

Fourth Generation

Liberal Constitutions

1848: A NEW SOCIAL ORDER. THE ASCENT OF PARLIAMENTS

In early spring 1848, Europe was buffeted by a perfect storm – ‘a moment of madness’, in the words of Aristide Zolberg.¹ In what is known as the ‘Springtime of Peoples’, a broad civil movement revolted against Europe’s autocratic, and by then downright repressive regimes, many of which were the product of the Congress of Vienna of 1815.² Citizens demanded democratic reforms, participation in government and liberal constitutions. The spirit of liberty, equality and fraternity returned from its long banishment within a few months or even days.

The first eruption is on 12 January 1848 in Palermo, Sicily. A group of Italian nationalists led by Giuseppe Mazzini, the founder of *Giovine Italia* (Young Italy), rose against the Bourbon king Ferdinand II’s reactionary regime. They aimed to force him to grant a constitution and thus spur the unification of Italy.³ After brief success, with rebellion spreading throughout Italy, the uprising was crushed with Austrian help. Short-lived constitutions and new liberties⁴ were granted in various Italian kingdoms. Next, the unrest spread to France. Just over a month after the Italian uprising (23 February 1848), an uprising sparked by the prohibition of a benefit banquet caused the fall of the Guizot government. The proximate cause of this outdoor dinner party was far from frivolous: organising banquets was one of the few ways of circumventing the severe restrictions on political freedoms. It was one of the reactionary French government’s many repressive measures at the time to stamp out all dissent. The situation spiralled out of control, royalist troops refused to intervene,⁵

¹ Zolberg 1972, p. 183 ff.

² *Ibid.*

³ Sperber 2005, p. 116 ff.

⁴ Naples and Piedmont were granted a constitution in March.

⁵ Bugeaud, commander of the royal security forces in Paris, intervened too late – or rather, he failed to intervene at all, whilst barricades were being erected everywhere. Bugeaud claimed that the royal orders reached him too late and his troops had been obliged to wait too long for

and the king abdicated. The Second Republic was proclaimed on 25 February, and a new constitution was introduced, granting many individual fundamental freedoms and direct universal suffrage to men over the age of 21. This constitution, however, proved unable to end the unrest in Paris, which continued for most of the rest of the year. A workers' uprising from 23 to 26 June of that year resulted in bloody riots.⁶ Approximately 10,000 people were either killed or injured at the hands of the National Guard, sent in to quell the rebellion.

The unrest in France spread within two days to Belgium, where there were only a few disturbances in Brussels, and the Grand Duchy of Baden in what is now Germany. A popular assembly abolished the Baden nobility's privileges, demanded popular sovereignty and a liberal constitution (a revision of the 1818 constitution) on 27 February 1848. The violent uprising in Baden spread in turn to Bavaria and Prussia, where liberal-democratic uprisings broke out in mid-March.⁷ At this point, events in continental Europe spiralled out of control. Lajos Kossuth demanded democratic government in Hungary, peasant revolts erupted in Silesia and Galicia, and a German national assembly in Frankfurt pressed for universal suffrage and a united Germany. A proletarian revolution broke out in the Rhineland with similar demands.⁸ The rebellion swept on to Bohemia, Moravia and even Vienna. Klemens von Metternich, the architect and enforcer of the Congress of Vienna and Chancellor of the Austrian Empire for 39 years, was forced to resign and flee in disgrace. 'Everything is lost!' he wrote in stupefaction to friends.⁹ The world of the Congress of Vienna had indeed come irrevocably to an end.

Whilst the Prussian king made concessions to demonstrators in Berlin, the unrest in the Austro-Hungarian empire proved more difficult to contain. Venice proclaimed itself the Republic of San Marco, Lombardy joined the uprising, and the Hungarians declared independence. There was also unrest in Bohemia and Moravia. A pan-Slavic congress convened in Prague at which the empire's Slavic peoples demanded the restructuring of the Habsburg Empire as a federation of autonomous peoples.¹⁰ The mighty Austro-Hungarian empire, which dominated most of South-eastern and central Europe, tottered. Even despite a second uprising in Vienna that year, it preserved its integrity and regained control through a

supplies and ammunition. Bugeaud's justification is not very convincing. Cf. Sperber 2005, p. 116–117; Zamoyski 2014, p. 483–484.

⁶ Author George Sand participated in the *June Days uprising* (French: *Les journées de Juin*). Standing on the top of a barricade, she shouted to a friend: 'N'est-ce-pas que c'est magnifique, n'est-ce-pas que c'est beau!' (Isn't this magnificent, isn't this beautiful!) As cited by Figes 2019, p. 131.

⁷ Sperber 2005, p. 117.

⁸ They even dreamt of merging with the Netherlands and Belgium.

⁹ Zamoyski 2014, p. 486–487.

¹⁰ They wanted to transform the Habsburg Empire into a 'a federation of autonomous peoples.'

combination of concessions (including granting universal suffrage in places) and military intervention (with Russian aid). It was so successful that the new emperor was able to nullify all the preceding months' concessions before the end of the year.

RISE OF NATIONS

Despite incumbent governments or their successors thwarting¹¹ many of the 'constitutional' revolts¹² and largely repudiating their constitutional proceeds, they did produce enduring results in several cases. What was going on? Why did things boil over from Wexford¹³ to Calabria and from the Baltic Sea to the Ionian Sea – and as far afield as New Zealand (1852)¹⁴ and Argentina (1853)?¹⁵ Truly convincing explanations are difficult to come by and even more so for why the rebellions followed each other in such quick succession. Several of them certainly have common causes: revolts against the conservative Austrian Empire and its retainers.¹⁶ And the rebellions can also in part be attributed to resistance to the exploitation of the proletariat and workers' abominable living and working conditions resulting from the industrial revolution. 1848 was also the year of Karl Marx and Friedrich Engels' *The Communist Manifesto*, although the rebellions were certainly not triggered by this document; the first workers' revolts merely rode on the coattails of the 1848 revolutions.

1848 does mark a period when constitutions were conceived or rediscovered as instruments of national liberation.¹⁷ Hitherto, states had chiefly been territories

¹¹ Thornhill argues that most of these constitutional revolutions were not successful – and certainly not on the long term. *Ibid.* I think this only applies to the short term. The revolts initiated a development that would lead to changes over time. The Italian and German uprisings were the prelude to the unification of Italy and Germany a few decades later. This was also accompanied by constitutional changes.

¹² Concessions in the form of constitutional guarantees and freedoms were the aim of most of these revolutions. That is why Thornhill calls the rebellions the 'constitutional revolutions of 1848.' Thornhill 2011, p. 241.

¹³ The place where the Young Islander rebellion started in Ireland, before proceeding to County Kilkenny and County Tipperary. https://en.wikipedia.org/wiki/Young_Irelander_Rebellion_of_1848 (consulted 24 October 2018).

¹⁴ The New Zealand Constitution Act 1846 was an attempt to give New Zealand self-government. It was a little premature for the European powers. After the document was withdrawn, the New Zealand Constitution Act 1852 was enacted (entering into force in 1853), giving New Zealand a measure of self-government and a parliament (an elected lower chamber and an appointed upper chamber) with legislative authority. Westminster (London) retained control of the executive.

¹⁵ The Argentine Constitution of 1853 is a truly liberal constitution, in the sense that it grants fundamental freedoms and introduces a separation of powers.

¹⁶ In reality, the Holy Roman Empire had been defunct since the beginning of the nineteenth century – formally at least, since the Congress of Vienna (1815). The ensuing peace treaty dissolved the entity and left it to the emperors of Austria to settle the venerable mediaeval empire's estate. In the nineteenth century, there was still what Wilson termed the empire's 'afterlife'. Wilson 2016, p. 663–676. Cf. Van Hooff 2018.

¹⁷ 'In particular, this period saw a widespread inflation of the concept of national sovereignty, in which, in conjunction with rights, the idea of national self-legislation began to act as

controlled by governments whose borders had been drawn by the major powers at the Congress of Vienna in 1815. States increasingly began to reinvent themselves in this period into imagined political communities¹⁸ of 'nations'.

The idea of a nation as denoting a group or a population that feels connected by language, culture, race, kinship, common history or any other trait. The traits themselves do not really matter a great deal. The concept of nation is mainly about self-image – the 'we' – and the connectedness and solidarity it gave rise to. A nation is not about what a group or population actually 'is', but what this group 'wants to be', what it wants to do together. Or as Ernest Renan explained to an audience of baffled Dutch students in a lecture hall in Leiden in 1877: the 'nation' is about the connection between all the great things you have done together, and above all about the greater things you still want to do.¹⁹

This desire to be together,²⁰ live together in a state of connectedness, and freely determine the conditions of living together, gained momentum in this period. The idea of this interconnectedness and a political society's social capital grew in strength. Whilst the state was still a vehicle for nation-building in the early nineteenth century, as illustrated by the example of the Napoleonic administration in France,²¹ the roles were reversed from the middle of the nineteenth century: nation formation was increasingly seen as a development that preceded, or should precede, state formation.²² The consequences of this metamorphosis in thinking about states and political societies as nations, and the desire for freedom it engendered,

the leading impulse of inclusionary political formation. This reached an apotheosis in the (largely unsuccessful) constitutional revolutions of 1848, when in many European societies the demand for constitutional formation and rights-based representation coincided with an impetus towards the construction of states founded in more fully and cohesively integrated national societies.' Thornhill 2011, p. 240–241.

¹⁸ 'Imagined community' in Benedict Anderson's words. (Benedict) Anderson 1991 (orig. 1983.)

¹⁹ My rendering of 'avoir fait de grandes choses ensemble, vouloir en faire encore'. Cf. www.bnlisieux.com/archives/nationo4.htm for the original text (consulted on 5 May 2018). My translation is based on Renan's more extensive explanation: 'Une nation est une âme, un principe spirituel. Deux choses qui, à vrai dire, n'en font qu'une, constituent cette âme, ce principe spirituel. L'une est dans le passé, l'autre dans le présent. L'une est la possession en commun d'un riche legs de souvenirs; l'autre est le consentement actuel, le désir de vivre ensemble, la volonté de continuer à faire valoir l'héritage qu'on a reçu indivis.' Cf. Renan 2018 (orig. 1882), part III.

²⁰ 'Le désir de vivre ensemble' ('[...] avoir fait de grandes choses ensemble, vouloir en faire encore [...]'). Renan 1882, chapter III.

²¹ Breuilly 2011 – and Stedman, Jones & Claeys 2011, part I (*Political thought after the French Revolution*).

²² It is important to distinguish between the concept of nation and *nationalism*. The latter is, in short, the ideology that asserts that the state (as a territory) and the nation *must* coincide, that the two must have a one-to-one relationship. Nation must also be distinguished from the principle of nationality. Breuilly argues that the principle of 'nationality' is based on several coherent principles: 'humanity is divided into nations; nations are worthy of recognition and respect; recognition and respect require autonomy, usually meaning political independence within the national territory.' Breuilly 2011, p. 77.

extended well beyond Europe. In Latin America, a series of new states and republics with liberal constitutions came into being on the back of this new thinking.²³ These new constitutions were also a way of claiming and marking sovereignty.²⁴ This phenomenon of state formation by constitution also emerged in Europe. In response to several external factors and foreign powers' claims, Switzerland consolidated its right to self-government in its 1848 constitution, which made the country an independent confederation. Just as Belgium had proclaimed itself an independent state and monarchy in its 1831 constitution. For the same reason, the Greeks drafted their first constitution in 1822 (amended in 1823 and 1827) in an effort to achieve independence from the Ottoman Empire.²⁵ Given this background, the peak in constitution writing around 1850 is unsurprising.²⁶ The period marks the birth of parliaments as truly representative bodies, with powers of effective oversight and instruments to control government (budget, ideas on accountability etcetera) on behalf of the people.²⁷ Many political freedoms date back to this era in which parliaments rose and the seeds for later fully integrative democracies were planted.

²³ Sabato 2018. Gargalla 2014, p. 9–11.

²⁴ Elkins, Ginsburg & Melton 2009, p. 41–42.

²⁵ The French Thermidor constitution of 1795 was an important source of inspiration for the Greek constitution of 1822.

²⁶ Cf. figure 3.1 Elkins, Ginsburg & Melton 2009, p. 41.

²⁷ In the Netherlands, 1848 marks the birth of the modern parliamentary system. In October of that year the government finally persuaded the king to agree to a new, liberal constitution. It gave parliament more influence, limited the king's power and granted citizens new rights and freedoms. The turmoil in Europe must certainly have been one of the reasons for the king's sudden change of heart; until then he had refused to countenance change and had stubbornly thwarted constitutional modernisation. The rise of the liberals under the leadership of the constitutional reformer Johan Rudolph Thorbecke (1798–1872) was undoubtedly an additional factor. The most important innovation in the Constitution of 1848 was the introduction of direct elections to the House of Representatives, Provincial Councils and municipal councils. However, political franchise was still subject to property qualifications, only entitling a small proportion of the population to vote. The elected House of Representatives had more effective control from 1848, thanks to its right to amend bills as well as its right to effectively contribute to budget formulation – by law, the budget had to be submitted yearly for parliamentary approval (including parliamentary input). Parliament was also granted the right of inquiry, and Senate sessions were made public. Equally importantly, the 1848 constitution limited the king's power by introducing political ministerial responsibility. Ministers were henceforth answerable to parliament, rather than to the king, for their policies. Royal power was further reduced by curtailing the king's independent, constitutional governmental powers. It is also fundamentally important that fundamental freedoms enabled citizens to participate and partake in forming public opinion and political processes. This includes the prohibition of censorship and freedom of expression, the freedom of association, assembly and religion and the freedom of education (both teaching and learning). It is these rights in particular that make the Dutch Constitution of 1848 a prime example of this period's liberal constitutions.