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THE GERMAN CENTRAL POWER IN THE REVOLUTION OF 1848: SOME LEGAL ASPECTS

The revolution of 1848 is one event with pan-European significance. France, Germany, the people of the Austrian Empire, Italy saw a peoples movement for participation in political decision-making, for national unity and social justice.

Treatment of these events has been quite different, however, depending upon national traditions and there have been very few approaches to look at the history of these years in a broader European Perspective.¹ While in Germany “1848” is considered one of the great events in 19th century history, warranting and resulting in extensive research and publications, other European nations have focused on other traditions. But despite many works on the revolution in German, most of them lack a decided international perspective.² Looking at the German revolution from an international point of view will allow different conclusions about the importance of the bodies created in the course of events and it will allow to evaluate the influence of the given legal framework of the settlement of 1814/15 on decision-making processes. There are certain aspects that will be looked at:

¹ Notable exceptions: J. Sperber: *The European Revolutions 1848–1851*, Cambridge 1995; most recently: M. Rapport: *1848. Revolution in Europa*, Darmstadt 2011; D. Dowe (ed.): *1848. Revolution und Reform*, Bonn 1998.

² Important works include: W. Siemann: *Die deutsche Revolution von 1848/49*, Frankfurt a. M. 1985; V. Valentin: *Geschichte der deutschen Revolution von 1848 bis 1849*, 2 vol., repr. Weinheim 1998; G. Wollstein: *Das „Großdeutschland“ der Paulskirche: Nationale Ziele in der bürgerlichen Revolution von 1848/49*, Düsseldorf 1977; M. Botzenhart: *1848/49. Europa im Umbruch*, Paderborn 1998.

1. The German Central Power

Before (and, in fact after) 1848 there was no German national state, instead there was the German Confederation, founded on the Congress of Vienna as a kind of successor to the old Holy Roman Empire. It consisted of the several smaller German states, while Austria and Prussia were members with only parts of their territories. Foreign princes who possessed land within in Germany, such as the King of Denmark (for Holstein) or the King of the Netherlands (for Luxemburg and Limburg) were also represented at the Diet, the highest governing body of the Confederation.³

In the events following the March uprising a new parliament for entire Germany was established and in the following weeks the old Diet stopped its work. The parliament, the National Assembly had been proposed by a so-called Pre-Parliament (*Vorparlament*), a non-elected assembly of well-known liberal politicians and it was elected according to a law passed by the Diet.⁴

The German National Assembly established a new Central Power as a kind of predecessor for the Government of the yet to be founded German national state. The Diet had ceased to exist.

Head of the Central Power was an Austrian Prince, Arch-Duke John, who appointed a ministry to act as executive body.

A question that remained unanswered was for the relationship between the new Central Power and the old Diet, between the old German Confederation and the new Institutions that tried to create a German nation state. This was important, because it touched the important point in how far the new body was bound by actions and obligations of the old one. Was the new Central Power a substitute for the old Diet or an entirely new authority? It was created by the National Assembly, but the parliament itself could trace its origin back both to a popular movement and to actions taken by the Diet.

Johann Gustav Heckscher explained in the debate about establishing the Central Power: "First: My point is peoples sovereignty; second: I don't follow the rule of law. I. e. I don't mind how much or little of the old institutions remain, I care whether they are good."⁵

³ On legal and constitutional matters: E. R. Huber: *Deutsche Verfassungsgeschichte seit 1789*, vol. 2, 3rd ed. 1988.

⁴ For a narrative of the events of 1848 cf. the works cited in footnote 2.

⁵ F. Wigard (ed.): *Stenographischer Bericht über die Verhandlungen der Deutschen Constituirenden Nationalversammlung zu Frankfurt am Main*, Frankfurt a. M. 1848–1849, vol. 1, p. 369.

Heckscher expressed the popular feeling very well, the revolutionaries thought they could create a state, that all the old reactionary laws of the Confederation had ceased to exist and that *tabula rasa* was given to build the new constitution upon. But what happened to the legal framework the old Confederation had been operating in? There were obligations under international law, the Confederation had been created as part of the settlement of 1814/15.

The question of legal continuity had some practical implications, too, e. g. could the Central Power claim the rights the Diet had in respect to the member states? Most states did indeed accept the Central power as successor of the Diet, the notable exceptions were Austria and Prussia that made some reservations.

A year later, when the revolutionary efforts had failed, this question of legal continuity was important again. The National Assembly had been dissolved, the revolution had been defeated militarily, but the Central Power was still existent. Both Austria and Prussia tried to reach an interim agreement respecting the German central government. Very much as Arch-Duke John was supposed to act as vicar for the state that was to be founded, now a vicar was needed as long as the question of the future design of German Confederation was needed. As long as John remained in place however, both Austria and Prussia were restricted in their freedom to follow their own policies. Thus August Jochmus, foreign minister of the Central Power, wrote to John and explained on 11th July 1849: “The policy of the Central power is neither Austrian nor Prussian, it is German. The Arch-Duke Imperial Vicar represents the principle of legal continuity, as well in the sense of the old school, being the champion of the former German Confederate power, as in the sense of the aspired form of government, the union of entire Germany.”⁶

This meant that a formal transfer of authority was needed and that it could not be achieved without consent of the Central Power. The legal band that united all German states still existed and it was represented by the Imperial Vicar. Both Prussia and Austria wanted to get rid of John in his position, but both also argued that this band still existed, because they needed this argument for their own policies with respect to Germany.⁷ This is why they did not simply ignore the Frankfurt authorities. The Central power was also actively engaged in the search for a new body to act as temporary central authority for Germany. Ludwig von Biegeleben, a Councillor in the German Foreign Ministry, was charged

⁶ A. Jochmus v. Cotignola: *Gesammelte Schriften*, Berlin 1884, vol. 3, p. 45.

⁷ Prussia was pursuing its project of a „closer union“ within the Confederation, while Austria tried to re-establish the old Diet, possibly including entire Austria.

with a mission to Berlin, Munich and Vienna to negotiate a possible solution that would allow John to step down.⁸ For the Central power a necessary condition for any such step was that a new body was to be recognized by all the member states of the German Confederation. It was in this point, where the Central Power showed strength, because the two powers would have preferred a solution without consulting the minor states. A solution was found finally, it was the so-called Interim, the Bundeszentalkommission, a body consisting of Austrian and Prussian envoys that met in Frankfurt and served as a central authority from December 1849 to February 1851. A formal transfer of power was arranged for and John handed his authority over to the new body.

2. Schleswig-Holstein

The fate of the two duchies of Holstein and Schleswig was permanently a matter of international politics in the 19th century. What was the background?

The two duchies had a shared history for a long time, but were never formally united. They shared certain institutions, but their legal connection was only through their ruler. Only Holstein became a member of the German confederation, while Schleswig remained a separate entity. For centuries the King of Denmark was the sovereign of the Duchies and had ruled them through the “German Chancellery” in Copenhagen. The advent of nationalism changed the situation: In Holstein, the inhabitants were German by language and popular culture, in Schleswig only a majority was German while there was a Danish minority. Leading politicians in Schleswig were predominantly German, and the concept of a united “German” Duchies gained ground in Schleswig and Holstein, but also in the rest of Germany. This idea considered the Duchies inseparable and of German character. Different laws of succession complicated the situation, and were seen as an opportunity to separate the Duchies from the Danish Crown and make them “real” German states. The popularity of the Schleswig-Holstein issue in the Duchies themselves, but also in Germany, cannot be underestimated.⁹

⁸ Cf. A. Jochmus v. Cotignola: op. cit., vol. 3, p. 147 seq.

⁹ On all aspects of the diplomacy of the Schleswig-Holstein question: H. Hjelholt: *British Mediation in the Danish-German Conflict 1848–1850*, 2 vol., Copenhagen 1965–1966; idem: *Great Britain, the Danish-German Conflict and the Danish Succession 1850–1852*, Copenhagen 1971.

In 1848 there were revolutionary effects being felt in Copenhagen, too.¹⁰ A new constitution was passed and one of its purposes was to create one uniform Danish state, including Schleswig. We will not follow the development in Denmark here any further, but against any attempt to separate the Duchies of Schleswig and Holstein constitutionally (and ultimate in succession) a popular movements in the Duchies started. Eventually a provisional government for the two countries was established and military actions had started. The Danish forces had to leave the countries.

This success was possible, because Prussia had joined the conflict on the side of the Schleswig-Holsteiners and it was authorized to do so by the German Diet that had declared this to be necessary action to protect the rights and privileges of the inhabitants of Holstein. These rights and privileges were said to be the right to be united with Schleswig.

When the Central Power came into existence, important decisions had already been made: (1) The joint provisional government of the Duchies had been recognized as the legitimate authority for Schleswig and Holstein. (2) On behalf of the German Confederation Prussia had started military actions against Denmark. The Central Power inherited the conflict.

When on 26th August 1848 Prussian and Danish commanders signed an armistice in Malmö, this only happened after certain diplomatic struggles. Firstly, there was immense pressure by the United Kingdom, Russia and Sweden to stop hostilities; secondly, the terms and conditions for this armistice were hard to agree on.

Prussia faced a peculiar problem: it did not fight as such, but rather as an agent of the German Confederation. This meant, the commanding general was subject to the instructions issued by the German Diet and he would need approval for any truce or peace agreement he might enter into. The Diet did not exist any more, when the Malmö Treaty was signed, but there was the Central Power. So, initially Prussian general Wrangel demanded from the Danish side that any armistice agreement would be subject to approval by the Frankfurt authorities. This was not accepted, and after negotiations between the Prussian government in Berlin, the Prussian general in Schleswig-Holstein and the Frankfurt Central Power it was agreed that Wrangel could conclude the armistice independently.

¹⁰ H. Vammen: *Die "Casino"-Revolution in Kopenhagen 1848*, "Zeitschrift der Gesellschaft für Schleswig-holsteinische Geschichte", 123, 1998, pp. 57–91.

This armistice provoked a serious political crisis in Frankfurt, the people stood up against the conditions of the agreement and martial law had to be imposed, but I will follow another aspect of the Schleswig-Holstein question here.

In the armistice it was agreed upon that peace negotiations should be held in London. The United Kingdom had acted as mediator during the negotiations for the armistice and should continue to do so. Foreign Secretary Lord Palmerston took interest in the case and wanted to contain the conflict as soon as possible so that no pan-European struggle would emerge. His aim was reconciliation of the people of the duchies with their ruler and a solution for the question of succession.

But who were the parties that were to negotiate in London? On the one side, the Danish Crown, but on the other side? Prussia that had carried the burden of the military action and had suffered from the resulting Danish blockade of the Baltic ports wanted to withdraw from the negotiations and argued that it had acted only on behalf of the German Confederation. The Government in Schleswig-Holstein could not engage into these talks, because it had no international standing, it had not been recognised as a legitimate body neither by the Frederick VII., the Danish King, nor by the United Kingdom. In fact, for the Danes and for most outside observers it appeared to be the case of rebellion of the Schleswig-Holsteiners against their legitimate ruler and the King-Duke therefore was entitled to enforce obedience.

The campaign that had been fought was a measure taken by the German Confederation and this meant that it was the German authorities that were the opponents of the Danish King in this military conflict. Consequently it was the Central Power (or rather its representative in London) as successor to the Diet that was charged with the negotiations. The talks in London were conducted between the Central Power and the Danish King. These talks were almost fruitless because both sides could hardly agree even on the basis for any discussion.

Neither the provisional government in Schleswig-Holstein nor the German Confederation or the Central Power had challenged the legality of the Frederick's reign over the duchies. The constitutional arrangements were the central question, and the medium-term prospect of different succession in the duchies, combined with the national character of the two countries further complicated the issue. The Central Power wanted to secure the union of the two duchies. It is quite important to understand that the German Government had its own role in these negotiations, but it also acted as an agent for the interest of the Schleswig-Holsteiners. Without

Frankfurt, the Provisional Government for the duchies could not have made their wishes heard in the international arena.

The Danish Government wanted Schleswig to be remain part of the Danish Crown (i. e. to share Danish succession), while it accepted the different status of Holstein as part of the German Confederation.

An initial proposal by Lord Palmerston to divide Schleswig and to incorporate its northern part into the Danish monarchy, and to unite the southern part with Holstein as a member of the German Confederation was rejected both by the German and Danish envoys. For both parties this conflict was a matter of national pride: German public saw the two duchies as German land that had be secured from foreign (Danish) rule and were to be made part of the new German national state. For Denmark an old part of the realm had to be secured for the future since Schleswig had been under the Danish Crown for centuries. Both could argue that there was German- or Danish speaking population, which served as the underlying argument for their positions.

Despite Palmerston's best efforts no agreement was reached and in spring 1849 the hostilities started again.

3. Upper Italy

The border of the German Confederation in the south corresponded to that of the Austrian county of Tyrol. Habsburg rule extended further south and included the north Italian Kingdom of Lombardo-Venetia. Just as in Germany, the Italian people desired a united nation-state and in 1848 the peninsula was one of the centres of action. In Lombardy and Venetia a people's uprising drove the Austrian forces out and the King of Sardinia rushed to help the Italians. As in the case of Schleswig-Holstein, the British government tried to negotiate for a peaceful solution of this conflict and urged the Austrians and Sardinians to solve the conflict peacefully.¹¹

The Central Power saw this as an opportunity to become a player on the international stage.¹² Prince Leiningen, the first Prime Minister of the Central Power, explained in a memorandum in August 1848 that Austria was fighting the

¹¹ On this aspect A. J. P. Taylor: *The Italian Problem in European Diplomacy 1847–1849*, Manchester 1934 is most authoritative.

¹² R. Heikau: *Die ersten Monate der provisorischen Zentralgewalt für Deutschland*, Frankfurt a. M. 1997, pp. 163–174.

war against Charles Albert of Sardinia-Piemont with German federal troops¹³. Therefore Germany was involved in the events in upper Italy even without consent and could claim legitimately to participate in any peace negotiations. Leiningen suggested that the Central Power could either send delegates themselves or could instruct Austria to represent German interests. He did not want to leave the negotiations to the Habsburg Monarchy alone, because he considered this to unacceptable to German prestige.¹⁴ This memorandum was an internal document only, but it outlines the policy pursued by the Central Power in the first weeks. In the National Assembly this approach was presented, but also in communications with Vienna it was tried to convince the Austrian government to invite the Central Power to such negotiations. Even a mission was sent to Vienna to get in direct contact with Habsburg authorities.¹⁵

Austria however refused to allow the Central Power to participate in the negotiations, it denounced the claim that German authorities had anything to say in this matter and delayed any formal communication in this question with Frankfurt. In the end no mediated peace talks took place, despite any effort by Palmerston, but it was the military power of the Austrians that decided the question. The question whether Germany should participate in negotiations did not exist any more.

One should understand that Leiningens thoughts were not motivated primarily by intense interest in the affairs in Italy. His intention was showing two things: (1) The Central Power was the legitimate body to represent Germany internationally. (2) The Central Power took precedence over the German states when it came to international affairs. Austria did not follow him in this respect, but also the United Kingdom would have objected to the participation of the Frankfurt government in these negotiations.¹⁶

4. Limburg

The case of Limburg was an odd one, not of great significance internationally, but very instructive when looking at questions of border disputes in the course

¹³ Under the laws of the German Confederation each member had supply certain troops as federal contingents.

¹⁴ The memorandum in Bundesarchiv Koblenz, DB 53/58; cf. R. Heikau: *op. cit.*, pp. 163–168.

¹⁵ R. Heikau: *op. cit.*, pp. 168–174.

¹⁶ *Ibid.*, p. 173 seq.

of the 1848 events.¹⁷ Historically, the duchy of Limburg was a part (a province) of the Netherlands, not of Germany. As such it did not join the German Confederation in 1815. When the Kingdom of the United Netherlands split up in 1830, seeing the creation of the new Belgian monarchy, the Dutch king remained Grand Duke of Luxemburg and in this capacity member of the Confederation. The new Belgian state, however, secured a substantial part of Luxemburg for the new kingdom and as a kind of compensation the Dutch king joined the Confederation with the remaining part of Limburg (the other became part of Belgium, too). When William – the King of Netherlands – took this step 1839, this happened through bilateral action by the king and the German Diet independent of the recognition of the Belgian state. In these proceedings William made a reservation that Limburg should remain integral part of the Netherlands and should enjoy the same constitution. This was accepted by the Diet with the qualification that any difficulties this should cause were to be dealt with by the King so that the execution of any German Federal legislation would not be affected.¹⁸

The situation in 1848 can be described like this: William II. was King of the Netherlands and Grand Duke of Luxemburg. In his latter capacity and as Duke of Limburg he was member of the German Confederation. While Luxemburg was a separate entity, for Limburg the constitution and all other legislation of the Dutch kingdom applied, making it an integral part of the monarchy. In Limburg the language spoken was Dutch and hardly anyone considered himself German in any way.

The events of 1848 brought changes: In Germany the Confederation was to be changed into a modern nation state. But also in the Netherlands new ideas gained ground: The people stood up, but a revolution was averted and a new constitution was adopted peacefully. The question therefore was: What should happen to Limburg?

For the Dutch and for the inhabitants themselves it was clear that Limburg was part of the Netherlands. The new constitution did not change the status of the province.¹⁹ The German side argued that with the reconstruction of Germany Limburg was part of the new state. It was the National Assembly that facilitated

¹⁷ H.-G. Kraume: *Außenpolitik 1848. Die holländische Provinz Limburg in der deutschen Revolution*, Düsseldorf 1979 gives the most comprehensive account of this case.

¹⁸ Text of these proceedings: *Protokolle der Deutschen Bundesversammlung vom Jahre 1839. Loco dictaturae. Sitzung 1 bis 23*, Frankfurt a. M., pp. 251–265, 279–580.

¹⁹ H.-G. Kraume: op. cit., pp. 187, 191 seq.

the treatment of this issue. On the 19th July 1848 a debate on the affairs of Limburg was held and a report on this question – prepared by the committee on international affairs – was presented.²⁰

Professor of Law Heinrich Albert Zachariä presented the findings of the committee and argued that the Grand Duke of Luxemburg had ceded part of his territory in 1839 and had received the Duchy of Limburg as compensation. So he had joined the German Confederation with Limburg as such, making it part of the Confederation's jurisdiction, without any relation to the Netherlands. For Zachariä it was most important that his interpretation of the 1839 events allowed him to argue that the question of the accession of Limburg was an internal affair of the Confederation. This meant (a) Limburg was indeed part of Germany and (b) no agreement with the Netherlands was necessary.²¹ The debate in the National Assembly showed widespread support for Zachariä's presentation and ultimately the Assembly agreed to the committee report.

This resolution put some pressure on the Central Power, because it provided the guideline for further actions. In practice, however, the German government did not follow the parliament, but pursued an approach that transmitted a different picture to the Dutch authorities. A strict interpretation of the resolution would have obliged the Central Power to take all the necessary actions to maintain Limburg's position as member of the Confederation, e. g. to stop the application of Dutch law, in particular the new constitution. But in all the communications with the Netherlands authorities no definite statement as to the status of Limburg was contained and the impression was made that the German side intended to solve the question amicably with the Dutch.²² Such a bilateral approach was in fact just the opposite approach, Zachariä had claimed that this question was an domestic issue of Germany, not an international affair that required negotiations with a foreign power. Publicly, in particular in the National Assembly, the Central Power upheld the position that Limburg was an internal affair of Germany, but claimed that certain aspects required an understanding with the Netherlands. No measures were taken to reach such an understanding in the following months so that the question was delayed until the German Confederation was reconstructed in 1851 and the status quo ante was reinstated.

²⁰ The debate: E. Wigard (ed.): *op. cit.*, vol. 2, pp. 1020–1032.

²¹ Cf. H.-G. Kraume: *op. cit.*, p. 78.

²² *Ibid.*, pp. 126–132.

For the Netherlands themselves the question of Limburg was a difficult one, too: Given the developments in Schleswig-Holstein the Government feared possible military action and no measures were taken, even after the resolution by the Frankfurt assembly. In The Hague the question of Limburg was considered an international one, not simply a domestic issue of either the Netherlands or Germany and negotiations of some kind were expected, but not actively asked for.²³

In short: Putting the question into the sphere of international law allowed both parties (German and Dutch) not to take any action and maintain their position verbally. Both argued along opposite lines but no resort to violent measures was necessary.

5. Closing remarks

The Central Power played an important role when it comes to the international aspects of the German revolution of 1848. The given legal framework shaped the actions and set the limits of possible measures. The Central Power presented itself and was seen as a successor of the old Diet and insofar the old obligations remained. It was only in this capacity that it became part of the negotiations about Schleswig-Holstein and tried to do so in the case of upper Italy. The basic settlement of the Congress of Vienna still remained (with modifications, e. g. Belgium) the legal framework of all international actions. While in the case of Schleswig-Holstein national ideology provided the basis for a military conflict, the use of certain forms of law prevented a similar effect in the case of Limburg. But also in the more domestic sphere of Germany the question of legal continuity was important. The existence of the Central Power beyond the end of the revolution guaranteed the existence of the bands created by German Confederation, even when the Diet and any other body had ceased to exist.

²³ *Ibid.*, p. 201.

NIEMIECKA WŁADZA CENTRALNA PODCZAS REWOLUCJI 1848 ROKU. WYBRANE ASPEKTY PRAWNE

Streszczenie

Władza Centralna miała duże znaczenie w międzynarodowym aspekcie niemieckiej rewolucji 1848 roku. Stworzone ramy prawne warunkowały działania i określały kroki możliwe do podjęcia. Władza Centralna przedstawiała siebie (i tak też była postrzegana) jako spadkobierczynię dawnego parlamentu, tak więc wcześniejsze zobowiązania pozostawały w mocy. W ramach tych uprawnień była stroną w negocjacjach dotyczących Szlezwika-Holsztynu, próbowała także negocjować w sprawie północnych Włoch. Podstawowe ustalenia kongresu wiedeńskiego (z wyjątkiem modyfikacji np. Belgii) nadal stanowiły ramy prawne dla wszelkich międzynarodowych działań. Podczas gdy ideologia nacjonalistyczna dała początek konfliktowi zbrojnemu w wypadku Szlezwika-Holsztynu, zastosowanie pewnych rozwiązań prawnych zapobiegło podobnej sytuacji w Limburgu. Ciągłość prawna miała znaczenie również w wewnętrznych sprawach Niemiec. Fakt istnienia Władzy Centralnej po zakończeniu rewolucji gwarantował istnienie grup stworzonych przez Związek Niemiecki nawet po rozwiązaniu parlamentu oraz innych ciał państwowych.