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**Executive and Legislative Powers  
in the Constitutions of 1848-49**

Edited by

**Horst Dippel**



**Duncker & Humblot · Berlin**

HORST DIPPEL (ed.)

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The idea for this volume was born when I decided to take up the invitation Sascha and Ezra Talmor of Haifa University were kind enough to extend to me to chair a workshop at the Sixth Conference of the International Society for the Study of European Ideas (ISSEI) at the University of Haifa (Israel) from 16 to 21 August 1998. Commemorating the revolutions of 1848-49, the constitutions of these years were the obvious choice for scholarly consideration and assessment. My special thanks, therefore, go to the Talmors for instigating it all. I also should like to express my thanks to all those colleagues who were prepared to sacrifice part of their summer holidays and to contribute to the Haifa workshop, and of course, to the Deutsche Forschungsgemeinschaft for providing travel grants.

Back home, the hardships of being the editor began, and I am very grateful that several colleagues who had not been able to attend the Haifa conference were willing to contribute to this volume in order to make it more substantial. They all had to endure my wishes and impatience which they did with unflinching good humor.

It was a great pleasure to find Norbert Simon from Duncker & Humblot Publishers spontaneously ready to accept the volume proposed to him and to publish it in his renowned series "Schriften zur Verfassungsgeschichte". That the idea finally turned into a book was only possible with the help of many who generously offered their time to make it happen. Kristina Koch, Jeff Phillips, and Mike Morrissey did their best to bring the English of non-native authors as close to a native-speaker level as possible. Nicole Jacob, Julita Klink, and Gerrit Schäfer had to work hard to transform a dozen manuscripts into a coherent volume according to the standards of the publisher. And Angelika Ferrante did, as usual, all the secretarial work without which the book could not have been completed. To all of them I wish to give my most sincere thanks.

Kassel, July 1999

*Horst Dippel*



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## Introduction

By Horst Dippel

Modern constitutionalism is based on two generally acknowledged assumptions: first, that it came into being at the end of the eighteenth century, and second, that it is today the universally accepted source for legitimate power in almost any state throughout the world. How these ideas evolved from its revolutionary origins over the course of two hundred years to achieve today's global significance is, to a large extent, still a mystery in spite of all the research, past and present, devoted to national constitutional histories. National constitutional developments added together will never constitute something like the sum of modern constitutionalism, but will only leave room for excuses for all kinds of national peculiarities and forms which may properly be called constitutional folklore. Modern constitutionalism itself has to be placed at the center of research, thus allowing the evaluation of the merits and deficiencies of different national performances.<sup>1</sup>

Small wonder that in the course of the development of modern constitutionalism the *biennium* of 1848-9 has been continuously underrated.<sup>2</sup> No collection of its constitutions has ever been published, nor any systematic interpretation of them has yet been written in spite of the fact that during the revolutionary upheaval of 1848-9, more than 40 constitutions were, with at least some sort of

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<sup>1</sup> For more details, cf. my Prolegomena zu einer europäischen Verfassungsgeschichte, in: Gesellschaft und Diplomatie im transatlantischen Kontext. Festschrift für Reinhard R. Doerries zum 65. Geburtstag, Stuttgart 1999 (in print). See below also the article by Antonio Chiavistelli and Luca Mannori who address aspects of this problem.

<sup>2</sup> Cf. Boris Mirkine-Guetzévitch, Les Constitutions européennes, 2 vols., Paris 1951, I, p. 14, who suggests that between 1814 and 1914 "le mouvement constitutionnel s'individualise", while "fabrication en série" of constitutions only happened in 1919-1922 and again after 1945. A similar perspective on nineteenth-century constitutionalism, again underrating the importance of 1848-9, is developed by Joaquín Varela Suanzes, Introducción: Las cuatro etapas de la historia constitucional comparada, in: *id.* (ed.), Textos básicos de la historia constitucional comparada, Madrid 1998, pp. xxiii-xxvii.

public legitimacy, drafted in Europe and most of them enacted.<sup>3</sup> When asked why these years saw more constitutions than any other two-year period in Europe in the nineteenth century, conventional wisdom confines itself to pointing at the February revolution in Paris. But the strife for constitutional reform had been well under way in parts of Europe before February 22 and had even come to a conclusion in some countries before that date. In France, on the other hand, the events of 1848 had not resulted in a constitution until November, well after many European countries had already enacted a new constitution, and this found itself in obvious contrast to some of the guiding principles of the February revolution.

Why did Europe, at least since 1847 experience a renewed struggle for constitutions, culminating in 1848-9? Do all these constitutions really have a common topic or do they constitute just an incoherent mass that came about by various and more or less unconnected forms of revolutionary unrest? The answer to these questions leads back to modern constitutionalism, its characteristics and its development. With its origins in the American and the French revolution at the end of the eighteenth century, two sources are detected that were responsible for an American and a European, particularly, a French variant of constitutionalism the differences of which are visible until today. Both were born in revolution, carried through to achieve and secure human rights and freedom. Ever since this time, constitution was thought to be the synonym for liberty and progress.

Whoever aspired for revolutionary change or for political reform in 1848-9 demanded a constitution. These years, therefore, lived to see, once again, the attempt of modern constitutionalism to prevail over the countervailing forces of legitimism and historical right, and its ensuing constitutions bear witness to what extent modern constitutionalism succeeded or failed to implant its core ideas, either in its American or in its French variant, in the different countries. What in political terms may be called the European revolutions of 1848-9, is in its constitutional meaning the struggle of modern constitutionalism against the forces of the past.

The twelve articles assembled in this volume are not designed to provide answers to all these questions or even to substitute a still missing constitutional history of 1848-9. Instead, they were written to illustrate, with a focus on the organization of legislative and executive powers, some major aspects of this struggle. In the sample of constitutions of 1848-9, an American constitu-

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<sup>3</sup> In spite of its title, Carlo Ghisalberti, *Il costituzionalismo del '48*, in: *Rassegna storica del Risorgimento* LXXXV/Numero speciale, 1998, pp. 39-48, interesting as it is, is more an overview over constitutional aspirations in various European countries during the *biennium* than a synthesis under the perspective of modern constitutionalism.

tion of 1848 is deliberately included to document the whole range of ideas from nearly unconcealed opposition to major constitutional concessions to the rule of popular sovereignty in a democratic republic and to demonstrate the similarities as well as the differences between European and American constitutional concepts at the time. It may be worth keeping in mind that this American constitution, the Wisconsin constitution of 1848, with its "modern" principles, is the only constitution drafted and adopted in these years that is still in force today. There were others that lasted for several decades up to almost a century, such as the Swiss and the Dutch constitutions and the *Statuto Albertino*, all from 1848. Most of the other constitutions, however, failed to survive the defeat of the revolution and were repealed by reactionary politics at the beginning of the 1850s. Some of them never got even that far and were stifled before being put into practice, such as the German constitution of the Paulskirche or the Roman constitution of 1849. The *Kremsierer Verfassungsentwurf* of 1848-9 even had to be buried before the Imperial Diet was able to adopt it.

Longevity or ephemerality stand for major aspects in this struggle for modern constitutionalism, but they are no criterion for the "modernity" or "backwardness" of a constitution. This quality may be indicated by the constitutional models referred to or copied from. In Italy the French *Chartes* of 1814 and especially of 1830 and, hardly less important, the Belgian constitution of 1831, were obviously more influential with the early constitutions than with those drafted in the second half of 1848 or in 1849. This is also true for Germany and Austro-Hungary, where most constitutions were comparatively later drafts, when traditional forces appear to have been more powerful in rejecting too sweeping adoptions from French constitutionalism. Some countries were able to adapt their own constitutional traditions to the changed situation. Thus, the Netherlands had improved on its own constitutional history since 1795, as Arend Huussen demonstrates. The Electorate of Hesse, as Wilhelm Speitkamp tells us, further developed its liberal constitution of 1831, and according to Rainer Schweizer Switzerland revitalized its own reform drafts of 1832-3, but was open to American influences, too. In restricted aspects, the impact of American constitutionalism can also be documented in the constitution of the Paulskirche and in the French constitution of 1848, which placed an American-like President beside a French legislature, only to realize that this combination was doomed to fail. Nevertheless, the French constitution of 1848, though in modified form, might also stand as model for constitutions drafted in 1849, such as that of the Roman Republic.

These adaptations to French or American ideas or to their own history and tradition, and thus the question to what extent modern constitutionalism gained its way may not or not primarily be expressed by direct loans from respective constitutions but also by the way the constitution came into being.