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WHAT REMAINED OF 1848? TRENDSETTING CONSEQUENCES OF THE REVOLUTION IN AUSTRIA

Abstract

From the point of view of an Austrian Legal Historian as (ever) lasting impacts of the 1848/49 revolution in Austria we can keyword-like count[2]:

(1.) Constitutions firstly promised the equality of citizens before the law and guaranteed equal rights also to churches and religious communities.[3]

(2.) The progress of political development led to the extinction of the traditional estate system[4] and

(3.) to the abolition of subservience of peasants – with far-reaching social and economic importance.[5]

(4.) State district courts took the place of the manorial patrimonial courts through uniformly organized local districts with authorities serving for sovereign administration, and on the field of autonomous tasks with communal authorities (*Gemeinden*) following the construction for self-organization.[6]

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2 Cf. Brauneder 2009, p. 112.
3 Apart from that, equal rights for Protestants and Jews with Catholics had not (yet) been achieved in 1848/49, but a major step in this direction had been taken.
4 Nevertheless, privileges of the nobility formally existed until 1919.
5 In exchange for compensation, they became free owners of their land.
6 Most of these reforms are still in effect today.

(6.) While the security police continued to exist in the cities, in the countryside the gendarmerie served as a separate armed security body.[7]

(7.) The decentralization of state power initiated the federalization of the state too.

(8.) Self-government served as an organization-model for single professions in chambers, first for trade and commerce.[8]

(9.) Instead of collegial organised central state authorities of the Ancien Regime modern monocratic ministries came into being – this was a prerequisite for the political responsibility of the state administration to the parliament.

(10.) For the first in the territory of today's Austria elections led to the formation of modern parliaments, the German National Assembly (*Deutsche Nationalversammlung*) and the Austrian Imperial Diet (*Österreichischer Reichstag*).

At least: What began in 1848 as a "springtime of the people" awakened nationalistic tendencies among Czechs, Poles and South Slavs and led to a far-reaching reorganization of the political map of the entire East-Central European area – not already in 1848, but in 1918 – following the dissolution of the Habsburg monarchy.

Keywords: constitutionalism, equality before the law, extinguishing of estate system, federalization, fundamental rights, nationalism, parliamentarism, self-government

1. Initial Positions before 1848 – Overview

In the Pre-March period[9], liberal and national streams shaped the development of political systems in Europe and influenced changes in the respective constitutional situation of the states concerned increasingly.

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7 Since 2005 the Gendarmerie-organization builds an integrated body of the security police.

8 From 1861 on they had an immediate share in the formation of political will in the state parliament ("*Reichsrat*") until 1907 and in the provincial diets ("*Landtage*") until 1918.

9 Boesch, 1995, pp. 114–119 (political reorganization by the Congress of Vienna in 1815), pp. 119–121 (reorganization of the political map of Europe after 1815), pp. 130–133 (Revolution of 1830); Brauneder, 2000b, 81–82; Langewiesche, 2007; Brauneder 2007; Ziegerhofer-Prettenthaler 2013, pp. 24–64.

1.1. Liberalism

Liberalism led to the installation of an early-constitutional charter (*charte constitutionelle* 1814) in France, which served as a model for other states. After 1815 the king's restorative ambitions made themselves felt, against which a broad and complex opposition of different social classes arose. They aimed at more far-reaching changes in the constitutional situation and in July 1830 provoked the outbreak of a revolution, which led to an increased importance of parliament as a representative body in the constitutional structure, and vice versa to a corresponding devaluation of the importance of the monarch, now elected by a Parliament.

The French revolution of July 1830 provoked similar developments in lot of other European states. In Switzerland, most cantons enacted liberal-democratic constitutions. In reaction to this, the conservatively governed cantons organized a special Confederation (*Sonderbund*) in 1845 and sought to secede from the Suisse Confederation, whereupon the majority of the – liberal-dominated – cantons reacted militarily and was able to assert itself until 1847.

1.2. Nationalism

Nationalism led to the emergence of new states such as Greece in 1829 and Belgium 1830, and to failed attempts at national unification as in Poland in 1830 and in Italy 1831. In the German Confederation, such efforts found a containment soon following the founding of the Viennese Act about the German Confederation (*Deutsche Bundesakte*) through the promulgation of restrictive measures, beginning with the Karlsbad Resolutions of 1819. Further measures against liberal and democratic tendencies followed after 1832 as a consequence of the National Festival in Hambach. The Act about the German Confederation (combined with a supplementary Act found in Vienna 1820) obligated all individual German states to establish constitutions that upheld the principle of monarchical legitimacy. Nevertheless, this had no effectiveness in the states of southern Germany (especially in Bavaria). Here, soon after 1815 it come to the introduction of the first constitutional charters (modelled on the French *charte constitutionelle*). Other states gradually followed. After 1830, the enactment of new constitutions with increased sovereignty of the people followed in all German territories, except for Austria and Prussia.

1.3. Democratic Streams

Democratic streams, following liberal ones, were suppressed, especially regarding the right to vote in parliaments, which mostly followed a two-chamber system, with the first chamber being set up as a chamber of estates under monarchical influence, and only the second chamber due to a limited right to vote in its composition was determined by the people.

The constitutions of individual German states provided for comprehensive catalogues of fundamental rights, but only conceived as state objectives (constructed as guidelines for handling state power). Therefore they did not bring any subjective rights for the individual citizens (constructed as claims, enforceable against the state authorities). However, the monarch had no rights to far-reaching influence on the composition of the parliaments, but also veto rights against their legislative decisions; in addition, the entire administration came to the monarch as a prerogative, therefore the judicative branch came to independent courts.

The constitutions[10] were mostly unilaterally enacted (Octroy) by the monarchs, hence without the participation of the people's representatives, although there were increasing exceptions to this after 1830. Only a small part of the German states remained the old estate system, the great powers Austria and Prussia created estate parliaments in the countries or provinces of their states, which had no political participation in Austria in the Pre-March period, but there was no state representation in either of the large states. Until 1848, however, the Federal Assembly took a restrictive distance towards the increasing liberal tendencies in the German states concerned.

1.4. Economic Unification

Close to the political and legal connection of Germany in the Confederation of 1815[11], tendencies towards an economic unification of the German states increasingly occurred in customs unions. Through these ambitions for an expansion to a political and a state level aroused step by step up to 1834, then

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10 Brauneder, 2000b, pp. 81–82; Brauneder, 2009, pp. 88–91; Brauneder, 2013; Willoweit and Schlinker, 2019, pp. 236–238.

11 Kotulla, 2008, pp. 315–326 (establishment of German Confederation), pp. 403–417 (Constitutional Status); Willoweit and Schlinker, 2019, pp. 231–232, 248.

under Prussian leadership an almost closed economic area it came to the foundation of the German Customs Union (*Deutscher Zollverein*), only Hannover and Braunschweig, Mecklenburg, and Baden and above all Austria stood abroad.

1.5. Economic and Agrarian Crisis

At the beginning of the 1840s, economic and agrarian crises caused a mass-impoverishment among the lower urban and rural classes, and this resulted an increasing number of politically dissatisfied people. From the point of view of foreign countries (an observer from Switzerland), the atmosphere in Germany seemed already unstable, so "that even the dumbest eye begins to see how the same (namely Germany) is approaching a major and momentous crisis on this path (namely through the reactions of the Federal Assembly). There is no mistaking it: Germany is on the eve of a revolution."[12]

This impression was not only symptomatic of the situation in the German Confederation, but for the entire European area; when the revolution finally broke through in 1848, its impact was also Europe-wide.

2. Development of the 1848-Revolution

2.1. Causes

The causes of the revolution of 1848[13] partly passed back to the French Revolution of 1789, because only few demands articulated at that time found a realization, even after the waves of revolution in 1830/31 had brought only few solutions, which satisfied the people. Another cause was the system of states created for Europe by the Congress of Vienna in 1815, because it disappointed political expectations, especially in Italy and Germany. In addition to this, the so-called "social question" became urgent because of the industrial

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12 „*Der Beobachter aus der östlichen Schweiz*" ["Observer from eastern Suisse"] wrote as follows: "*Die innere Entwicklung Deutschlands nimmt allmählich einen solchen Gang, daß auch das blödeste Auge einzusehen beginnt, wie dasselbe auf diesem Wege einer großen und folgenreichen Krise entgegengeht. Es läßt sich unmöglich verkennen: Deutschland ist am Vorabend einer Revolution.*": Cited in Brauneder, 1992b, p. 48.

13 Boesch, 1995, pp. 145–157; Ziegerhofer-Prettenthaler, 2013, pp. 65–80.

revolution immediately before 1848. Furthermore, this raised new social problems, which contemporary politics could not solve (bulks of unemployed people living in misery). This created a new social class, the fourth estate, the workers, initially made up of a small proportion of factory workers. Within the German Confederation, this also included small-scale unskilled laborers and journeymen as well as farm workers, especially in areas with manorial system. At that time, when within the German Confederation the third estate, the urban bourgeoisie, was not until on the way to emancipation as a political factor: In most German states – except of Prussia and Austria – after 1830 people were involved in state decision-making through elected representatives and fundamental rights guaranteed by the state. The economic importance of the bourgeoisie and of the peasantry for the state due to their tax payments was obvious; the desire for political rights had become a matter of course in large circles of society. For the lower classes of society, the agricultural crises in the 1840s had an aggravating effect because they led to the impoverishment of broad sections of the population (pauperism). In France or in parts of the German Confederation, famines heated up the political mood. Finally, political concerns and social problems – above all in Italy and Germany –joined by objectives, which aimed at national unity in a common nation state.

Revolutionary moods were emerging in all European countries in varying degrees. Opposition circles were highly differentiated, existing in all social classes, sometimes they were also found in aristocratic circles, even at the monarchical courts (e.g., at the Vienna court, individual members of the imperial family[14]) were open to liberal reforms. This also explains the widespread effect of the revolution of 1848, which – apart from England and Russia[15] – covered all major European states. There was broad agreement on how to concretize the political demands associated with it through a constitutional model that liberalism only could offer with the constitutional monarchy. The concepts of conservatism, aiming at expanding the estate systems of the Ançien Régime, had no prospects to be realized. The demands of the

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14 Brauneder, 2000a, p. 81: For example, in 1808 Archduke Rainer proposed a project for the organization of a "State Council", in the next year followed "ideas about reforms and improvements to be introduced in the Austrian monarchy".

15 In the Swiss Confederation, the "*Sonderbund*"-conflict of 1845 anticipated the revolution and the subsequent enactment of the federal constitution of 1848: Cf. Kölz, 1992, pp. 543etc.

democrats for the creation of republics were at the other end of the political spectrum – they had no prospect or realization because of the memory of the excesses of the first French republic (of 1792) as a terrifying example.

2.2. Progress of the 1848-Revolution – Consequences for Austria and the Habsburg Dynasty

2.2.1. Initial Situation

After 1789 and 1830, the revolution once again began in Paris. In February 1848, this forced the monarch to abdicate, the proclamation of the second followed. The definitive constitution enacted in November 1848 provided for the parliament for the first time purely representative of the people (in one chamber) with a (state) president elected by the people who had large powers (following the North American model).[16]

2.2.2. Immediate Consequences

2.2.2.1. Italy and the Habsburg-Dominions in Italy

The progress of the 1848-revolution in Italy[17] was of immense importance for the Habsburg dynasty. Unlike in France, the aim of the revolutionary forces was not only to help democratic principles to achieve a breakthrough, but also to achieve national unity. The revolution in Italy was also against the regents existing in the individual states, which belonged to foreign dynasties. The peoples perceived as an occupying power. Therefore, the Habsburgs in northern and central Italy were considered as foreigners. From the middle of the 18th century, they ruled not only in Lombardy-Venetia, which had belonged to the Austrian Empire since 1815, but, also in Tuscany, Parma,

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16 The aims of the revolutionaries – abolition of the monarchy and realization of the democratic principle – had achieved a complete breakthrough. The new constitution provided for a republic with strong presidential powers, after the election there was a clear anti-republican majority in the National Assembly; in the subsequent presidential election, Louis Napoleon, a nephew of Emperor Napoleon, was elected with an overwhelming majority, so that the (second) republic was soon called into question: Hartmann, 2003, pp. 101–114.

17 Daum, 2014.

and Modena through secondary lines of the Habsburg dynasty. The dynasty of Bourbon, who had ruled the Kingdom of the Two Sicily's in southern Italy since the first half of the 18th century, the people considered them as foreigners. In contrary to that, the Kingdom of Sardinia-Piedmont was perceived the only "national Italian" state, although it was also ruled by a foreign dynasty, by the French House of Savoy. The "national" revolution in Italy failed because Austria intervened in northern Italy and France in the Papal States; with the suppression of the uprising in the Kingdom of the Two Sicily's in southern Italy, the uprisings had collapsed in 1849: the realization of the national unification of Italy had failed.

2.2.2.2. German Confederation and Austria as Federal Powers in Germany

For the German Confederation[18], too, it was not only about helping the democratic system to break through, but also about achieving national unity. Unlike in Italy, however, the individual German states were not ruled by foreign dynasties – except of Holstein, which – in dynastic connection with Schleswig, which belonged to the Danish crown. A removal of the regents in the individual states was therefore unthinkable in Germany. Here too, however, the question was how to integrate these individual states into one overall state in the future. With the German Confederation, an institution was already available for the organizational preparation of German unity. The aim was to convert the confederation of sovereign states into a federal state. The revolution in Germany therefore took place on two levels: on the one hand on the level of the individual states, where it was about the participation of the people in state authority, and on the other hand on the level of the German Confederation, which was transformed into a state supported by the people, "nation state" should be converted.

The events at the level of the German Confederation also affected the development of the constitution in Austria because the emperor joined the German Confederation in 1815 with the former German hereditary states, which had belonged to the Holy Roman Empire until its dissolution. Efforts to reform the German Confederation took place within the

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18 Cf. Kühne, 1995 and 1998; Brauneder, 2000b, pp. 102–103, 116–117; Fiedler, 2002; Brauneder, 2007, pp. 36–38; Kotulla, 2008, pp. 419–438; Brauneder, 2009, pp. 109–111 (Pre-March), 131–133 (German National Assembly); Willoweit and Schlinker, 2019, pp. 248–258.

framework of a national assembly, elected in the areas belonging to the Confederation, which met first on 18th May 1848 in Frankfurt am Main, the seat of the German Confederation, in the building of the secularized St. Paul's Church (*Paulskirche*).[19] Their efforts culminated in March 1849 in the creation of a "Constitution for the future German Reich", with which the German Confederation (of individual states) was to be converted into a federal state.

In Austria, these elections were the first parliamentary elections. About a fifth of the 585 deputies were elected by voters in the federal areas of Austria. The German National Assembly saw itself as the bearer of the sovereignty of the future German Reich and claimed the "Provisional Central Authority for Germany". This consisted of a regent elected by her (the Austrian archduke Johann, a brother of the Austrian emperor) and of a government appointed by him, which was politically responsible to the national assembly. The Federal Assembly of the German Confederation recognized this procedure by transferring its powers to the Reich Administrator on behalf of the governments of the member states. As a result, the German Confederation – with consent of the governments of the member states – had given itself a new provisional "constitution" in an evolutionary way– with new institutions, the National Assembly as a parliament, which appointed a central government (*Reichszentralgewalt*) and a regent (*Reichsverweser*) serving as provisional head of state. This all together formed a political system based on the constitutional model.

In its primary task of drafting a "definitive" constitution, the cardinal problem for the National Assembly was how to proceed with the incorporation of all single German States into the future federal German *Reich*. This was primarily a problem for Austria, but also affected Prussia, because both monarchies included areas that did not belong to the German Confederation. The possibility that the German Confederation should continue to exist as a federal state in the previous area – including the federal areas of Austria – initially was assumed to be the "normal case". However, this so-called "larger German" solution soon turned out to be problematic in the implementation, so that during the constitutional deliberations in the National Assembly an alternative solution for

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19 Cf. Kühne 1995, 1998.

the conversion of the German Confederation into a federal state without Austria crystallized – in the sense of a "smaller German" solution. With it, another problem that would have arisen when Austria was included in the federal German State (*Reich*) could be eliminated: Namely, the question, who should serve as the head of the future German State as Emperor (*Kaiser*), a position, which would naturally have offered the most politically important German regent: either the King of Prussia or the Austrian Emperor. With the withdrawal of Austria from the German Reich, this problem would have been superfluous. And with the disappearance of the Czech-populated Austrian provinces of Bohemia and Moravia the treatment of non-German minorities within the federal German State would have defused too. The "Constitution of the German Reich" that was finally created was based on the "greater German" solution. An adequate number of seats (corresponding with the number of inhabitants) was reserved for Austrian deputies in the representation of the member states (*Bundestag*). However, the Constitution of the German *Reich* stipulated that every member state that possessed territories belonging to the future German *Reich* as well as others had the obligation split its territory into separated parts with separate constitutions, so that these parts could only be connected in personal unions (para. 2).

For Austria, this would have meant that it was impossible to enact a single constitution for its federal territories (the former German hereditary territories) belonging to the German *Reich* and its other provinces, namely Lombardo-Venetia, Hungary, Galicia, and Bukovina. As a result of the enactment of the Constitution of Hungary in April 1848, Austria seemed separated in certain complexes of provinces connected in a personal union. Of course, the Austrian government had always taken the view that it fundamentally rejected the project of the transformation of the German Confederation from a confederation of states into a federal state. At the end of 1848, following the change of throne from Emperor Ferdinand to Franz Josef, Prime Minister Schwarzenberg explicitly declared that Austria would not agree to a "small German" solution. He raised the argument that Austria was still a power of the German Confederation and could not be unilaterally pushed out of it, proclaiming bluntly: "We

will not allow ourselves to be thrown out of Germany!"[20] A clarification of the Austrian point of view brought – already before the decision of the Frankfurt National Assembly about the Constitution of the German *Reich* (at the end of March 1849) – the octroy of a new Imperial Constitution (*Reichsverfassung*) on 7 March 1849, which included all territories of the Austrian Empire (as a unified state). The National Assembly interpreted this statement as Austria's rejection of its participation in the coming German *Reich*.

The Prussian deputies in the National Assembly therefore immediately began to work on the realization of the "small German" solution. Following the decision about the Constitution for the German *Reich* – including the offer to Austria according to para. 2 – the Prussian king Friedrich Wilhelm IV was already offered the office of "Emperor of the Germans". However, he rejected the appointment to this monarchic office based on a decision by the National Assembly because this process was not compatible with monarchical legitimacy (as in 1830/31 on the election of "citizen kings" in France or Belgium). The constitutional project of the Frankfurt National Assembly had thus failed. The development that had taken place on an evolutionary path – politically and legally – had not led to the end of the German Confederation either; during the revolution, it had not been lost, extinguished, or dissolved as a subject of international law. It was not replaced by a German *Reich* as a revolutionary entity, which now – when the National Assembly had failed – had in turn been replaced by a new German Confederation. In March 1848, the German Confederation had ordered the drafting of a new constitution on its own initiative. The coming federal constitution should come into being in form of a constitutional treaty between the National Assembly and the governments of the individual German states. Finally, due to an agreement reached between Prussia and Austria in Olmütz, the German Confederation returned to the organization, which he had before 1848: In the autumn of 1851, the Assembly of the German Confederation met again (in Frankfurt) for the first time since March 1848.[21]

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20 Cf. Koch, 2010.

21 The construction of the German Confederation remained in need of reform: In 1863 Austria tried to initiate a reform of the confederation at the Meeting of German Princes at Frankfurt ["*Frankfurter Fürstentag*"], at least this was doomed to fail, because the King of Prussia stayed absent: Brauneder, 2009, p. 153.

2.2.2.3. In Austria Itself[22]

The revolution broke out in Vienna on March 13, 1848, triggered by the public reading of a speech by Lajos Kossuth to the revolutionary Assembly of the Hungarian estates in Preßburg in the courtyard of House of the estates of Lower Austria. A crowd of workers and students flowed in the city and threatened with violence, the order to shoot was given against the gathering first victims (some of them killed) were to be mourned. As a direct consequence of the unrest that broke out in the city and in the suburbs, a liberal ministry was set up as an immediate measure and the enactment of a constitution promised. The emperor invited delegates from the estates of all Austrian hereditary provinces to cooperate with the ministry under the leadership of the Minister of Interior Franz Pillersdorf, who worked out the draft of the constitution in cooperation with a committee of the provincial diets (Central Committee of the Estates – *Ständischer Zentralausschuss*). Not more than two weeks later the Emperor issued the constitution promised on April 25. That arrangement provided the provisionally constitutional system of March 1848. In May, a new wave of revolution in Vienna forced the government to change the constitution, worked out by the intended *Reichstag* (serving as a people's representative body). The future constitution should be enforced in cooperation between the *Reichstag* (serving as the constituent assembly of the Austrian Empire) and the monarch – in form of a constitutional treaty (by agreement between monarch and parliament), and not by way of monarchical octroy. The election of the *Reichstag*[23] was to follow principles that corresponded only partially to universal suffrage. After a change in the electoral regulations, which removed the restrictions on voting rights imposed by a tax census, the *Reichstag* first met in Vienna in July 1848. From there the *Reichstag* was evacuated to the provincial town of Kremsier, because the revolution flared up again in the October Uprising. In Vienna, the course was set for the organization of constitutional work in two committees just in summer 1848, one of which only had the task of drafting fundamental rights.

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22 Brauneder, 1992a, pp. 159–194 (development in 1848/49); Brauneder, 1993, pp. 45–49 (development until 1848- Constitution), 52–55 (development until the Kremsier-Draft); Brauneder, 2000b, pp. 84–94 (development until 1848), 106–110 (development until 1849), 120–125 (development until 1851); Brauneder, 2002, pp. 107–108, 112–113, 120–121 (development in 1848/49); Brauneder, 2009, pp. 112–123 (development in 1848/49).

23 Adlgasser, 2014, pp. IX–XXIV.

Concrete deliberations in the committees and in the plenum only took place in Kremsier. Here, the *Reichstag* created the draft of a constitution based on sovereignty of the people, regarding the role of parliament as a representation of the people and considering about the effect of fundamental rights as subjective claims of the individual. The draft could not go into force, because the emperor dissolved the *Reichstag* at the beginning of March 1849 – before the *Reichstag* could put the overall draft on the agenda in the plenary session. At the same time, he imposed a new constitution. As a result, this constitution remained unimplemented, especially in regard of the intended parliaments: Neither to the *Reichstag* nor to the provincial diets (*Landtage*) elections were prepared; the Supreme Imperial Court *Reichsgericht,* which with served as a constitutional court remained on paper, the same happened to most grants of fundamental rights. In the end, the emperor already repealed the constitution at the end of 1851 (on New Year's Eve, therefore referred to as *Silvesterpatente*).

The development of the constitution in Austria during the revolutionary years of 1848/49[24] is primarily to characterize by the fact that the Austrian Empire was extremely heterogeneous. It was not only composed of different complexes of provinces, but also characterized by the fact that most provinces also consisted of settlement areas of different nationalities: Hungary was mostly populated by Magyars, Lombardy-Venetia exclusively by Italians, in Galicia the Poles, in Bukovina the Ruthenia's ("Little Russians"), in Bohemia and Moravia the Czechs, and in the other Austrian provinces the Germans. During the constitutional debates in the *Reichstag*, the liberal-national Germans showed understanding that Galicia, Lombardy Venetia, and Hungary should have their own constitutions. Of course, the Czechs demanded the same for Bohemia and Moravia-Silesia. The constitution of 1848, however, went in principle from a constitutionally homogeneous unitary state. It also included Galicia as well as Bohemia and Moravia-Silesia in its scope of application, but initially Lombardo-Venetia (due to war against Sardinia-Piedmont); and Hungary was excluded (because it had been granted its own constitution by the monarch – made up of 31 articles of law) before the Pillersdorf Constitution was enacted. The imperial Constitution of 1849

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24 Brauneder, 2000b, pp. 94–102 (the problem of relationships between state and provinces ["*Länder*"] 1848), 110–116 (draft of the Imperial Diet of Kremsier), 125, 127–128, 129–130 (1849); Brauneder, 2009, pp. 121–122 (about representation, nationalities, federalism).

then included all areas of the Habsburg monarchies in its area of application. The government quickly put down uprisings that broke out in the Austrian Empire in 1848. However, Constitutionalism initially was pushed back but remained the orientation goal of the liberals for the future constitutional structure of the monarchy. A restorative period followed the failure of the revolution, led by efforts to restore the pre-revolutionary constitutional status. Like in 1815, a restoration of political system led to the return of the former monarchs: In northern Italy Austria was initially able to maintain its position in Lombardo Venetia and to prevent the impending loss. Hungary, due to the Constitution granted in 1848, considered itself an independent state and declared the ruling Habsburg dynasty deposed. With the help of Russian troops, the Austrian government pacified Hungary until summer of 1849. The separation of Hungary from its neighbouring territories (Transylvania, Timisoara Banat, Serbian Voivodeship, Croatia-Slavonia) followed. A new Imperial Constitution enacted in March 1849 included all parts of the Hungarian Crown in the Austrian Empire. Although Austria had received an early constitutional political system in 1849 after the failure of the Kremsier *Reichstag*'s constitutional project, this remained unrealized in its essential content: In particular, neither the Reichstag nor the provincial diets (*Landtage*) convened, and the Supreme Imperial Court (*Oberstes Reichsgericht*) never was organised.

1851 and the subsequent interlude of neo-absolutism up to 1860, there was continuous recourse to the two constitutions imposed and the draft constitution of the Reichstag of the revolutionary period of 1848/1849. In 1861/62, the constitutional restauration of the status of the provinces (*Länder*) and local communities (*Gemeinden*) followed the respective laws of 1849/50, and in 1867, the cisleithanian provinces of the Habsburg Empire state were based on a new constitution[25], which followed the 1849-Constitution as the model.[26]

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25 Stourzh, 1989, p. 252; Brauneder, 1993, pp. 55, 60; Neschwara, 2017, pp. 24–25, 26–26, 34.

26 In 1867, both Hungary and Austria then returned to the constitutionalism of 1848/49. After the Compromise, which led to the restoration of the 31 articles of law from 1848 were restored for Hungary at the beginning of 1867 and to the announcement of six constitutional laws ("Basic State Laws" ["Staatsgrundgesetze"]) for the remaining territories ("*Länder*") of now so-called "Cisleithania", on the initiative of the House of Representatives, which followed the constitution of 1849 – except of the establishment of a parliament following the model of the "*Reichstag*".

3.3. Trendsetting Consequences of 1848 in Austria

3.3.1. In General

3.3.1.1. Until 1918

From the point of view of constitutional history, left of 1848 is – apart from the realization of civil equality and other political grants of fundamental rights – above all the creation of modern organizational fundaments for the institutions for handling state power in legislative, administrative, and judicative branch. The creation of district courts and district authorities at that time was a direct consequence of the abolition of manorial rule and the transfer of their functions in self-government to local communities (*Gemeinden*), which were conceived as local authorities serving for administration.[27] They still exist today in the forms it developed in 1848/49, with brief interruptions (1852/62 and 1938/45) and with modifications.[28]

The concept of local government based on the principle of the self-organization of society served also as model for self-government of certain professions immediately after 1848. Initially with the creation of chambers of commerce and trade, which from 1861 until the end of the monarchy were involved in the formation of state decisions within the framework of the right to vote for the Imperial Council (*Reichsrat*)[29] and the provincial parliaments (*Landtage*)[30] – to the *Reichstag* until the introduction of universal suffrage in 1907 and to the provincial diets even until the end of the monarchy in 1918.[31] The aristocratic property owners, who were deprived of their

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27 Brauneder 1992a, pp. 42–52, 66.

28 After 1849, other functions of the manorial estates within the framework of state contract management were transferred to state district tax offices or to the „Gendarmerie" (created in 1850). These institutions do not exist in today's Austria.

29 Brauneder, 1896a, pp. 87–89, 91–97, 113–116, 116–118; Brauneder, 1896b, pp. 127–129, 133–134; Adlgasser, 2014, pp. XXV–LXVII.

30 Brauneder, 1896a, p. 89–90; Brauneder, 1986b, 125–127.

31 Brauneder, 2000b, pp. 192–203 (reforms of the Parliament, especially the Law of Election); Brauneder, 2009, pp. 158–160 (realization of sovereignty of the people) – The concept of professional self-government organized in „chambers" was then extended to the economically independently acting judicial professions of lawyers and notaries (1849 and 1850 respectively): Brauneder, 2009, pp. 94, 127, 146, 174, as well as pp. 201 and 242 (concerning the Constitution of 1934); Brauneder, 2000b, pp. 229–130. – Further applications did occur until 1918 (doctors, engineers) respectively after 1945 (pharmacists, civil engineers).

sovereign rights in 1848, had mutated into large landowners (*Großgrundbesitzer*). They were initially to have the privilege of an own chamber in parliament, the Senate of the *Reichstag*, but this was amended in May 1848 with a new Election Law because of the radicalization of the revolutionary events. Since 1861, the large landowners – as well as the chambers of commerce and trade – formed their own class of voters in the provincial diets and in the House of Representatives of the *Reichsrat*. Both remained determining political factors in the constitutional system of the monarchy until the end of the 19th century.[32]

The historically traditional estate system was formally abolished in 1849, but the aristocratic class had other privileges apart from the right to vote; and these privileges were only abolished in 1919, by which a demand of the *Reichstag* of 1848/49 had found a belated realization.[33] With the end of manorial rule, not only the nobility but also the Catholic Church lost its function as an intermediary bearer of sovereign power: Until then, the church owed its privileges solely to the fact that the ruling Habsburgs themselves belonged to the Roman Catholic confession. In 1848, other confessions – previously only tolerated by the state – were formally put on an equal footing with the Catholic Church – ultimately since 1868.[34] This would also have corresponded to the introduction of compulsory civil marriage instead of the concept of denominational differentiated marriages according to ABGB 1811, as demanded by the fundamental rights found in the subcommittee of the *Reichstag* in 1848/49. In the second half of the 19th century, there were initiatives on the part of the Liberals and the Social Democrats, but they failed, because of the veto the Catholic monarch. After 1918, the marriage law reform was back on the reform plans of the Social Democrats and Liberals, but it fell victim to the inclusion of the Greater Germans in coalitions

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32 Even after the introduction of a general class of voters in 1896, a few thousand large landowners received more seats in the House of Representatives than the approximately four million eligible voters of the general class of voters: Brauneder, 2000b, pp. 200–202; Brauneder, 2009, pp. 158–160.
33 Neschwara, 1993, p. 91.
34 The concept of separation of churches and state was subsequently broken, first in the 19th century for a decade from 1855 to 1868 and then again in 1934: Brauneder, 2000b, pp. 189–190; Brauneder, 2009, pp. 157–158 ("laicization of the state").

with the Christian Socials.[35] Even the Nazi regime introduced compulsory civil marriage in 1938 – what a pity![36]

The first enactment of constitutions in a formal sense (that is, in the form of constitutional acts) in 1848 led to the end of the monarch's absolute rule of law. In accordance with constitutionalism, popular participation restricted the absolute government through elected representatives in a Parliament. The people's right to vote was initially severely restricted by an electoral census, and this had a significant impact on the first parliamentary elections in Austria, the election to the Frankfurt National Assembly in the spring of 1848. The law for the second parliamentary elections in Austria in July 1848 to the Austrian Reichstag reduced the census to minimum requirements (own income, as day-laborers), but only a minority of people exercised the right to vote. Equality regarding active suffrage did not come about until 1907. After the interlude of curial and census suffrage for the *Reichsrat* of 1861, with the introduction of universal suffrage[37]; but at the level of the electoral law to the provincial diet not until the end of the monarchy. In addition to the privileged classes of voters (members of the great landowners and members of the Chambers of Commerce and Trade), the mass of citizens entitled to vote (divided into urban and rural communities) found no adequate representation, and smaller peasant landowners and the workers in the cities had no politically representation all, neither in the *Reichsrat* and provincial diets nor in the local communities. It was not until 1907, with the abolition of universal suffrage to the House of Representatives, that there were noticeable improvements in terms of equality. However, only men benefited from general suffrage. Until then, active suffrage also included women, but only in the class of the large landowners – albeit only formally and not in practice. It was not until 1919 that women's suffrage became part of all institutions serving as general representations.

The constitutions enacted in 1848/49 provided parliaments with political control rights over the government[38], which still exist today. The now (in

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35 After the coup d'etat of the Christian Socialists against the parliament, Austrofascism even went back to the legal situation before 1811 based on the Concordat of 1933 regarding Catholic marriage law: Schima, 2011; Kalb, 2011.

36 The law, which is still in force today, is politically controversial, and there are currently no initiatives for a total change.

37 Simon, 2010.

38 Brauneder, 1987, p. 135.

1848) organized monocratic ministries were responsible for the legality of government acts (including those of the monarch) to parliament within the framework of the right of interpellation, resolution, and inquiry. This too – as a late consequence of 1848 – only came to fruition from 1861 with the creation of the *Reichsrat* as a parliament. However, the possibility of a vote of no confidence did not yet exist in the constitutional system until 1918. Admittedly, the constitutions of the revolutionary years provided for legal responsibilities of Ministers: A Supreme Imperial Court (*Reichsgericht*), called upon to protect fundamental rights too, should be responsible for this task.[39]

The constitutional achievements of 1848 were initially as good as exclusively limited to the state, the provinces had only a temporary part in this development. To the extent that the *Reichstag*, elected in June as the constituent national assembly, wanted to give the provinces partially the character of states when drafting a new constitution about their involvement in the formation of state will. The Constitution indented a chamber consisting of deputies of the provincial diets, comparable to Austria's today *Bundesrat*. The concepts of federalism developed in 1848/49 envisaged the decentralization of state legislation in general state and provincial affairs and the transfer of self-government matters to the provincial parliaments. Following the period of neo-absolute government, from 1861 onwards[40], the course was again set for a significant federalization of the state, so that at the end of the 19th century the importance of the provinces increased to such an extent that a conversion of the decentralized unitary state of the Austrian Monarchy into a federal state was considered to come into being. However, this federal state intended a structure, which divided the state into the settlement areas of the nationalities and not into the previous historical provinces.

The constitutional considerations of the revolutionary years of 1848/49 – beyond the short interlude of period of neo-absolute government – remained pointing the way for the further development of the Austrian constitutional foundations. This started with the dissolution of the German Confederation through the War of 1866 and the settlement of the division of the Austrian Empire and through the emergence of a two-state monarchy: At the beginning of 1867, first in the Hungarian provinces, there was a restoration of the constitutional laws of 1848 and at the end of 1867 in the non-Hungarian,

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39 Heller 2010, pp. 89, 91.
40 Simon, 2015, pp. 71–73; Symposium, 2015.

now so-called Cisleithanian territories – several basic state laws led to the modified restoration of the constitutional aera of 1848/49. A restoration of the *Reichstag* of 1848 – without revolutionary pressure like in 1848 – was not possible, because of the veto of the anti-constitutional monarch: therefore, in Cisleithania the *Reichsrat*, which had existed as a parliament since 1861, remained, and a parliament comparable to the *Reichstag* of 1848/49 was not restored. As early as in 1861, respectively in 1862, there was a return to the constitutional fundaments of 1848/49 about the position of the provinces and local communities. With the fundamental rights and the *Reichsgericht*, the content of the corresponding basic laws of 1867 was very closely, in single cases even literally, connected to the corresponding institutions of that time. The speaker in the House of Representatives who was responsible for drafting the fundamental rights in 1867 wrote succinctly on the paper of his draft that he had edited: "Everything 1849!" ("*Alles* 1849!").[41]

3.3.1.2. Since 1918

The collapse of the Habsburg monarchy in the fall of 1918 awakened, the memory of the unfinished revolution of 1848: contemporaries also saw the proclamation of the republic as a late fruit of the 1848 revolution. This perspective goes back to social-democratic narratives. These stories begin with the founding of German-Austria; the *Arbeiter-Zeitung* ("Worker's newspaper") publish a comment on October 30, 1918, as follows:

"The spirits of the constitution of 1848 are awake again after a long, long slumber and on the historic ground in front of the country house, where seventy years ago the first great revolution in German-Austria germinated, the old battle cry of freedom sounded again in a thousand voices [...]."[42]

Another late fruit of the revolution of 1848 is the renewed attempt to create German unity.[43] The accession of German-Austria to the German Republic, proclaimed on November 12, 1918, was established as a state goal, the

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41 Stourzh, 1989, p. 252; Brauneder, 1994, p. 155; Brauneder, 2000a, p. 32; Neschwara, 2017; Neschwara, 2021, p. 160.

42 „*Die Geister der Verfassung des Jahres 1848 sind nach langem, langem Schlummer wieder wach und auf dem geschichtlichen Boden vor dem Landhause, dem vor siebzig Jahren die erste große Revolution Deutschösterreichs entkeimte, scholl [...] wieder tausendstimmig der alte Schlachtruf der Freiheit.*"

43 Neschwara, 1993, p. 91; Weiß, 2018, Neschwara, 2018b, p. 152.

propagation of which as a union remained a central goal of German-Austrian foreign policy until 1933: It was initially supported by the Social Democrats and, of course, by the Liberals. The most prominent of this idea among the Social Democratic representatives was Foreign Minister Otto Bauer, also a politician of Jewish descent. After the failure of the *Anschluss*, which Bauer considered essential for the long-term prosperous existence of German-Austria (as part of the German Republic), Bauer promptly resigned as foreign minister after concrete negotiations on a state treaty with the German Reich had already started in Berlin in March 1919 were.

The aftermath of the 1848 revolution also came at the international level. The contemporaries also perceived the developments that began in 1848 as a "spring of the people". The awakening of nationalistic tendencies among Czechs, Poles and southern Slavs in the Habsburg monarchy made a reorganization of the political map in central Europe appear feasible. But only the dissolution of the Austro-Hungarian monarchy brought forth new states[44], shortly before German Austria and Czechia-Slovakia Republic came into being as new states. Soon after that an SHS state (uniting Serbian, Croatian and Slovenian people of the Habsburg Monarchy) came into being (afterwards joined with the Kingdom of Serbia and Montenegro). Russian Poland, after the collapse of the Tsarist Empire at the end of 1917, should exist as a monarchy – but now dependent on the Habsburg dynasty, but finally formed a republic in the autumn of 1918 – including the Austrian and Prussian areas of former Poland. Hungary saw itself in state continuity with the Hungarian monarchy, it returned to the monarchical form of government in 1920 – after the experiment of the soviet republic under the mass murderer Béla Kun.

German Austria, restricted to the borders drawn by the State Treaty of St. Germain in September 1919, and Hungary, reduced to its Magyar core by the Peace Treaty of Trianon in 1920, are the only states of the post-war order of 1919/20 that have survived to present days in unchanged shape. Apart from Poland, enlarged after 1945, the other successor states of the Austro-Hungarian monarchy fell apart after the end of the socialist regimes in Central and Eastern Europe, so Czechoslovakia in 1993 and Yugoslavia since 1991. The state fragmentation of former Yugoslavia still does not seem to be

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44 Brauneder, 2000b, pp. 248–250 (Poland), 250–254 (Czechoslovak Republic), 254–258 (State of Serbs, Croats, and Slovenes).

complete – think of the constitutional situation in Bosnia-Herzegovina[45] and in Kosovo.

3.3.2. Regarding Fundamental Rights in Particular[46]

3.3.2.1. Development during the Monarchy until 1848

Let us now come back to the most important trend-setting results left of the 1848-revolution for Austria, and that was the grant of fundamental rights for individual citizens.

The intellectual roots of modern fundamental rights, embedded in natural law doctrines of the late 18th century, granted every human being to have individual "innate rights" (as already granted in introduction to the Austrian General Civil Code of 1811 – ABGB § 16). Of course, at these times state authorities did not respect individual rights as equal rights (single rights varied on reasons of social status or religion).[47]

The decisive impetus[48] for granting fundamental rights came from the independence movements in the British colonies of New England, beginning with the Virginia Bill of Rights of 1776, which in turn influenced the contemporaneous Declaration of Independence of the North American Union and through this it influenced the declaration of human and civil rights in Europe after the outbreak of French Revolution in 1789. Since then, fundamental rights usually found guarantees in form of constitutional law. The idea of binding state actions to norms regulated in codifications of constitutional law also gained importance for individuals, because such norms now led to the participation of the people in exercising state powers – represented by a parliament as a political body of the people. Fundamental rights thus got the character of constitutional law

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45 Europa-Ploetz, 1999, pp. 152–153 (Yugoslavia), 153–156 (Bosnia and Herzegovina); Haeberli et al. (eds.), 1994, pp. 33–34 (since 1918), 191–94 (since 1945); Chronik-Handbuch, 1996, pp. 158–159 (Bosnia and Herzegovina). – Another state, of which parts belonged to the Austrian monarchy until 1918, Ukraine, failed to form a separate state after 1918. She was than integrated into the Soviet Union in 1919 and organized as an autonomous Soviet republic after 1945, became sovereignty following the collapse of the Soviet Union in 1992, but seems to have been on the way to state fragmentation since 2014.

46 Hofmeister. 1988; Brauneder, 1991; Schäffer. 2014; Neschwara, 2017.

47 Kleinheyer, 1975, pp. 1061–1066; Brauneder, 1991, pp. 194–195; Schäffer, 2014, pp. 4–6.

48 Kleinheyer, 1975, pp. 1066–1070; Brauneder, 1991, pp. 189–190; Schäffer, 2014, pp. 4–6.

but including only instructions and guidelines for state actions. Embedded in constitutional norms, therefore fundamental rights had a higher-ranking (even fundamental) level and – due to state grants – independent from their natural law foundations too. However, the idea of individual equality based on natural law continued to have an influence on them, because such constitutions led to the overcoming of the corporate structures of society.

In Central Europe[49], within the borders of the German Confederation of 1815, liberal circles pushed these ideas and propagated for – fundamental rights being enshrined in a state constitution, because this would open participation for people and would grant them freedom rights against state arbitrariness. Fundamental rights in this meaning first time were constitutionally – granted in Bavaria in 1808, and in few other German territories after 1815 (initially Württemberg or Baden); and in consequence of the July-Revolution of 1830 since then in all German states, except of Prussia and Austria.

3.3.2.2. Development during the Monarchy since 1848

In Austria, several fundamental rights first were granted as – a part of constitutional law immediately following the revolution, in March 1848[50]: for the first-time equality of citizens was proclaimed, freedom of the press, freedom of education and learning) was granted, especially in connection with the liberation of peasants and the emancipation of Jewish citizens as well. Since then, catalogues of fundamental rights had been created in April 1848 and in March 1849[51], which finally found its way into the Basic Law on the general rights of citizens of 1867 Basic State Law (*Staatsgrundgesetz*)[52] and then this Basic Law was transferred to the provisional constitutional law of the Republic of German-Austria in 1918.[53]

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49 Kleinheyer, 1975, pp. 1070–1075; Brauneder, 1991, p. 192; Schäffer, 2014, p. 6–8.
50 Brauneder, 1991, pp. 187–263; Schäffer, 2014, pp. 9–16.
51 Partly following the model of the „*Grundrechte der Deutschen*", drafted in German National Assembly in Frankfurt/Main (with the significant participation of members of parliament elected in Austria): Kleinheyer, 1975, pp. 1075–1082; Brauneder, 1991,
52 Stourzh, 1989; Brauneder, 1991, pp. 274–276; Neschwara, 2017, pp. 41–42.
53 Brauneder, 1991, pp. 281–283; Schäffer, 2014, pp. 17–19; Neschwara, 2021, pp. 158–159.

3.3.2.3. In the Republic until 1945

Attempts to create a new catalogue of fundamental rights with the drafting of a new constitution failed after 1918 – due to ideological differences between the political parties, so the politicians decided to incorporate the existing fundamental rights into the Federal-Constitutional Law (*Bundes-Verfassungsgesetz*, hereinafter referred to as BV-G), which came into effectiveness in November 1920.[54] The number of these fundamental rights was a little bit expanded in 1918/19 by resolutions, passed in the Provisional and the Constituent National Assemblies[55] as well as in the provisions of the Treaty of St. Germain (due to clarify the principle of equality).[56]

In the parliamentary discussion of the Constituent National Assembly from July to October 1920 in connection with the drafting of the federal constitutional law, the situation in the Austrian Reichstag of 1848/49 seemed to be repeating itself. However, contemporaries themselves did not generally feel this way.[57] The members of the Constituent National Assembly did not see themselves as builders of a permanent constitution for the state of the Republic of Austria within the limits of the Treaty of St. Germain: It was therefore accepted that – due to ideological differences between the political parties – no agreement could be reached on a new catalogue of fundamental rights. Austria stayed with the existing basic rights, the core of which is the basic state law on the general rights of citizens. These fundamental rights then remained – unchanged until the end of the constitutional order of 1920, after less than 15 years of validity until 1933. Within this brief time, no initiatives led to new catalogues of fundamental rights.

Only under the regime of Austro-Fascism, established in 1933, following a coup d'état by Christian-social Party, it was possible to create a new catalogue of fundamental rights with the enactment of a new Constitution in 1934, an authoritarian constitution based on estates (recruited from social groups representing economic and cultural interests), but the content of the catalogue of fundamental rights followed the catalogue of basic rights of the B-VG of 1920.[58]

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54 Brauneder, 1991, pp. 322–324; Neschwara, 2017, pp. 41–42.
55 Brauneder, 1991, pp. 306–319; Schäffer, 2014, pp. 23–28.
56 Brauneder, 1991, pp. 304–306.
57 Cf. Brauneder, 1991, pp. 283, 286, 288, 291, 301; Schäffer, 2014, pp. 208–209.
58 Brauneder, 1991, pp. 327–329; Schäffer, 2014, pp. 30–31.

The interlude of Austrofascism ended with the occupation of Austria by the German Empire (*Anschluss*) in March of 1938. The Constitution of the Weimar *Reich*, which now became decisive for Austria, was even stripped off the rule of law and liberal institutions by the National Socialist regime since 1933, and therefore it was lacking fundamental rights.

3.3.2.4. In the Republic since 1945[59]

After the resurrection of Austria following her Declaration of Independence at the end of April 1945 "in the spirit of the 1920 constitution", Austria returned to her former fundamental law by transferring the federal constitutional law in the version of March 1933: At the end of these developments, Austria returned to the roots of fundamental rights, based on the ideas of the 1848-revolution!

The further development of fundamental rights in Austria since 1945 on the one hand was marked by renewed failures of attempts to create a new catalogue of fundamental rights, on the other hand, by the adoption of fundamental rights following international agreements: Concerning the first aspect, it should be noted, that only some new fundamental rights found a regulation in special constitutional laws.[60] Moreover the *Staatsgrundgesetz* of 1867/1920 itself was supplemented too.[61] All these new fundamental rights were regulated in special federal constitutional laws apart from the *Staatsgrundgesetz* (being a part of "B-VG"). At least in 2003, in the course of the Austrian Convention (founded in 2000), a new codification of fundamental rights was approached with more publicity (compared to similar efforts in the past, which were carried out almost out of the public); but the project also failed like in 1920 – once more due to ideological differences.[62] As for the second aspect[63], it should be noted: fundamental rights constantly were increased and expanded and partly supplemented due to legal norms from international agreements: these developments started with the end of Allied control in Austria, beginning in 1955 with the State Treaty of Vienna

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59 Brauneder, 1991, pp. 337–328; Schäffer, 2014, pp. 31–33, 33–35.
60 Brauneder, 1991, pp. 347–349; Schäffer, 2014, pp. 35–36.
61 In 1974 through the "protection of telecommunications secrecy" and in 1988 "freedom of art"; in the same year "protection of freedom of the Person".
62 Österreich-Konvent, 2005, pp. 83–109; Schäffer, 2014, pp. 46–47.
63 Brauneder, 1991, pp. 347–349; Schäffer, 2014, 35–42.

and special rights for national minorities in Austria[64]; but above all with the adoption of the "European Charter of Human Rights" ("ECHR") of 1950, which was added to the Austrian catalogue of fundamental rights in 1958 and modified their content.[65] In 1964 Austria declared that the "ECHR" has got constitutional status, and this brought it at the same level with the fundamental rights of the B-VG. In addition to that from now on the European Court of Human Rights at Strasbourg was responsible for individual complaints about violations of fundamental rights as well as this did the Austrian Constitutional Court at Vienna. Because of the problems arising from the immediate application of the "ECHR", the Austrian government from now on international fundamental rights adopted by transformation into national laws[66]. A different treatment only happened to the – UN-Convention on the Rights of the Child of 1989, a special federal constitutional law transferred it into national law. As a result of Austria's accession to the EU, which became effective – in 1995, individual fundamental rights of Austrian constitutional law also apply to EU citizens on the ground of basic freedoms and prohibitions of discrimination under European Community law.[67]

Apart from this another catalogue, consisting of fundamental rights began to cover the Austrian constitutional system since 2000[68], when the

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64 Schäffer, 2014, pp. 38–39; Olechowski, 2016, pp. 259–260.

65 However, the fundamental rights laid down in the ECHR resulted from a different understanding of constitutional regulations. At these times no one realized that serious problems could arise in the application of international law, because the content of most of these rights granted in the ECHR were also embedded in the Austrian Basic Law on general rights as a part of the B-VG. Notwithstanding the problems that might be involved with it.

66 This includes regulations as follow: the European Social Charter of 1969; and the International Convention on the Elimination of all Forms of Racial Discrimination of 1972, which was fulfilled in 1973 with a special federal constitutional law, whereby the principle of equality in art. 7 B-VG was upgraded to become a human right. The next was: The Human Rights Convention of the United Nations (UN) of 1978 on economic, social, and cultural rights and on civil and political rights, which was treated more restrictively; and finally in this case it was to be prevented, that those basic social rights (rights, including claims for social benefits to the state) were given constitutional status and thus would stay under the protection of the Constitutional Court. The same happened the UN-Convention on the Rights of Persons with Disabilities of 2008, which became part of the law of the EU in 2010 (and Austria therefore committed itself to transform these provisions into national law); all these regulations were not carried out at constitutional level: Schäffer, 2014, pp. 38–39, 39–42.

67 Therefore, several articles (2, 3, 6, 18) of the "*Staatsgrundgesetz*" on fundamental Rights of the Citizens belong to EU-Citizens too: Gehler, 2018, pp. 382–384.

68 Gehler, 2018, pp. 425–428 (Fundamental Rights-Convention 1999/2000), 428–459 (European Union-Convent 2001/3), 441–445 (EU-Constitutional draft), 515 (failing of this draft).

Intergovernmental Conference of the European Union at Nice, made efforts to create a "constitution" dedicated to the European Union (EU). Despite of the fact, that this project failed, a "Charter of Fundamental Rights" was to consolidate and enshrine the broad array of rights of EU-citizens at the level of Constitutional Law. The EU-Charter of Fundamental Rights has got legally binding in Austria – since 2009 (with the Treaty of Lisbon): This allows the European Court of Justice to influence the assessment of fundamental rights issues of the EU-Charter in their application in Austria. Since 2012 the Austrian Constitutional Court treats the EU-Charter the same as the ECHR. In effect, since then in Austria three catalogues consisting of fundamental rights do exist, and in addition to that three Supreme Courts are supervising violations against fundamental rights.

4. Outlook: Remembrance of 1848 in Austria

In the past in Austria the memory of 1848 and its aftermath in every period of political development found always neglection. 175 years ago[69] the awareness of the effects of the revolution, which have continued to present days, has almost completely faded – contrarily to Hungary, where the outbreak of the 1848-revolution is celebrated as a states-holiday since 1928 (despite of the years of socialist regimes from 1948 up to 1989).[70] In the Czech Republic one can realize a remembrance of the Reichstag at Kremsier.[71]

The attitudes in Germany are quite different, here the Federal President and the Bundestag had issued statements to the public, which keep the memory about the 1848 alive. Beyond that, the German Federal Archives in Koblenz also started an online series on 175 years of the 1848/49-revolution. From February 2023 on until August 2024, every month they present one picture or document from the revolutionary years on the Federal Archives website. The online presence is a digital additional project in addition to a

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69 Cf. after 150 years: Hye, 2003, p. 10 (the widely respected daily newspaper „*Die Presse*" ["The Press"] mentioned a collective loss of memory [„*kollektiver Gedächtnisschwund*"].
70 Cf. Gergely, 2003, p. 168.
71 Cf. Koržalka, 2003, p. 238.

permanent exhibition in the Federal Archives Memorial at Rastatt.[72] On May 18, 2023, the first gathering of the German National-Assembly 175 years ago was commemorated in a ceremony, among other things in speeches of the Federal President as well as the President of the German "Bundestag".[73]

In contrary to this, in Austria none of the supreme authorities of the Republic, neither the Parliament (*Nationalrat* and *Bundesrat*) nor the Federal President respectively the Federal Government found it worth to point out on the days of the 1848-revolution in spring of 2023.[74]

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72 [https://www.bundesarchiv.de/DE/Content/Meldungen/2023-02-15_akte-des-monats-1848.html (26.04.2023)]: Pictures and documents from the revolutionary years 1848/49.

73 Cf. [https://www.deutschlandfunk.de/175-jahre-deutsche-nationalversammlung-bundespraesident-haelt-festrede-100.html (01.06.2023)].

74 At the invitation of the Third President of the National Council only the Freedom Party of Austria organized an event with scientific lectures in an adjoining building of the Parliament (Palais Epstein) on March 28, 2023 under the "175 years of the bourgeois revolution in 1848: [https//www.ots.at/presseaussendung/OTS_20230329_OTS0064/175-jahre-buergerliche-revolution-vortragsabend-ueber-geschichte-und-erbe-von-1848 (07.05.2023)]: 175 years bourgeois revolution – lecture evening about the history and heritage of 1848.

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