. 14–18.
- ⁷ The “monarchical principle” found its clearest expression in the preamble of the Constitutional Charter. See *Charte constitutionnelle* (4 June 1814), in «Bulletin des lois du Royaume de France», vol. 1, n. 133, pp. 197–207, preamble pp. 197–199. A detailed analysis in V. Sellin, *Die Erfindung des monarchischen Prinzips. Jacques-Claude Beugnots Präambel zur Charte constitutionnelle*, in A. Heinen and D. Hüser (edited by), *Tour de France. Eine historische Rundreise. Festschrift für Rainer Hudemann*, Stuttgart, F. Steiner, 2008, pp. 489–497.
- ⁸ See S. Freiherr von Pufendorf, *Samuelis Pufendorfi de jure naturæ et gentium libri octo*, Lund [= Londini Scanorum], Junghans, 1692, Book 7 Ch. 5, Para. 13, and Book 7 Ch. 6 Para. 6–12. On concepts of *monarchia limitata* from Grotius to Pufendorf see H. Dreitzel, *Monarchiebegriffe in der Fürstengesellschaft. Semantik und Theorie der Einherrschaft in Deutschland von der Reformation bis zum Vormärz*, 2 vols., Köln, Böhlau, 1991, vol. 1, pp. 94–99.
- ⁹ See H. Grotius, *De jure belli ac pacis libri tres. In quibus jus naturæ et gentium: item juris publici præcipua explicantur*, Paris, Buon, 1625, especially Book 1 Ch. 3. The term *monarchia limitata*, however, is not yet explicitly used by Grotius.
- ¹⁰ H.E. Bödeker, *Debating the “res publica mixta”: German and Dutch Political Discourses around 1700*, in M. van Gelderen and Q. Skinner (edited by), *Republicanism and Constitutionalism in Early Modern Europe*, Cambridge, Cambridge University Press, 2002, p. 235.
- ¹¹ See Pufendorf, *De jure naturæ et gentium*, Book 7 Ch. 6. Para 10.
- ¹² See R. Rémond, *La vie politique en France depuis 1789*, Paris, A. Colin, vol. 1, 1965, pp. 268 f. See also H. Gangl, ‘Die Verfassungsentwicklung in Frankreich 1814–1830’, in «Historische Zeitschrift», CCII, n. 2, 1966, pp. 265–308, here pp. 273 f. Jacques-Claude comte de Beugnot (1761–1835), who had been a leading figure in the royal commission entrusted with drafting the actual text of the new constitution, took the credit for having urged for the term *Charte*. See J.-C. comte de Beugnot, *Mémoires du comte Beugnot, ancien ministre (1783–1815)*, Paris, E. Dentu, 1866, vol. 2, pp. 218 f.
- ¹³ W. Schmale, *La France, l’Allemagne et la constitution (1789–1815)*, in «Annales Historiques de la Révolution Française» n. 286, 1991, pp. 459–481, here p. 476.
- ¹⁴ For such an interpretation of Restoration see, e.g., V. Sellin, *Die geraubte Revolution. Der Sturz Napoleons und die Restauration in Europa*, Göttingen, Vandenhoeck & Ruprecht, 2001, and V. Sellin, *Das Jahrhundert der Restaurationen: 1814 bis 1906*, München, Oldenbourg, 2014.
- ¹⁵ Cf., e.g., Austria until 1848 (and 1861 respectively), Prussia until 1848/1850, Denmark until 1848, the Ottoman Empire until 1876 (and 1908 respectively), or Russia until 1906.
- ¹⁶ *Ueber den historischen Standpunkt bei dem Verfassungs-Werke*, in «Journal für Deutschland, historisch-politischen Inhalts», VIII, 1817, pp. 231–255, citation p. 252.
- ¹⁷ In 1818, for example, the Bavarian writer and jurist Johann Christoph von Aretin felt obliged to even explicitly encourage his fellow countrymen to an intensified study of French and English constitutional law. See J.C. Freiherr von Aretin [= B. Timonomus], *Gespräche über die Verfassungs-Urkunde des Königreichs Baiern*, München, K. Thienemann, 1818, vol. 1, p. 54.
- ¹⁸ J. Görres, *Gesammelte Schriften* (edited by Marie Görres), München, Literarisch-artistische Anstalt, 1854–1874, vol. 2, p. 13.
- ¹⁹ The German noun *Landstände* or *Landtag* – the corresponding adjective being *landständisch* – had traditionally signified the assembly of (feudalistic) representatives of the estates of the realm, called together to advise and pass legislation. The return to an estates-based political order proper (now becoming constitutionalised), however, was rarely envisaged in nineteenth-century Germany.
- ²⁰ Not only conservatives, but also many of the German liberals had doubts on this score. See T. Wilhelm, *Die englische Verfassung und der vormärzliche deutsche Liberalismus. Eine Darstellung und Kritik des Verfassungsbildes der liberalen Führer*, Stuttgart, W. Kohlhammer, 1928, pp. 175–193.
- ²¹ F. Murhard in «Allgemeine politische Annalen», X, 1823, p. 71.
- ²² *Deutsche Bundesakte vom 8. Juni 1815*, Art. 13: “In allen Bundesstaaten wird eine Landständische Verfassung statt finden”. Printed in: E.R. Huber (edited by), *Dokumente zur deutschen Verfassungsgeschichte. 1. Deutsche Verfassungsdokumente 1803–1850*, Stuttgart, W. Kohlhammer, 1978 [1961], pp. 84–90, citation p. 88.
- ²³ On legitimisation – and indeed survival – strategies of European monarchies in the nineteenth century see V. Sellin, *Gewalt und Legitimität. Die europäische Monarchie im Zeitalter der Revolution*, München, Oldenbourg, 2011.

- ²⁴ On the interplay of "constitution" and "conflict" in a long-term European perspective see U. Müßig (edited by), *Konstitutionalismus und Verfassungskonflikt: Symposium für Dieter Willoweit*, Tübingen, Mohr Siebeck, 2006.
- ²⁵ Article 14, which had become the most controversial article in French constitutional practice after 1814, specified that «Le Roi est le chef suprême de l'Etat, il commande les forces de terre et de mer, déclare la guerre, fait les traités de paix, d'alliance et de commerce, nomme à tous les emplois d'administration publique, et fait les règlements et ordonnances nécessaires pour l'exécution des lois et la sûreté de l'Etat».
- ²⁶ On the functional character of the monarchy, particularly in the nineteenth century, see, e.g.: E.-W. Böckenförde, *Der Verfassungstyp der deutschen konstitutionellen Monarchie im 19. Jahrhundert*, in E.-W. Böckenförde, R. Wahl (edited by), *Moderne deutsche Verfassungsgeschichte (1815-1914)*, Königstein/Ts., Athenäum, Hain, Scriptor, Hanstein, 1981 [1972], pp. 146-170, here pp. 159 f.; H. Hoffman, *Das Problem der säkularistischen Legitimität im Bismarckreich*, K. Hammer, P. Claus (edited by), *Le Bonapartisme. Phénomène historique et mythe politique. Actes du 13e colloque historique franco-allemand de Paris à Augsburg du 26 jusqu'au 30 septembre 1975/ Der Bonapartismus. Historisches Phänomen und politischer Mythos*, 13. deutsch-französisches Historikerkolloquium des Deutschen Historischen Instituts Paris in Augsburg vom 26. bis 30. September 1975, Zürich, München, Artemis, 1977, pp. 77-101, here p. 91 f.; H. Dollinger, *Das Leitbild des Bürgerkönigtums in der europäischen Monarchie des 19. Jahrhunderts*, in K.F. Werner (edited by), *Hof, Kultur und Politik im 19. Jahrhundert. Akten des 18. Deutsch-französischen Historikerkolloquiums Darmstadt*

- vom 27.-30. September 1982, Bonn, Röhrscheid, 1985, pp. 325-364, here pp. 331 f.; Kirsch 1999, *Monarch und Parlament*, pp. 389 f.; M. Kirsch, *Die Funktionalisierung des Monarchen im 19. Jahrhundert im europäischen Vergleich*, in S. Fisch, F. Gauzy and C. Metzger (edited by), *Machtstrukturen im Staat in Deutschland und Frankreich/Les structures de pouvoir dans l'État en France et en Allemagne*, Stuttgart, F. Steiner, 2007, pp. 81-97. For a study of monarchical power in long-term perspective see, e.g., B. Jussen (edited by), *Die Macht des Königs. Herrschaft in Europa vom Frühmittelalter bis in die Neuzeit*, München, C.H. Beck, 2005.
- ²⁷ V.F. Freiherr von Andrian-Werburg, *Oesterreich und dessen Zukunft*, Hamburg, Hoffmann und Campe, 1843 [1841], p. 178. L. Börne remarked in 1818: «Weder Liebe noch Furcht ist ein sicheres Band zwischen Volk und Herrscher, sondern Achtung allein; denn die Völker sind Männer geworden, aber nur das Kind fürchtet, der Jüngling liebt, der Mann achtet.» Cited in: A. Gathy [= J. Brunow], *Der Völkerfrühling und seine Verkünder. Frühlingsgruß an Deutschlands Redner*, Nürnberg, Hoffmann und Campe, 1831, p. 67.
- ²⁸ *Political State of Prussia*, in «The Edinburgh Review», LXXXIII, n. 167, January 1846, pp. 224-239, citation p. 229.
- ²⁹ See, e.g., *Réflexions sur les constitutions, la distribution des pouvoirs et les garanties, dans une monarchie constitutionnelle*, Paris, Nicolle, Gide, 1814; B. Constant, *Principes de politique, applicables à tous les gouvernements représentatifs et particulièrement à la constitution actuelle de la France*, Paris, A. Eymery, 1815; F.R. A. vicomte de Chateaubriand, *Réflexions politiques sur quelques écrits du jour et sur les intérêts de tous les français*, Paris, Le Normant, 1814; F.R.A. vicomte de Chateaubriand, *De la monarchie selon la Charte*, Paris, De l'Imprimerie des Amis du

- Roi, 1816; R. von Mohl, *Constitutionelle Erfahrungen. Ein Beitrag zur Verfassungs-Politik*, in «Zeitschrift für die gesamte Staats-Wissenschaft», II, n. 2, 1845, pp. 191-233; R. von Mohl, *Das Repräsentativsystem, seine Mängel und die Heilmittel. Politische Briefe*, in K. Von Beyme (edited by), *Politische Schriften. Eine Auswahl*, Köln, Westdeutscher Verlag, 1966[1852], pp. 118-224.
- ³⁰ See also Walter Bagehot's, in parts cynical, judgement of the British monarch's limited political role in the second half of the 19th century: W. Bagehot, *The English Constitution*, London, Chapman and Hall, 1867, especially pp. 57-117. For Bagehot, the monarch was only at the head of the "dignified part of the constitution", while the prime minister was at the head of the efficient (*Ibid.*, p. 13).
- ³¹ On the revision of the *Charte constitutionnelle* in the crisis of 1830, shifting constitutional powers from the crown to parliament, see M.J. Prutsch, *Die Charte constitutionnelle Ludwigs XVIII. in der Krise von 1830. Verfassungsentwicklung und Verfassungsrevision in Frankreich 1814 bis 1830*, Marburg, Tectum, 2006.