

Zitierhinweis

Blaschke, Olaf: Rezension über: Werner Daum / Peter Brandt / Martin Kirsch / Arthur Schlegelmilch (eds.), Handbuch der europäischen Verfassungsgeschichte im 19. Jahrhundert. Institutionen und Rechtspraxis im gesellschaftlichen Wandel. 2: 1815-1847, Bonn: Dietz, 2012, in: Reviews in History, 2013, May, heruntergeladen über Website



copyright

Dieser Beitrag kann vom Nutzer zu eigenen nicht-kommerziellen Zwecken heruntergeladen und/oder ausgedruckt werden. Darüber hinausgehende Nutzungen sind ohne weitere Genehmigung der Rechteinhaber nur im Rahmen der gesetzlichen Schrankenbestimmungen (§§ 44a-63a UrhG) zulässig.

Six years after the publication of the first volume of the *Handbook of Nineteenth-Century European Constitutional History* (1), the long-awaited second has appeared. While the first ranged from around 1770 to 1815 over 1224 pages, its successor covers the time between the Congress of Vienna (1814/1815) and the Revolutions of 1848 using 1504 pages. However, it is not just sheer size that identifies this as a milestone in constitutional historiography but rather the territorial scope and multifarious perspectives of the project. Volumes three (1848–70) and four (to around 1900) should appear in the near future, and each volume is accompanied by a CD-ROM which includes constitutional sources. The CD-ROM which parallels volume two contains 965 texts concerning European constitutional history.

The project was produced by the Historische Forschungszentrum der Friedrich-Ebert-Stiftung (Historical Research Center of the Friedrich-Ebert-Foundation), which acts as the sponsoring institution, and the Institut für Europäische Verfassungswissenschaften der FernUniversität in Hagen (Institute for European Constitutional History at the University Hagen), where the editors (except Martin Kirsch) are based. The other contributors (of which there are more than 30) are either experts for the country whose constitutional history they examine or experts from the country whose constitutional history they examine. The 21 chapters cover all European nations, some of them which even didn't exist at the time, like Norway (Peter Brandt), or were in *statu nascendi* like the Romanian principalities (Dietmar Müller, Leipzig; Ioan Stanomir, Bukarest; Bogdan Murgescu, Bukarest). The United States of America (Peter Brandt) are included, since the Declaration of Independence and the American Constitution of 1787 exerted a lasting influence on French, British and German constitutional thinking, though less on southern Romanic countries. The project fulfills the modern demand of international and transnational perspectives. Russia (Dietmar Wulff, Bielefeld; Michail Dmitrievič Karpačev, Voronež), though without a written constitution, is also dealt with, and the autocratic Ottoman Empire (Tobias Heinzelmann, Zurich), serves as a contrast to European developments and as an explicit contribution to the discussion about Turkey being a part of or apart from Europe.

The panorama of countries starts with Great Britain (Hans-Christof Kraus, Passau), which doesn't fit into the continental frame of the epoch between 1815 and 1848. It was the Great Reform of 1832 which ended not a long Ancien Régime but separated an Old from a New Regime. Following this, the rather lengthy article about France (Martin Kirsch, Berlin; Daniela Kneißl, Bonn) discusses the three constitutions and regimes between the Charte of 1814 and the revolutions of 1830 and 1848.

Most extensive are the chapters about Italy and Switzerland with about 90 pages each, and about the German-speaking countries, which cover 300 pages. The explanation for this asymmetry lies not in the German origin of the book-project and the editors' affinity to Italy but in the heterogeneous and federal character of the subjects. The chapter about Italy concentrates on the Kingdoms of Sardinia and the Two Sicilies (Werner Daum), and on the central Italian principalities and the Papal States (Francesca Sofia, Bologna). The author dealing with Switzerland (Ulrich Zelger, Zürich) is confronted with 19 cantons in 1814, with 22.5 in 1815 and, after some segregations, a civil war and re-arrangements, 22 cantons in 1848, all of them having republican constitutions, except monarchic Neuenburg. The Swiss case includes as many countries as the rest of Europe, the German case doubles the problem. If Spain (Walther L. Bernecker, Erlangen-Nürnberg; Jens Späth, Rom), like France, created three constitutions in this period (1812, 1837 and 1845), the German Confederation of 1815 (Edgar Liebmann, Wuppertal), with its own frail constitutional architecture, consisted of 37 states and four cities. Some of them, like Baden, Württemberg and Bayern, adopted a constitution in the first wave of constitutionalisation (Hartwig Brandt, Marburg) before 1819, others like Hanover, Saxony and Hesse in the second wave (Ewald Grothe, Wuppertal) around 1830, and some of them never made it (Axel Kellmann, Köln). The biggest German countries, Prussia (Monika Wienfort, Berlin) and Austria (Markus J. Prutsch, Helsinki; Arthur Schlegelmilch, Hagen), successfully refused it until the revolution of 1848.

Medium sized articles of between 30 and 60 pages about the Netherlands (Jeroen van Zanten, Amsterdam), Belgium (Johannes Koll, Wien), Luxemburg (Norbert Franz, Luxembourg), Poland (Martina Thomsen, Kiel), Hungary (András Gergely, Budapest), Liechtenstein (Herbert Wille, Benden), Sweden (Otfried Czaika, Stockholm) and Denmark (Jens E. Olesen, Greifswald), Finland (Frank Neseemann, Speyer), Serbia (Holm Sundhaussen, Berlin; Nenad Stefanov, Berlin), Greece (Ioannis Zelepos, Wien) and Portugal (António Manuel Hespanha, Lissabon) complete the picture.

200 pages seems rather long for an introduction, but this length is needed in order to explain the theoretical and comparative approach, guiding the reader through the confusing landscape of European constitutional developments. It deals with social and economic developments in Europe between 1815 and 1848 (Peter Brandt) and European constitutional thought (Pierangelo Schiera, Trento), but the heart of the introduction and of the entire book is the comparative synthesis. Written by Werner Daum, except the part about international relations and treaties (Bardo Fassbender, München), it offers an illuminating overview of different constitutional categories, drawing lines between all the countries dealt with.

Thus, the book follows a double organisational principle. While it proceeds from country to country each of these studies is structured into 12 categories. The editors developed and exhaustively explained these in volume one. The twelve organizational categories are: 1. international relations, 2. constitutional structure at the state level, 3. suffrage, 4. basic laws, 5. administration, 6. justice, 7. military, 8. constitutional culture, 9. church/religion, 10. education, 11. finances, and finally 12. economic and social legislation/public welfare. This principle enables the reader to draw comparisons between the countries. But Daum has already done most of the work, structuring his analysis according to the twelve categories and presenting a synopsis of the country-studies.

The twelve dimensions are substantial, allowing for a rather wide understanding of constitutional history, which is not reduced to the history of political structures or the history of constitutional law (written or unwritten) as an autonomous sphere. On the other hand, the twelve constitutional fields protect the project from slipping into a *histoire totale*. Rather, the realistic understanding of constitutions – as the arrangement of the entire institutions responsible for the regulation of society – is guided by a specific view on social developments, on the interaction between political systems with the social and economic changes accelerating in the late 18th century. Beyond mere constitutional laws constitutional reality is taken seriously as well. It is the relationship between both which form ‘the real constitution’.

Was constitutional history in Europe both diverse and capable of exhibiting common features? The comparative approach allows us to move beyond such simplistic ideas. Though corporate, absolutistic and autocratic monarchies persisted, accompanied by a few republics, the post-Napoleonic era until 1848 was characterised by monarchic constitutionalism. This argument is repeated (for example, p. 9, pp. 181–5), and reflects an earlier argument by Martin Kirsch.⁽²⁾ In contrast to the concept of constitutional monarchy, monarchical constitutionalism emphasises the constitution-creating role of the monarch. The constitution was implanted as a monarchical instrument. The monarch is guaranteeing the constitution more than the constitution is able to qualify his rule. Constitutions were their answer to the new quest for legitimacy. The Vienna Final Act of 1820 confirmed the monarchical principal. International relationships and the responsibility for territorial integrity remained the domain of the monarch. This was clear in any case. Therefore, written constitutions had nothing to say about foreign politics. In the dualism between crown and parliament the monarch had the final say.

Looking at constitutional realities, rather than simply whether there was a written constitution or not, Werner Daum offers a very useful typology (pp. 75–94). It starts with regimes without constitutions, including autocracies like Russia. Absolutistic regimes consisted of three subcategories: authoritarian like Oldenburg or Greece (1833–44), administrative monarchies

like Austria, and consultative monarchies like Prussia or Denmark (from 1834), with the Ottoman Empire and the Papal States sharing a bit of everything. Two intermediate types between absolutism and constitutionalism were corporate monarchies as in Tirol or Hanover and oligarchic-patrician regimes like Hamburg and some Swiss cantons. The last category is constitutionalism. It can also be divided into three subcategories: a dual system with the primacy of the monarch like in France (1814–1830); with primacy of parliament like France from 1830 and Belgium; or lastly parliamentary constitutionalism as represented only in Great Britain from 1835. A handy chart (pp. 76–9) illustrates this.

Beyond such typologies the social and cultural constitutional realities differ while having many traits in common. Only 0.3 per cent of the French population (1814–30) had the right to vote, 1.8 per cent in Bavaria were able to – compared to 17 per cent in Baden since 1819 (p. 98, 293, 836f.). It was a time when the wave of democratisation and egalitarian suffrage, starting around 1800, experienced a rollback to liberal suffrage with high census-based restrictions, corruption and manipulation.

Influences and transfers – jurists say reception, ethnologists talk about diffusion – are followed by philosophical ideas, practices and written constitutions. The contemporary European views and misperceptions of North America are discussed, including the influence of European constitutionalism on Hispanic America in the 1820s, and the example of how the Belgian constitution, adopted in 1831, served as a model for the constitutions of Serbia, Spain, and Portugal in the mid-1830s, and for Greece, Luxemburg, Netherlands, and some Italian states in the 1840s.

Charts and maps enrich the volume, while the obviously computer-generated index enriches nobody. It has too few keywords and the reader finds those which were chosen like Adel (gentry) or Öffentlichkeit (the public) on every other page anyway. An index of persons is badly missed. The selected bibliography is helpful but why do authors have a first name and editors not? Some authors tend to write too long sentences, putting every national exception of the general rule they are proposing into the same sentence.

Alongside with the book a CD-Rom is available. As with other collections (3) it contains the constitutions of the time, but beyond that plenty of relevant laws, decrees and memoranda, many of them hard to find, and selected reflections of contemporaries like Madame de Stael, Henry Hallam, Thomas B. Macaulay, Wilhelm von Humboldt, Alexis de Toqueville and many others, even some crucial parliamentary debates like Benjamin Disraeli's 1839 speech in the House of Commons on civil rights. The 965 texts are left in their original language, and some of them have been scanned and left in the Cyrillic or Arabic original. Important key sources are both in the original language and in German (Charte 1814). The organisational principal of the CD-ROM follows the book, country after country, but the sources within each country are segmented according to the 12 constitutional dimensions. The search tools are provided in German, English and French.

A parallel reading of the second volume of 2012 and of the contemporary historian Karl Heinrich Ludwig Pölitz on *Forms and Conditions of Constitutional Life* (*Das constitutionelle Leben, nach seinen Formen und Bedingungen*), published in 1831 and covering the previous 40 years, produces some surprises.(4) There has been much progress in the study of constitutions in the last 180 years. Archival sources uncover the interests of the politicians negotiating the constitutions, statistics about suffrage tell about the broken constitutional realities and the lack of participation in early 19th century. Social historical questions and cultural studies enrich the field. Nevertheless, some things haven't changed. Pölitz was already concerned with international comparisons. From the beginning until now constitutional history, especially comparative constitutional history, has been obsessed with building types. The once entered path is broader today, but it is still the same path. Pölitz distinguishes monarchies from republics, the modern typologies are slightly more subtle. Pölitz contrasts imposed (*oktroierte*) constitutions, constitutions negotiated with corporations, and those negotiated with representatives of the people. The threefold approach

in the latest handbook about the motives and origins of constitutions is quite similar (p. 93 f.). Pölitz was already concerned with the range of suffrage rights and with voting-mechanisms, while today we are more informed about social backgrounds. As early as 1831 Pölitz reflected on the American influence, and about transfers and comparisons.

All in all, the handbook, though not the first to compare constitutions in Europe (5), is able as a co-operative project to cover more than single scholars could usually achieve. A solid survey of tendencies all over Europe is a challenging task. The authors were disciplined in following using the 12 dimensions approach, which makes the book an indispensable source from which to learn about and to compare European constitutional history. The book includes the latest scholarly discussions, taking into consideration gender and cultural studies, endeavouring to consider transnational and transfer perspectives, which are hardly explored in constitutional historiography, and integrating even the latest trend of global history. Again and again the authors concede how much transnational and global research still needs to be done, but *The Handbuch der europäischen Verfassungsgeschichte im 19. Jahrhundert* lays a great foundation for this research, and has set the standard for modern constitutional historiography.

Notes

1. *Handbuch der europäischen Verfassungsgeschichte im 19. Jahrhundert. Institutionen und Rechtspraxis im gesellschaftlichen Wandel, vol. 1: Um 1800*, ed. Peter Brandt et. al., (Bonn 2006). Results, schedules and tables of content of the project can be seen at <http://www.fernuni-hagen.de/dtiev/handbuch_verfassungsgeschichte> [accessed 7 March 2013] .

2. Martin Kirsch, *Monarch und Parlament im 19. Jahrhundert. Der monarchische Konstitutionalismus als europäischer Verfassungstyp – Frankreich im Vergleich* (Göttingen 1999).

3. For example, *Constitutions of the World from the late 18th Century to the Middle of the 19th Century / Sources on the Rise of Modern Constitutionalism*, ed. Horst Dippel; *Rechtshistorische Texte: Europäische Verfassungsgeschichte*, ed. Dietmar Willoweit / Ulrike Seif (München, 2003).

4. Karl Heinrich Ludwig Pölitz, *Das Constitutionelle Leben, nach seinen Formen und Bedingungen* (Leipzig 1931).

5. Particularly Wolfgang Reinhard, *Geschichte der Staatsgewalt. Eine vergleichende Verfassungsgeschichte Europas von den Anfängen bis zur Gegenwart* (München 1999).