Volume 3. From Vormärz to Prussian Dominance, 1815-1866
Speech of Friedrich Julius Stahl against the Repeal of the Prussian Constitution (1853)

In this 1853 speech, the conservative law professor Friedrich Julius Stahl (1802-1861) pleads against a motion to abolish the Prussian constitution, which was instituted during the revolution of 1848/49. Stahl supported the constitution because he felt that it strengthened the monarchy. His speech shows how widely accepted the constitutional form of government was even within pro-monarchical circles.

Repeal of the Prussian constitution. Motion of Count v. Saurma-Jeltsch and Prince Reuß (Session of the First Chamber on February 24, 1853)*

Gentlemen! I cannot agree with how the Committee has taken exception to the motion. It maintains that Article 107 permits only amending, and therefore not repealing, the constitution. As was emphasized by the previous speaker: Amending repeals not the substantial, but rather only the imaginary. This difference alone is irrelevant in consequence; there could indeed be a motion proposed to repeal all the sections dealing with the Chambers. Formally, this would be only an amendment and yet would amount to a repeal. In fact, however, Article 107 does not emphasize that the constitution can be altered, but rather that it can be altered in the usual manner of legislation. That it can be amended is something this article does not even need to say; this was self-evident. But just as self-evident is that it can be repealed. Thus, in the entire document there is nary a word about how a law can be amended or repealed, and have we ever disputed this? The right to repeal the constitution in a legal manner is based not on Article 107, but rather on the nature of the matter; it is based on the premise that the authorities that conferred the constitution, the king and the state parliament, must likewise also have the right to withdraw it. Article 107 merely specifies the form for this, that this does not need to happen through an assembly specially summoned for this purpose, authorized with a special mandate, but rather through the ordinary Chambers.

A previous speaker remarked that it would certainly not be permissible in England to propose a motion for the abolition of Parliament. I would reply that we are also not permitted to propose a motion for transforming the monarchy into a republic. This impermissibility, though, is not based on the constitutional document; according to it, it would be completely permissible. Rather, it is

* Count v. Saurma-Jeltsch, together with Prince Reuß – as a member at the time of the First

based on the innermost sanctity of kingship, and this sanctity is something that our Chambers and the entire constitution do not have, at least not up to now.

In the matter itself, I thoroughly respect the weight of the motives on the part of the gentleman proposing the motion; he is moved by devotion to the old Prussian kingdom, to the old constitution and history of this country; he is also moved by the nature of our constitution. It is true, the constitution has its origins in the battles on the barricades; it takes its substance from the first work of the Constitutional Committee of the National Assembly; it takes its form and, in many cases, its idioms, from the revolutions of 1791 and 1848, which are certainly also the suitable expression of the spirit of these revolutions. They would certainly cause profound damage to this country if they did not fortunately neutralize themselves for the most part. If the provisions about ministerial responsibility, the provisions about the school system were carried out, this would be a serious disaster. One could say that in many respects, our constitution is only a possibility because it is not a reality. (Bravo and merriment.)

The constitution is a memorial to Prussia's humiliation, and as much as one needs to be aware of its reputation as law and as sworn law, one must also be aware that in many respects it cannot hold up when measured against a higher and more sacred law. Regardless of this, I cannot agree with the gentleman proposing the motion, and I support the motion to proceed to the daily agenda.

That a legal condition originated from an uprising is not a sufficient reason to abandon this legal condition is something that has already been mentioned by the gentleman who spoke earlier: The *Magna Carta*, the Declaration of Rights, the *acte of settlement* in England stem from uprisings, yet no one would advise that country to dispose of them. Now the view of the motion's petitioner is that the constitution not only has its origins in a rebellion, but rather, which is quite different, that it harbors the principle of the revolution. Through this constitution stemming from a revolution, it is said that Prussia has joined the ranks of the constitutional states. But what does that mean, a constitutional state? Where do we end up if we use schoolboy phrases to negotiate parliamentary matters? (Bravo!)

Is the Swedish constitution, is our former United Diet, is our current constitution, lacking ministerial responsibility and the right to refuse taxation, a constitutional state? I am asking about the concept of such [a constitutional state]; it should reside in the division of powers. As has already been remarked, under the division of powers – which constitutional doctrine invented, and which is entirely reprehensible – [what was] understood was, and is, nothing other than that the Chamber is the legislative power and the King the executive; but no one has claimed that the state parliament's cooperation with the Crown on legislation is a division. In the Swedish constitution, in the German Imperial constitution, this kind of cooperation takes place, and these are indeed much older than constitutional doctrine. So, too, with the objection regarding the rule of the majority. I am in the curious position here of having to defend the majority. (Merriment.)

If the constitution were of the kind such that this assembly, voting by majority, would have preponderance over the king, then I would have to agree with the gentleman proposing the motion; if, however, this assembly is profoundly subordinated to the authority of the king, then it is indeed impossible to find anything offensive in its passing resolutions according to a majority of votes. Under the old, venerable Imperial constitution, decisions were made in the Electors' Council, in the Council of Princes, and in the Curia of Counts according to majorities; should this constitution therefore be called revolutionary?

But the entire motion, explained this way, exists on purely academic terrain indeed. Everything that has been said today "for" and "against" could just as well be said in its entirety at any philosophical faculty or law school doctoral defense. (Bravo!)

I say for the most part! Only, here we are not faced with the question of whether the constitution should be adopted; if that were the question, then I would certainly have more serious doubts than the gentleman who spoke before me about proceeding from the earlier condition of absolute monarchy into one of restricted [monarchy] whilst the entire material for this, the structure of society, the historical traditions, are lacking. I would be the last person to offer my approval for trading the previous monarchy for the current constitution as is. Only, the issue at hand here is not adopting it, but rather doing away with it. The constitution has already been in existence for three years, circumstances have been regulated by it, laws based on it, rights acquired through it; is it such an easy thing to root it out all of a sudden? Have the gentlemen proposing the motion, for example, even considered this one thing, do they also want to strike out the rights of the Protestant and the Catholic Church, which the constitution guarantees; do you believe that this would go down well across the country, or do you want to negotiate and settle this specifically in advance, and through such a debate – if I may avail myself of an expression from the gentleman proposing the motion[*] – while perhaps not exactly sinking the probe into a painful wound, then at least into the most sensitive parts of the body of the state? Have you even considered what kind of general condition would arise for constitutional law, whether it might perhaps be the United Diet? This [parliamentary body – the United Diet] dissolved itself in view of a future provincial representation; that it might rise up again of its own accord I dare not venture to assert. Should it therefore now, as a result of that conditional declaration, unconditionally come to an end with nothing to take its place? The constitution of Prussia, be it good or bad, does have a history, and offhandedly giving up something with a history without specific proposals for a replacement is something I would not want to call "le contraire de la révolution," but rather the Contre-Revolution! (Shout: Very true!)

The main thing, furthermore, is that I nowhere find an obvious danger that could occasion such a severe measure; if one existed, then no doctrine would prevent me from agreeing.

The most dubious sentences in the constitution, as said, have neutralized themselves, and at every one of its positions the power of the Crown remained victorious; the King possesses a

[*] From Prince Reuß in the previous speech.

secure army and possesses secure finances. With these two things, the King of Prussia once confronted three European great powers and dispatched them. With these two things, should he not also, if necessary, be a match for two Chambers? (Merriment and bravo.)

And have such extremely dangerous laws and institutions really been passed since the Chambers have been in existence? Let us compare legislation since the constitution and prior to the constitution, even going back decades, I ask: on which side do we find conservation, on which side destruction? (Lively bravo from the right.)

The most dubious regulations were those that threatened not only the power of the Crown, but also the convictions of the population; fortunately, these have also been overcome during this session; I mean the regulations about the constitution of local government, I also mean that hastily repeated electoral agitation by means of triennial elections.

But the constitution, for all these profound and fundamental infirmities, still has its positive value, and the [value] is this, that it actually is a constitution, i.e., that it contains legal guarantees and a state parliament, and this is certainly the point of great divergence between the gentleman proposing the motion and myself. On this alone I base my hope and my conviction that, by proper further development, this constitution can become not merely harmless, but positively salutary.

Yes, we want and strive for legal guarantees, we do not want any unlimited freedom for citizens or corporations or the church; but we also do not want any unlimited freedom for bureaucratic authority and preventive disciplinary measures. (Lively bravo.)

We don't want anything unlimited, we want a well-placed, harmonious legal whole, in which every element is assigned to and firmly and legally secured to the sphere befitting it according to a higher, eternal order. I view this constitution, for which I truly have no special liking, as the initial primer in a harmonious painting, and it certainly befits us to adjust the contours and to apply a proper coloring, but not to blot it out, since we have no assurance that the new primer will produce something different and better at the first attempt. (Hear, hear! and bravo on the right.)

Likewise, we want a state parliament, but in a wholly different spirit than existed in the German lands from 1815 to 1848; we do not want it to include a weakening of monarchical authority, not a mutual control of mistrust, as the gentleman proposing the motion puts it; instead we want it to include a strengthening of the Crown. Through it, we want to add the moral power of public impression to the legal power of the Crown. (Bravo on the right.)

You will recall, gentlemen, our negotiations about the disciplinary measures against the dissidents, about the establishment of district and provincial estates, about Austrian troops marching into Holstein. Would the Crown have had more power on these occasions without the

Chambers? Did it not in fact have a great deal more power because of the Chambers? (Lively shout: Very true, quite right!)

It would also have been possible to carry out all of this under absolute monarchy; but it would have remained a mistaken judgment, a reproach, an indictment – moral victory was then achieved by the Crown through discussions in the Chambers! – And if one abolished the Chambers, would this abolish the power of public judgment? Will it not rather be the case that this power then remains solely with the daily press and public-house conversations? But are not the Chambers a far more reliable and a far more dignified organ than these?

We do not want the state parliament, furthermore, in order to promote so-called progress, this great process of disintegration of our era; on the contrary, [we want it] in order to maintain conditions, and to restore them where they have been damaged. We do not want to cede the field to the bureaucracy alone. (Bravo.)

It has always – naturally, varying with the persons – more or less always inclined toward the liberal ideas of the era, because everywhere these favor the mechanical handling of conditions. (Bravo!)

This is in the nature of things. Hence, for decades, this great process of disintegration has – even in those countries that had no Chambers – been accomplished by the bureaucracy, and have these been set back in comparison with countries that have Chambers? We want to open its mouth and free up its arms for conservatism and its representatives, so that it may attend to its rights itself through word and deed in public assembly.

The task [at hand] is therefore not the abolition, but above all the correct formation of a regional representative body. And here I can only profoundly lament that our last motion did not gain the support of our government; this would have immediately secured the constitution against future dangers. Therefore what matters now is to employ the assistance of a healthy parliament to repair the damage in individual portions of the constitution, and this only selectively, that is, everywhere where the need is apparent, not in a doctrinaire fashion through general revision. The last changes to such a work that might remain would then be to eliminate those provisions that, while completely harmless, are by no means completely dignified and appropriate.

Such a legal order, which we have set as our goal, but the achievement of which we cannot guarantee, by no means contradicts Prussian history; it is, on the contrary, in the inmost harmony with the same. There are two themes that run through the glorious history of this country. One is the power of the kings; the other is the spiritual participation of the people. The Prussian Volk was never merely a passive object of the government. Its kings achieved great deeds, but [the Volk] itself never helped achieve them merely as an instrument, but rather morally through its own will, its own consent and dedication and sacrifice. This applies to the Seven Years War, to the Wars of Liberation, and last of all to Prussia's restoration in the autumn of 1848. (Bravo!)

Whereas in other countries it was the army alone that restored authority, in Prussia the army, too, that also restored authority; but the people helped achieve this restoration spiritually and morally. (Bravo!)

A legal order like the one I have sketched and that we seek will not give away any of the king's power.

It is only looking for a form for the spiritual participation of the country, and if, in this century, this departs in part from the forms of previous centuries, I cannot find in that alone an absolute judgment for dismissal.

For this reason, Prussia ought not to be disconcerted because the great powers surrounding it have established absolute monarchies; it is seemly for every state to preserve its peculiar characteristics, especially when its peculiar characteristic is of the higher kind – and is one really so certain that absolutism in other empires will subsequently lead to favorable results? (Lively bravo from the left.)

After the February Revolution of 1848, many people believed that the end and the aim of world history was the provisional government (merriment), and again today many people believe that the end and aim of world history is absolutism; I hope that the Lord of world history has established a different aim and end for history. Only an empire based on ethical foundations, on guaranteed rights, on genuine liberty, will have a long and satisfying existence. For this reason, the absolutist constitutions in Europe should only constitute an even more urgent challenge to Prussia to maintain and develop itself as a realm of ethical foundations, of guaranteed rights, and of genuine liberty. This is its great mission; may it not prove disloyal to the same. (Lively bravo.)

By no means do I maintain that guaranteed rights are impossible except by means of written laws; that genuine freedom is impossible except by means of Chambers. For this there are a number of forms and paths. Only it is not manly to be constantly changing paths and forms instead of continuing steadfastly and courageously to the end of the path on which we have been set by Providence. (Bravo!)

It is even less manly because the distorted image of liberty has been disgraced, and faith in the archetype of liberty abandoned. (Bravo!)

Our constitution bore, according to a royal pronouncement, the broad stamp of its origins; now this stamp is getting narrower from year to year. (Voices from the left: Only not too narrow.) If we strike out the constitution, then we will have removed the damage done by the revolution, but also its gains. If, by contrast, we continue along the path we have taken over the last three years, restoring step by step the goods that have really been destroyed and damaged, along the path of public discussion and thereby of inner conviction, then we will doubly regain [our

constitution], we will make it stronger and, at the same time, increase its value in the public consciousness. Then we will have achieved not just these goods, but also their proper appreciation in the nation, which is its pledge for the future. (Bravo on the right.)

Yes, our constitution, as it stands, is still a memorial to Prussia's fall, and thereby a memorial to Prussia's shame. But it is to no avail to destroy this memorial instead of, by deeds of loyalty and political wisdom, transforming its inscription step by step, so that it might remain standing through the ages as a memorial to Prussia's rebuilding, as a memorial to Prussia's honor. Therefore I vote for [moving onto the daily] agenda. (Lively applause.)

Source: Friedrich Julius Stahl, *Siebzehn parlamentarische Reden und drei Vorträge* [*Seventeen Parliamentary Speeches and Three Lectures*]. Berlin: Wilhelm Hertz, 1862, pp. 27-36.

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