

Notes

1 Introduction

1. See Montesquieu (1950 [1758; OV 1748]; OV stands for 'original version').
2. In his famous lectures on the epochs of modern history, held for King Maximilian II of Bavaria in 1854, Leopold von Ranke shrewdly remarked: 'Dies [Ranke was referring to the American Revolution; MJP] war eine größere Revolution, als früher je eine in der Welt gewesen war, es war eine völlige Umkehr des Prinzips. Früher war es der König von Gottes Gnaden, um den sich alles grupperte; jetzt tauchte die Idee auf, daß die Gewalt von unten aufsteigen müsse' (Ranke 1971 [1854], p. 417). For better readability of the text, all original quotes in the main text have been translated into English.
3. With reference to the American Federal Constitution, Thomas Paine wrote: 'It was the political bible of the state. Scarcely a family was without it. Every member of the government had a copy; and nothing was more common, when any debate arose on the principle of a bill, or on the extent of any species of authority, than for the members to take the printed constitution out of their pocket, and read the chapter with which such matter in debate was connected.' *Rights of Man*, Part II, in Paine (2000 [1989], pp. 155–263, citation p. 186).
4. See Sieyès (1789).
5. In his final report on the Congress of Vienna, Talleyrand described the unanimous disappointment felt by the European powers on the way in which Ferdinand VII had returned as king to Spain in 1814: 'Je n'ai vu aucun Souverain, aucun ministre, qui, effrayé des suites que doit avoir en Espagne le système de gouvernement suivi par Ferdinand VII, ne regrettât amèrement qu'il ait pu remonter sur son trône, sans que l'Europe lui eût imposé la condition de donner à ces États des institutions qui fussent en harmonie avec les idées du temps.' *Rapport fait au Roi pendant son voyage de Gand à Paris* (June 1815), in Pallain (1881, pp. 436–84, citation p. 474). Indeed, this critical opinion was soon to be confirmed, for only six years after the advocates of the 1812-Cadiz-Constitution had been forced into exile, the revolution started in Spain.
6. Anderson and Anderson (1967, p. 39f., p. 78f.). The use of the term 'monarchical constitutionalism' has a long tradition in German constitutional law (*monarchischer Konstitutionalismus*), namely as a synonym for the actual constitutional development of Germany and particularly of Prussia in the nineteenth century (see, for example, Hintze 1911, p. 360f.). However, 'monarchical constitutionalism' and 'constitutional monarchism' respectively also aptly characterise the constitutional situation in France and other states after 1814. More recent studies have taken a wider view of the meaning of these terms (see Kirsch 1999b), to also encompass Bonapartist regimes and constitutional monarchies dominated by parliament (such as the English system from 1689 onwards). In this study, however, the terms are used solely to characterise constitutional systems in which the leadership role of the monarch is uncontested ('monarchischer Konstitutionalismus mit Vorrang des Königs'; Kirsch 1999b, p. 7).
7. Unless specified otherwise, 'Germany' is used in this study in a wider sense, also including the German-speaking parts of the Habsburg Monarchy (Austria).

8. *Deutsche Bundesakte vom 8. Juni 1815*. Art. 13: 'In allen Bundesstaaten wird eine Landständische Verfassung statt finden.' In Huber (1978 [1961], pp. 84–90, citation p. 88). The German noun *Landstände* or *Landtag* – the corresponding adjective being *landständisch* – traditionally signifies the assembly of (feudalistic) representatives of the estates of the realm, called together to advise and pass legislation.
9. For the terminology see, for example, Demel (1983, 1993).
10. The assumption that Southern German constitutions were direct 'successors', if not mere 'copies', of the French *Charte* is commonly accepted in more recent literature (see Brandt 1998, p. 68f.; 2002, p. 142; Fehrenbach 1996b, pp. 13–24, explicitly p. 13; Kirsch 1999b, especially pp. 322–9; Schulze 2002, p. 63; Stein and Frank 2007 [1968], p. 8; et al.). Years in square brackets refer to the year of the first edition (literature) or to the original year of publication (printed sources).
11. In this work, the terms 'English' and 'British' are used synonymously to describe the constitutional system established in the wake of the Glorious Revolution.
12. The administration of public debt has to be seen as part and parcel of reform-politics. For Bavaria and Baden see the works of Hans-Peter Ullmann (Ullmann 1986a, 1986b).
13. See, for example, Brandt (1987, 1997, 1999), Gerner (1989), Grawert (1988), Mögle-Hofacker (1981), Press (1983), Raberg (2001), Wunder (1974, 1981).
14. The agreement, though, was less apparent in Hesse-Darmstadt than in Württemberg. Ernst Rudolf Huber therefore refers to a 'verschleierte Verfassungsvereinbarung' (Huber 1967 [1957], p. 336) with regard to the 1820 Constitution of Hesse-Darmstadt.
15. See, for example, Dumont (1991), Oz-Salzberger (1995).
16. Regarding the state of comparative research in history, see Cohen and O'Connor (2004), Haupt and Kocka (1996), Kaelble (1999, 2005). As for the theory of transfer research in general see, for example, Espagne (1994). For the transfer of 'political models' in the nineteenth century see Velde (2005), Pombeni (2005). An overview of comparison and transfer in social and cultural sciences is provided by Kaelble and Schriewer (2003). As for 'transnational history', see Budde, Conrad and Janz (2006). Critical of the sharp distinction between comparative and transfer research is, for example, Paulmann (1998, especially p. 681f.). The most ambitious attempt to overcome the boundaries between transfer and comparative research is the concept of *histoire croisée* (see Werner and Zimmermann 2002, 2003, 2004, 2006). Even though it has only recently become a major methodological tool in history, the comparative method has a long tradition, particularly in legal research. In Germany, for example, the *Kritische Zeitschrift für Rechtswissenschaft und Gesetzgebung des Auslandes* ([Kritische Zeitschrift] 1829–56) consciously made use of the comparative method even in the first half of the nineteenth century.
17. As far back as 1888 the German-American anthropologist Franz Boas drew attention to the fact that 'exchange' and 'acculturation' was a basic characteristic feature of almost every culture (see Boas 1982 [1888], especially p. 631f.). Marc Bloch later identified two types of comparative study: the first compares societies so separated through space and time that no direct exchange process is possible, which might be called 'trans-cultural' comparison; the second is the more common type of 'intercultural' comparisons (see Bloch 1928, p. 18f.).
18. On the potential of combining transfer and comparative research in the field of constitutional scholarship, see Prutsch (2009a, Section 1.2.1).

19. Regarding the concept of 'new political history' see, for example, Rémond (1996 [1988]), Frevert and Haupt (2005), Kraus and Nicklas (2007).
20. In recent years, attempts have been made to overcome the one-sided 'constitutional law' orientation of the field and to widen the meaning of 'constitution'. See, for instance, the project of a *Handbuch der Europäischen Verfassungsgeschichte im 19. Jahrhundert* (Vol. 1: Brandt, Kirsch and Schlegelmilch 2006), which applies a broader concept of constitution(alism). On the scope and limits of modern constitutional history see, for example, Prutsch (2010, especially 'Introduzione: Prospettive e limiti di una "Nuova Storia Costituzionale"', pp. 6–12).

2 The *Charte* and Constitutional Monarchism

1. For details on the history and drafting of the *Charte*, see Sellin (2001, pp. 41–273). See also Prutsch (2006, pp. 13–55).
2. In February 1814 Metternich was still declaring on behalf of the Austrian Emperor that: 'Les puissances se sont réunies sur le principe de ne pas regarder le changement de dynastie en France comme le dernier but de leurs efforts [...] Elle [His Majesty the Emperor; MJP] ne se croit pas en droit de se mêler des formes de gouvernement d'un État indépendant.' In Fournier (1900, p. 287).
3. By this time, the northeastern part of France had been occupied by the allied troops.
4. A lively account of French foreign policy in the last years of the Empire can be found in the memoirs of the then foreign minister, Caulaincourt (Caulaincourt 1933). For the Congress of Châtillon see Fournier (1900).
5. This military decision was backed up by reports of growing defeatism and unrest in Paris (see Madelin 1937–54, Vol. 14, p. 223).
6. In this declaration, Napoleon was personally blamed for the failure of the peace efforts. See *Déclaration des Puissances Alliées* (25 March 1814), in Chod'zko (1863, Vol. 1, pp. 143–46).
7. Since his replacement in 1807, Talleyrand had not been assigned any political posts of importance. In 1814, he held the merely symbolic function of vice president of the Senate. Nevertheless, behind the scenes he had been able to safeguard his influence by maintaining connections with the leaders of the coalition. At the beginning of March, he intervened for Napoleon to be deposed. See Bury (1948, p. 168f.). Among the more recent biographical works on Talleyrand is Morlot and Happert (1991).
8. In contrast to the *Corps législatif*, the Senate had not been adjourned in December 1813. See Bury (1948, p. 166f.). Concerning the content and background of the talk between Talleyrand and Alexander I, see Sellin (2001, pp. 133–40).
9. See Talleyrand-Périgord (1891–2, Vol. 2, p. 165). In general, however, Talleyrand's memoirs are of only limited value as a primary source.
10. Sellin (2004, p. 278f.).
11. See Sellin (2001, p. 136).
12. Not only the Duke of Orléans, but also Napoleon's former marshal, Jean-Baptiste Jules Bernadotte, the Swedish crown prince and later king Charles XIV John, were being considered as possible candidates for the French throne (see Talleyrand-Périgord 1891–2, Vol. 2, p. 155).
13. On the role of 'sovereignty' as a political key term around 1814, see Stolleis (2006).

14. The text of this proclamation was published in the *Moniteur universel* of 2 April 1814: [Moniteur universel] 1811–68, No. 92, 2 April 1814, p. 363.
15. What was also stressed in the proclamation was that the allied powers ‘respectent l’intégrité de l’ancienne France, telle qu’elle a existé sous ses rois légitimes’ and that – ‘pour le Bonheur de l’Europe’ – a strong French nation would be assured (ibid.).
16. Talleyrand’s address in ibid., p. 365.
17. What favoured Talleyrand’s efforts was that those senators considered to be critical of Napoleon’s regime had disobeyed the Emperor’s order to leave the capital in the event of Paris being threatened by the allied troops.
18. See Prutsch (2006, p. 19).
19. *Sénatus-consulte portant que Napoléon Bonaparte est déchu du trône, et que le droit d’hérédité établi dans sa famille est aboli* (3 April 1814), in [BL] 1814–48, Vol. 1, No. °8, pp. 7–9. The document itself consists of two main parts: the first part lists a number of offences of which the Emperor was accused, whereas the second part contains the actual decision to depose the Emperor.
20. The most obvious parallels were certainly those with the English Revolution: ‘Much in the same way as parliament in the Glorious Revolution, the Senate wished to get rid of the Emperor and at the same time to preserve the institutions of the empire.’ Sellin (2004, p. 277).
21. [BL] 1814–48, Vol. 1, No. °8, p. 7.
22. Taking the text of the constitution as a basis, all these accusations were indeed well justified.
23. [BL] 1814–48, Vol. 1 No. °8, p. 9.
24. Ibid. This final sentence thus implicitly expresses popular sovereignty and revolutionary rhetoric, focused not only on juridical reasoning, but also and especially on categories such as the ‘reasonableness’ of political actions and their unison with the ‘will of the people’.
25. One can argue, however, that in a hereditary monarchy any offence committed by the ruler delegitimises all his successors in equal measures as success and charisma would legitimise them.
26. In order to prepare Napoleon’s official deposition, the Provisional Government had already addressed the armed forces on 2 April. See *Adresse du Gouvernement provisoire aux Armées françaises* (2 April 1814), in [Moniteur universel] 1811–68, No. 93, 3 April 1814, p. 367.
27. [BL] 1814–48, Vol. 1, No. °8, p. 9.
28. See *Acte par lequel le Corps législatif, adhérant à l’acte du Sénat, reconnaît et déclare la déchéance de Napoléon Bonaparte et des membres de sa famille* (3 April 1814), in ibid., pp. 9–11.
29. See Tulard (1982, pp. 466–8), Bertier de Sauvigny (1999 [1955], p. 12). An English translation of his standard work on the French Restoration was published in 1980 (Bertier de Sauvigny 1980).
30. *Adresse du Gouvernement provisoire au Peuple français* (4 April 1814), in [BL] 1814–48, Vol. 1, No. °12, pp. 12–14. Citation p. 12f.
31. Ibid., p. 13.
32. For the objections by the military commanders see Caulaincourt (1933, Vol. 3, p. 170). See also the memoirs of Marshal Marmont, one of Napoleon’s closest confidants: Marmont (1857, especially pp. 253–56).
33. The renoucement was not dated and took effect only on 11th April, when the allied powers granted Napoleon the sovereignty of Elba and an annual pension

- of two million francs (Treaty of Fontainebleau). Napoleon departed for Elba on 20 April. For details on Napoleon's abdication, see Sellin (2001, pp. 173–94).
34. See the memoirs of Etienne-Denis duc de Pasquier, the police commissioner of Paris, who was himself a member of the committee. Pasquier (1893–5, Vol. 2, pp. 315–18).
 35. See Duvergier de Hauranne (1857–71, Vol. 2, p. 98). On the Senatorial Constitution in general, see Soto (1953) and Corciulo (1997).
 36. *Constitution française* (6 April 1814), in [BL] 1814–48, Vol. 1, No. 13, pp. 14–18.
 37. See Hartmann (2003 [1985], p. 89), Duverger (1944, p. 60).
 38. There are striking similarities to the Glorious Revolution, in which William of Orange and his wife Mary were proclaimed England's rulers only after their acceptance of the Bill of Rights.
 39. See Tit. 3 Chapter I, Art. 5 of the Constitution of 1791: 'Le corps législatif ne pourra être dissous par le roi.' In [AP] 1862ff. [1787–99], Vol. XXX, p. 154.
 40. Peter Claus Hartmann (Hartmann 2003 [1985], p. 89) considers the Senatorial Constitution to be the first attempt to establish a parliamentary system. Nonetheless, it can be argued that the Constitution of 1791 had tried to do exactly this by introducing ministerial responsibility, at least in a limited form. See Tit. 3 Chapter II Section IV, Art. 5 of the 1791 Constitution: 'Les ministres sont responsables de tous les délits par eux commis contre la sûreté nationale et la Constitution; De tout attentat à la propriété et à la liberté individuelles; De toute dissipation des deniers destinés aux dépenses de leur département.' In [AP] 1862ff. [1787–99], Vol. XXX, p. 160.
 41. See Duverger (1944, p. 61).
 42. These regulations of the Senatorial Constitution were not only dictated by material, but also by fundamental political interests. That is true insofar as they were intended to create an aristocracy fashioned after the example of the English peerage system. Accordingly, the Senators would have to be financially independent in order to become an independent political power. See Sellin (2001, p. 164). See also the comments of count Lanjuinais (Lanjuinais 1819, p. 68), who was himself a senator.
 43. Duvergier de Hauranne (1857–71, Vol. 2, p. 99).
 44. Among others, the pamphlet by Nicolas Bergasse, a former member of the *Assemblée constituante*, is worthy of note (see Bergasse 1814).
 45. Louis-Charles, Duc de Normandie, Dauphin of Viennois (1789–91), Prince Royal of France (1791–3), had been born in 1785. He died in prison in 1795.
 46. In contrast to his older brother, Louis had managed to leave the country in 1791. A well-written biography is Mansel (2005 [1981]). See also Lucas-Dubreton (1952 [1925], French original) and Lucas-Dubreton (1927, English translation).
 47. See Thamer (1994, pp. 375–8).
 48. In the *Ancien Régime*, the title of *lieutenant général du royaume* was conferred to a member of the royal family or the nobility to single this person out as a temporal representative of the king. See Erbe (1985, p. 168).
 49. Charles' arrival in Paris was accompanied by popular manifestations of loyalty towards the dynasty. See Pasquier (1893–5, Vol. 2, p. 344f.). In how far these manifestations were representative for the French nation as a whole must remain open.
 50. On his entry, Charles was escorted by the National Guard, after leading generals of Napoleon had expressed their allegiance in advance. See Dupuis (1919, Vol. 1, p. 222). On Charles' entry see the *Relation officielle de l'entrée de Monsieur* [the

- traditional title for the king's younger brother; MJP], *frère du Roi, dans la ville de Paris*, in [AP] 1862ff. [1800–60], Vol. 12, 12 April 1814, p. 15f.
51. The senatorial resolution is printed in [AP] 1862ff. [1800–60], Vol. 12, 14 April 1814, p. 17.
 52. Even contemporaries noticed that the Senate had suffered a severe political defeat. See Pasquier (1893–5, Vol. 2, p. 354).
 53. In [AP] 1862ff. [1800–60], Vol. 12, 14 April 1814, p. 17.
 54. See Sellin (2001, pp. 210–13). Again it was the Tsar who wanted to directly influence the regime change in France. Whatever the more personal reasons for supporting the Senate and not the Bourbons might have been – his reserved distance to Louis was well-known, as was his high-regard of enlightened philosophy, Alexander certainly pursued sheer power-political interests, too. His activities not only aimed at a closer Russo-French alliance, which required a stable and trustworthy political system in France, but have to be seen also as part of Alexander's conception of a trans-European post-war order under Russian leadership. For a characterisation of Alexander's personality and political strategy see, for example, Metternich's remarks on the Russian Tsar in Metternich (1880–4, Vol. 1(2), pp. 315–33).
 55. See [AMAE MD France] 646, fol. 41^r–42^r. The orthography of the text contains mistakes. This manuscript consists of three pages and has neither a date nor a special heading or signature. Obviously, the document is a fragment. The text is arranged in two columns. The left one is titled 'projet du Sénat', the right one 'observations du Roi'. Whereas in the left column Articles 22 to 29 of the Senatorial Constitution are quoted, in the right one the commentaries of the King to every single one of those Articles are written down. It is highly likely that the whole draft of the Constitution was commented on by the King, but that the first part got lost.
 56. *Ibid.*, fol. 41^r. In the original, 'casse' is used, here translated as 'disbands'.
 57. *Ibid.*, fol. 42^r.
 58. *Ibid.*, fol. 42^r.
 59. See Pasquier (1893–5, Vol. 2, p. 407).
 60. *Déclaration du Roi* (2 May 1814), in [BL] 1814–48, Vol. 1, No. 89, p. 75f.).
 61. *Ibid.*, p. 75.
 62. De Maistre's *Essai sur le principe générateur des constitutions politiques* (in Maistre 1821, pp. 255–367), in which he elaborated his views on monarchical sovereignty and divine rights developed earlier in *Considérations sur la France* (in Maistre 1821, pp. 1–254. A recent critical edition is Maistre 1980 [1797]), was actually published in the same year.
 63. [BL] 1814–48, Vol. 1, No. 89, p. 75.
 64. *Ibid.*
 65. See *ibid.*, p. 75f.
 66. In [Moniteur universel] 1811–68 No. 92, 2 April 1814, p. 365.
 67. On 2 April, when Napoleon's deposition was resolved, the *Journal des Débats* printed an open letter written by Louis, dated 1 January 1814. This letter underlined that the course of history would not be turned back after his return and that the revolutionary heritage would be accepted. See *Louis XVIII aux Français* (1 January 1814), in [JD] 1815–1944, 2 April 1814, p. 3.
 68. An essential work on the making of the *Charte* is still Simon (1906). Regarding more recent research results see especially Sellin (2001, pp. 229–73).
 69. *Convocation du Sénat et du Corps législatif* (6 May 1814), in [BL] 1814–48, Vol. 1, No. 90, p. 77.

70. Text of the armistice in [AP] 1862ff. [1800–60], Vol. 12, 23 April 1814, p. 19f.
71. Details on the commission's members in Simon (1906, p. 75f.). The number 21, which frequently appears in literature, is misleading: either one of the royal commissioners (see Castries 1965, p. 22) or the president of the commission (see Erbe 1985, p. 132) is not included.
72. See [AMAE MD France] 646, fol. 41^r–42^r.
73. 'Draft A': [AN AMJ] BB 30/191, dossier 1. Printed in Rosanvallon (1994, pp. 216–22).
74. See, for example, Martin Kirsch's mistaken supposition that the influence of the King did not go beyond the decision to impose the constitution and choosing his confidants (Kirsch 1999b, p. 302f.).
75. 'Draft B': [AN Papiers Beugnot] 40 AP 7, fol. 7–14. Printed in Rosanvallon (1994, pp. 226–32). In the first draft, the royal commissioners had offered possible textual alternatives, either in the form of marginal notes or additional articles. Louis' corresponding remarks were taken into account in the second draft. Cf. [AN AMJ] BB 30/191, dossier 1. Printed in Rosanvallon (1994, pp. 222–5).
76. Louis had the military jurisdiction of the *Prévôts des Maréchaux* (Provosts of the Marshals of France) before 1789 in mind (see Erbe 1985, p. 160).
77. See the memoirs of Beugnot (Beugnot 1866, Vol. 2, p. 148), offering a trustworthy inner view of the set up of the *Charte*. The first day of the meeting served to sound out the different opinions in the commission. The deliberations as such only started one day later (23 May) based on a draft of the Abbé de Montesquiou, who had systematically ordered Ferrand's and Dambray's draft ('Draft B'). See 'Draft C': [AN Papiers Beugnot] 40 AP 7, fol. 18–20. Printed in Rosanvallon (1994, pp. 237–40).
78. See Rémond (1965, p. 268).
79. The original idea of Senate and crown having the final say in the election of the delegates of the second chamber had been vehemently opposed by the members of the commission in the preliminary meeting on 22 May. Montesquiou's draft was therefore changed insofar as the direct election of parliamentarians by the electoral committees of the departments was concerned. In return, high property-qualifications and age-limits were introduced.
80. See Sellin (2001, pp. 253–64). Among the modest achievements of the commission was a right for legislative petitions by the chambers and state payments not only for the Catholic, but also Protestant clergy.
81. See Beugnot (1866, Vol. 2, pp. 218–25).
82. Text in [AP] 1862ff. [1800–60], Vol. 12, 4 June 1814, p. 32.
83. *Ibid.*
84. *Ibid.*, pp. 32–5.
85. See Sellin (2001, p. 273). The *séance royale* actually ended with the promulgation of several additional royal decrees.
86. See Rémond (1965, p. 268f.). See also Gangl (1966, p. 273f.). Beugnot took the credit for having pressed for the term *Charte* (see Beugnot 1866, Vol. 2, p. 218f.).
87. According to Max Weber, 'jede nicht durch persönliche freie Vereinbarung aller Beteiligten zustandgekommene Ordnung' can be characterised as imposed order (Weber 1980 [1922], p. 27).
88. *Charte constitutionnelle* (4 June 1814), in [BL] 1814–48, Vol. 1, No. 133, pp. 197–207, preamble pp. 197–9. Beugnot did not draft the preamble of the *Charte* until the evening of 3 June. A detailed analysis in Sellin (2008).

89. The fact that the preamble of the *Charte* mentions Louis VI (1108–37), Louis IX (1226–70), Philip IV (1285–1314) and Louis XIV (1661–1715) shows the broad historical perspective in which the rhetoric of the preamble and the Restoration in general was embedded.
90. It is remarkable that the Age of Enlightenment was not condemned per se, but accepted as something irreversible.
91. The term ‘monarchical principle’ arose only later (for the first comprehensive theory see Stahl 1845) and hence does not represent contemporary terminology.
92. *Charte constitutionnelle* (4 June 1814), in [BL] 1814–48, Vol. 1, No. 133, p. 199f.
93. Particularly in the final stage of the Napoleonic Empire, arbitrary recruiting methods had become an object of severe criticism by the population.
94. Article 22 of the Senatorial Constitution had been formulated in more general terms: ‘La liberté des cultes et des consciences est garantie. Les ministres des cultes sont également traités et protégés.’ In [BL] 1814–48, p. 17.
95. ‘Le Roi est le chef suprême de l’Etat, il commande les forces de terre et de mer, déclare la guerre, fait les traités de paix, d’alliance et de commerce, nomme à tous les emplois d’administration publique, et fait les règlements et ordonnances nécessaires pour l’exécution des lois et la sûreté de l’Etat.’ Namely it was the king’s right to enact decrees in order to guarantee national security which could be interpreted in an arbitrary way (for the constitutional practice, cf. Section 5.3).
96. Thus, Peter Claus Hartmann (Hartmann 2003 [1985], p. 92) is mistaken when he derives the principle of ministerial responsibility from the regulations of the *Charte*.
97. ‘22. Le Roi seul sanctionne et promulgue les lois.’
98. The only exception was fiscal legislation. In such a case, bills had to be first forwarded to the *Chambre des Députés*. The details for this specific case were set in Art. 47.
99. The Articles 20 and 21 specified the procedure in such a case.
100. The provision that the second chamber had to be re-convened within three months had been taken directly from the Senatorial Constitution (Art. 10). Still, it was possible for the chamber to be dissolved several times in a row, thus effectively preventing parliament from working.
101. The English case of 1688, when the House of Commons, despite its official adjournment, had come together in the form of a private reunion in order to declare the deposition of James II, was another historical example.
102. Articles 28, 30, 31 and 33 specified organisation and function of the *Chambre des Pairs*. The right to vote in the chamber was only granted to men aged 30 and over (Art. 28). The members of the royal family and the princes obtained their peerage and the right to a seat automatically (Art. 30); their attendance at the sittings, however, required the consent of the king (Art. 31). In case of high treason, the Chamber of Peers acted as a law court (Art. 33). Article 34 laid down that a peer could only be arrested and sentenced by the chamber itself.
103. The articles dealing with election, organisation and competences of the second chamber (Art. 35–53) were collected in a specific section of the *Charte*.
104. However, the parliamentarians were not elected at the same time. Instead, every year one fifth of the Chamber of Deputies was elected. In 1824 the electoral law was changed insofar as the deputies’ term of office was prolonged to seven years and that all members of parliament were to be elected simultaneously.

105. Altogether, approximately 0.3 per cent of the whole population met the electoral qualification criteria (see Goldstein 1983, p. 4). In absolute numbers, approximately 100,000 Frenchmen had the right to vote, but only about 16,000 were eligible (see Hartmann 2003 [1985], p. 93). To ensure that in poorer departments a sufficient number of people were eligible, Art. 39 stipulated that in any case the 50 people with the highest tax yield could be elected.
106. The two last articles of the *Charte* were provisional regulations concerning the second chamber:
 '75. Les députés des départements de France qui siégeaient au corps législatif lors du dernier ajournement, continueront de siéger à la chambre des députés, jusqu'à remplacement.
 76. Le premier renouvellement d'un cinquième de la chambre des députés aura lieu au plus tard en l'année 1816, suivant l'ordre établi entre les séries.'
107. Beugnot refers to the drafts Chancellor Ferrand and Count Dambray had drawn up for the constitutional commission (cf. notes 73, 75 and 77).
108. *Rapport du Beugnot au Roi sur la forme de promulgation de la Charte*. [AN Papiers Beugnot] 40 AP 7, fol. 114–17. Printed in Rosanvallon (1994, pp. 241–43, citation p. 241).
109. The opportune moment for a restoration of the monarchy was also stressed by Beugnot in his memorandum: 'Je ne puis trop le répéter: l'autorité royale est populaire en France dans le moment où je parle: tout le monde est las d'être gouverné par de la métaphysique. On veut de la religion, on veut du Roi, on veut une prompte restauration de l'ordre intérieur et plus de débats politiques' (Rosanvallon 1994, p. 243).
110. See Weber (1980 [1922], pp. 122–4). 'Keine Herrschaft begnügt sich, nach aller Erfahrung, freiwillig mit den nur materiellen oder nur affektuellen oder nur wertrationalen Motiven als Chancen ihres Fortbestandes. Jede sucht vielmehr den Glauben an ihre, Legitimität' zu erwecken und zu pflegen' (Weber 1980 [1922], p. 122).
111. What had been shattered in Weberian terms was the traditional source of monarchical legitimacy, based on the 'Alltagsglauben an die Heiligkeit von jeher geltender Traditionen und die Legitimität der durch sie zur Autorität Berufenen'. On Weber's three pure types of political rule ('traditional', 'legal' and 'charismatic'), see Weber (1980 [1922], pp. 122–76, citation p. 124).
112. For an exhaustive analysis of changes the notion and concept of 'monarch' and 'monarchy' had undergone from the Reformation to the post-Napoleonic age, see Horst Dreitzel's monumental two-volume study *Monarchiegriffe in der Fürstengesellschaft*, which takes Germany as a case study (Dreitzel 1991).
113. See Sellin (1996, pp. 348–50).
114. *Saint-Pétersbourg, 6/18 juillet 1814*, in Maistre (1860, Vol. 1, p. 379).
115. See Maistre (1980 [1797], p. 184).
116. Chateaubriand (1814, pp. 67–71, citation p. 69). For Chateaubriand's constitutional theory and particularly his later work *De la monarchie selon la Charte*, cf. Section 6.1.
117. *Ibid.*, p. 70f.
118. The preamble of the *Charte* in [BL] 1814–48, Vol. 1, No. 133, pp. 197–9.
119. For the standing of France during the Congress of Vienna it was actually advantageous that Louis' *Charte* and not the draft of the Senate – rooted in the principle of popular sovereignty – had become the new French constitution,

- allowing Talleyrand to portray France as a victim of the Revolution (see Sellin 2001, p. 282).
120. *Rapport fait au Roi pendant son voyage de Gand à Paris* (June 1815), in Pallain (1881, pp. 436–84). Louis XVIII was at that time back from his temporary exile in Ghent after Napoleon had lost the Battle of Waterloo on 18 June 1815.
 121. In *ibid.*, p. 464.
 122. In *ibid.*, p. 467.
 123. In *ibid.*, p. 469.
 124. In *ibid.*, p. 475.
 125. Cf. the title of Sellin (2001): *Die geraubte Revolution*.
 126. See Sieyès (1789).
 127. See, for example, Cunz (1936, p. 104f.).
 128. Concerning the politico-theoretical implications of the *Charte*, see also Rials (1987).
 129. See Kirsch (1999b, p. 323), Beyme (1973 [1970], p. 79).
 130. See Koriöth (1998, p. 37).
 131. Kägi (1937, p. 94). There are, indeed, no indications in the sources that the King or members of the constitutional commission had a ‘transfer’ of the English political system to France in mind. The distinctiveness of the French *Charte* is also underlined by a later quote of Pierre-Paul Royer-Collard, one of the leading figures of the *Doctrinaires*, who referred to the independent character of the 1814 constitution, and illustrated that a takeover of the English system of government in France would be doomed to failure due to the different historical contexts and, more particularly, the absence of a powerful aristocracy (in Barthélemy 1904, p. 17).
 132. See Pufendorf (1672, especially Book 7, Ch. 5, Para. 13; Book 7, Ch. 6, Para. 6–12). On concepts of *monarchia limitata* from Grotius to Pufendorf, see Dreitzel (1991, Vol. 1, pp. 94–9).
 133. See Grotius (1625, especially Book 1, Ch. 3). The term *monarchia limitata*, however, is not yet explicitly used by Grotius.
 134. Bödeker (2002, p. 235).
 135. See Pufendorf (1672, Book 7, Ch. 6, Para. 10).
 136. For this view see, for example, Horn (1672 [1664], Book 1, Ch. 10, Para. 7).

3 Constitutional Discourse and Political Reality in Post-Napoleonic Germany

1. In addition, Horst Dippel (1994, p. 12) stresses the need to distinguish ‘political’ and ‘constitutional-law’ (*staatsrechtliche*) discussions.
2. The notions of ‘constitutional’ and ‘political discourse’ applied here are thus understood in a more down-to-earth way than by authors such as Keith Michael Baker, who defines (historical) ‘political discourse’ as a ‘set of linguistic patterns and relationships that defined possible actions and utterances and gave them meaning’ (Baker 1990, p. 24).
3. Relatively little research has been done on early constitutional discourse in Germany at the turn of the nineteenth century and the role and importance of constitutional models in particular. If such research exists, then it is from a specific perspective (see, for example, Lenk 1969, Unruh 1977, Asmus 1992, Dreyer 1993, Fernández Sarasola 2000, Prutsch 2009b).

4. For concrete reception and transfer processes in the making of constitutions in Bavaria and Baden, cf. Chapter 4.
5. Cf. also concepts of Germany as a 'verspätete Nation' (Plessner 1959 [1935], title).
6. The characterisation of the ideal seventeenth-century civil servant in Germany as 'der seinem Fürsten treu ergebene Rat, umfassend gebildet, vor allem aber ein solider Praktiker, persönlich fromm, integer, fleißig, bescheiden und unbestechlich' (Stolleis 1980, p. 466) can be considered the lasting working ethos of eighteenth-century *Beamtentum*, too (see also Weber 1994).
7. On German *Bildungsbürgertum* during the nineteenth century see the four-volume opus Conze and Kocka (1985–92). For its political role in particular see volume four, *Politischer Einfluß und gesellschaftliche Formation*.
8. On this interrelation see, for example, Gall (2000).
9. See, among others, Wehler (1994 [1973]).
10. See, for example, Oz-Salzberger (1995) on the German reception of the Scottish Enlightenment.
11. See Dippel (1994, p. 9).
12. German historiography in the second half of the nineteenth and first half of the twentieth century was aware of this 'constitutional openness', even though in the mood of the period, falling back on foreign 'models' was interpreted in terms of backwardness and immaturity (see Wilhelm 1928, p. 1f.).
13. On Montesquieu's reception in Germany during the eighteenth and beginning of the nineteenth century see Herdmann (1990).
14. Heumann von Teutschenbrunn (1760, pp. 66, 287). The title of his work – *Vom Geist der Gesetze der Teutschen* – gives evidence for the influence of Montesquieu.
15. For example, *Neuer Weg zur Unsterblichkeit für Fürsten*, in [Berlinische Monatsschrift] 1783–1811, Vol. 5, 1785, pp. 239–47. 'Will ein Fürste seinen Gesetzen [...] eine ungewöhnliche Dauer verschaffen, so muß er dem Staat eine Verfassung geben [...] Er muß bewirken, daß von nun an keine Gesetze anders als mit Einwilligung des gesamten Staats gegeben werden können; mit einem Worte, er muß den Staat in eine Republik verwandeln, in welcher das Haupt der regierenden Familie den bloßen Vorsitz hat' (*ibid.*, p. 241).
16. On the perception of the American Revolution and its impetus in late eighteenth-century Germany see Dippel (1977).
17. See, for example, Dippel (1994, pp. 14–17; 1995, pp. 557–65). In contrast, older literature tended to overestimate the knowledge about and relevance of the American model (see, for example, Angermann 1974, p. 3). By the nineteenth century, an undeniable enthusiasm about the Revolution as such and the practical impact of the American Revolution on German constitutionalism was mixed up (see, for instance, Biedermann 1858, especially p. 485). On the long-term implications of the American Constitution for German constitutionalism see Wellenreuther and Schnurmann (1991), Fröschl (2008).
18. See [Staatsgesetze] 1785.
19. See Fay (1925, p. 10).
20. One of the most important sources of knowledge about foreign constitutional texts in the 1780s and 1790s was the *Historisch-politische Magazin*, edited by Albrecht Wittenberg (see [Historisch-politisches Magazin] 1787–95). The Federal Constitution of 1787, in *ibid.*, Vol. 2, 1787, pp. 911–21, 984–94.
21. See Seidel (1795, citation p. 58).
22. See Bülow (1797, especially pp. 90–110, citation p. 92). His study has to be read against the backdrop of personal and economic setbacks in the United States.

- Critical of the American political system at that time is, for example, also Bülow (1800).
23. *Ustawa rządowa* (3 May 1791), in [Ustawa rządowa] 1991 [1791]. The Constitution had been drafted with the collaboration of Stanisław Małachowski, Ignacy Potocki, Hugo Kołłątaj, Stanisław Staszic, Scipione Piattoli and others, and was adopted as a Government Act (*Ustawa rządowa*).
 24. In [Gazeta Narodawa] 1791, No. 37, 7 May 1791. For Małachowski, the Polish Constitution avoided the faults and errors of both and was adapted as far as possible to the particular circumstances of the country. On the impact of the English and especially the American Constitution on the Polish Constitution, see Unruh (1989, pp. 135–8). On the role of the Polish Constitution in the context of European constitutionalism, see Unruh (1974).
 25. Executive power was in the hands of the royal council, the ‘Guardians of the Laws’ (*Straż Praw*), presided over by the King and comprising five ministers appointed by him. In addition, council members included the Roman Catholic Primate, the Crown Prince, the Marshal of the Sejm and two secretaries. As in Britain, acts of the king required the countersignature of the respective minister. Moreover, by stipulating that the king ‘shall be answerable for nothing to the nation’, a counterpart to the English ‘The king can do no wrong’ was introduced.
 26. Translations of the Polish Constitution were soon published in a number of German journals (see, for example, [Historisch-politisches Magazin] 1787–95, Vol. 9, 1791, pp. 668–98; [Stats-Anzeigen] 1782–93, Vol. 16, 1791, pp. 328–49).
 27. See Biester (1792, pp. 582–4, citation p. 583). As for details on contemporary German opinions see Vahle (1971).
 28. Even Jacobites in the Rhineland were in favour of the Polish Constitution, which they regarded, however, only as an intermediary stage towards a radical change of polity and society. Among the few contemporaries who had a more sceptical opinion was J. W. von Archenholz (see, for example, Archenholz 1792, especially p. 31).
 29. Outside Germany, too, conservatives paid tribute to the new constitution. In his *Appeal from the New to the Old Whigs*, Edmund Burke celebrated the Polish Constitution as ‘regular progress, because founded on similar principles, towards the stable excellence of a British Constitution’ (Burke 1791, p. 128). The establishment of a hereditary monarchy and the balance between executive and the bicameral legislative branch obviously fit into Burke’s own constitutional concept. That the Constitution actually referred to the revolutionary principle of the sovereign nation by declaring that ‘all authority in human society takes its origin in the will of the people’ (Art. V) was – deliberately or not – ignored by Burke and German conservatives.
 30. In post-Napoleonic discourse, the Constitution of 1791 was practically no longer present.
 31. See, for example, [Historisch-politisches Magazin] 1787–95, Vol. X, 1791, pp. 172–214, 329–56.
 32. See Burke and Gentz (1991 [1793]). At the beginning of the 1790s, Gentz (1764–1832) had not yet become a distinct conservative. On the contrary: inspired by his reading of Rousseau, he was enthusiastic about the Revolution and defended the Declaration of the Rights of Man and of the Citizen in his first work *Ueber den Ursprung und die obersten Prinzipien des Rechts* (Gentz 1791).
 33. See Humboldt (1792).
 34. *Ibid.*, p. 86.

35. *Ibid.*, p. 88f.
36. As with the case of the American Federal Constitution, the Polish 3 May Constitution and the French Constitution of 1791, the subsequent French revolutionary constitutions and constitutional drafts were also almost immediately translated into German. See, for example, the Girondist constitutional draft of 1793 in [Deutsches Magazin] 1791–1800, Vol. 5, 1793, pp. 618–716. The Jacobin Constitution of 1795 in *ibid.*, Vol. 6, 1793, pp. 1265–93; [Historisch-politisches Magazin] 1787–95, Vol. XIII, 1793, pp. 521–25, 648–68. The Constitution of 1795 in *ibid.*, Vol. XVIII, 1795, pp. 244–306. French parliamentary debates on constitutional questions are also widely quoted in German journals of the time. See, for example, *ibid.*, Vol. XIII, 1793, pp. 287–306, 352–78, 484–521 (speech by Condorcet on the Girondist constitutional project); *ibid.*, Vol. XVIII, 1795, pp. 59–91, 113–70 (speech by Boissy d'Anglas on the new Constitution); *ibid.*, Vol. XVIII, 1795, pp. 338–69 (report of Sieyès in Parliament on the Constitution of 1795). On French influences on German constitutionalism between 1789 and 1815, see Siegmund (1987).
37. See the perception of constitutionalisation processes in Switzerland (Meiners 1792; Eggers 1799).
38. See [Vollendete Verfassung] 1793.
39. See Erhard (1795). Erhard argued that the soul of modern constitutions was the principle of universal justice, based on law and inalienable human rights. Thus, he distanced himself clearly from defenders of the traditional order and the idea of enlightened absolutist reforms, but also from the Jacobin ideology of an unrestricted 'rule of virtue'. Regarding the political and constitutional ideas of the Jacobin movement in Germany during the 1790s, see Lamprecht (2001).
40. See, for example, Gentz's defence of what he called *System der politischen Wechselwirkung* (Gentz 1795), revealing the defects of Sieyès' political philosophy and essentially directed against the Constitution of 1795.
41. It is symptomatic that in 1792 the *Gesellschaft der Wissenschaften zu Erfurt* advertised a prize for the 'beste populäre Schrift, wodurch das deutsche Volk von den Vortheilen seiner vaterländischen Verfassung belehrt und für die Uebel gewarnt würde, zu welchem Überspannte Begriffe von ungemessener Freiheit und idealischer Gleichheit führen' (in [Wirksamste Mittel] 1794, p. 400).
42. On the problem of continuity regarding political representation at the turn of the nineteenth century, see Vierhaus (1977).
43. See, for example, Häberlin (1793). Among the studies dealing with the Constitution of the *Reich* is also Hegel's early work *Die Verfassung Deutschlands*, written between 1800 and 1802 (Hegel 1999 [1800–2]). An overview on the debates from the 1760s onwards is Düwel (2008).
44. These drafts, six altogether, are printed and analysed in Dippel (1991; see also Dippel 1995, pp. 566–70). Critical to Dippel's conclusions: Neugebauer-Wölk (1992).
45. One of the advocates of partial reforms was Karl von Dalberg, who in 1802 became the last Archbishop-Elector of Mainz and Arch-Chancellor of the Empire. See his pamphlet *Von Erhaltung der Staatsverfassungen* (Dalberg 1795).
46. The question of whether the old Constitution of the *Reich* could be rekindled was generally answered in the negative (see, for example, Schue 1809). Instead, the Confederation of the Rhine was considered a possible starting point for a new *Reichsverfassung* (see, for example, Gosch 1809).
47. See, for example, [Wohl der Völker] 1809.

48. On the 'national awakening' of Germany during the *Befreiungskriege*, see Wilke (1996).
49. The exception proves the rule, though, and there were indeed a number of German authors praising Napoleonic constitutionalism. See Buchholz (1804), expressing admiration for Napoleon's non-constitutional action, which would make him a true symbol of 'sovereignty'.
50. In Germany, the *Code Napoléon* was enacted in those areas annexed by France in the Peace of Lunéville and in the northeastern territories incorporated into the Empire in 1811, but also in several member states of the Confederation of the Rhine (for example, Westphalia and Berg). In other member states, such as Baden, the *Code* was adopted in a modified form. On the introduction in the Confederation of the Rhine, see Fehrenbach (1983 [1974]). It is characteristic that overall the *Code Napoléon* and its enactment attracted more attention than the release of new constitutions in several German states. Of the numerous contemporary contributions on the *Code*, only a few examples may be mentioned: [Ansichten] 1808, Goßler (1809a, 1809b), [Einführung Berg] 1809, [Organischer Charakter] 1811, [Worte über die Einführung] 1811.
51. For French influences on these reform projects, see Fehrenbach (1981).
52. In contemporary writing there was already the idea that administrative and constitutional reforms had to go hand in hand, explicitly stated in articles such as *Welche Veränderungen sind in der Preussischen-Staatsverfassung und Verwaltung nothwendig?* in [Neue Feuerbrände] 1807–8, Vol. 2(4), 1807, pp. 16–81; Vol. 3(7), 1807, pp. 1–26.
53. *Proclamation an die Deutschen* (25 March 1813), in Huber (1978 [1961], p. 81f.). This proclamation had been preceded by a declaration of King Friedrich Wilhelm III one week before: *An Mein Volk!* (17 March 1813), in [Schlesische Zeitung] 1766–1819, 20 March 1813.
54. See Grimm (1988, p. 62).
55. Dahlmann (1815, p. 47).
56. A good overview of German political thought during the Restoration period is Faber (1981). On the predominant paradigm of a monarchical-constitutional state in the period, see Boldt (1975).
57. See [Rheinischer Merkur] 1814–16. The intense earnestness of the paper, the bold outspokenness of its hostility to Napoleon, and its fiery eloquence secured the *Rheinischen Merkur* almost instantly a position and influence unique in the history of German newspapers. Napoleon himself is said to have called the newspaper – half contemptuous, half respectfully – *la cinquième puissance* fighting against him.
58. See, for example, Agulhon (1977 [1970]), McPhee (2002).
59. See Faber (1981, p. 261). Caution regarding the evaluation of 'public constitutional discourse' in post-Napoleonic Germany is also expressed by Planert (2007, p. 26).
60. The subsequent division into 'conservative' vs. 'liberal' is conventional and certainly worthy of refinement, but might serve its purpose for the needs of this study. Despite the predominant 'preservative mood' among most intellectuals of the time, it seems to be daring to characterise the whole political landscape of the *Vormärz* as 'conservative' only (see, for example, Gerhardt 2007, distinguishing just different conservative groups).
61. Görres increasingly became a Romantic conservative. In particular, his *Koblenzer Adresse* of 1818, directed to the Prussian King, reveals Görres' conservative constitutional ideas.

62. In [Deutsche Staatsanzeigen] 1816–18, Vol. 1, 1816, p. 10f.
63. Besides these two conservative groups, namely Romantic conservatives and state-legitimists, ‘patrimonial-rational conservatives’ was a third one. This branch was most prominently embodied by Ludwig von Haller and his influential *Restauration der Staats-Wissenschaft* (Haller 1816–25).
64. On nineteenth-century German semantics of *Liberalismus* in a comparative European perspective, see Leonhard (2001, for the period until 1820 pp. 185–208).
65. On the role of Benjamin Constant for (liberal) political conceptions during the *Vormärz*-period, see Gall (1963). On Constant’s importance for continental European political thought, see Weber (2004).
66. Heinrich Friedrich Karl Reichsfreiherr vom und zum Stein (1757–1831) became famous for his sweeping reforms in Prussia after the Peace of Tilsit (1807), which were implemented together with Karl August von Hardenberg (1750–1822). After his enforced resignation in 1808 and his retirement to the Austrian Empire, vom Stein was summoned to the Russian Empire by Tsar Alexander I in 1812. After the Battle of Leipzig in 1813, Stein became head of the council for the administration of the re-conquered German countries. For the history of vom Stein’s life still crucial is Pertz (1849–55). See recently also Duchhardt (2007).
67. Only after 1830 and under changed societal and political prerequisites did the ‘national element’ regain importance for the constitutional movement, especially among liberals and radicals (see Faber 1981, pp. 272–5).
68. What was stressed was the French nation’s innate deceitfulness and unrestricted striving for power, resulting in the concept of France as the traditional enemy and adversary of the German nation (*Erbfeind*). See, for example, *Friede mit Frankreich! Aber auch Versöhnung??*, in [Teutsche Blätter] 1814, No. 74, 25 June 1814, pp. 271–4. See also *Teutschlands Ansprüche*, in [Rheinischer Merkur] 1814–16, No. 76, 23 June 1814, p. 1f., where France is qualified as ‘teutscher Erbfeind’ (ibid., p. 1). See also Jeismann (1996).
69. See *Wie ward Frankreich unter Napoleon regiert?*, in [Minerva] 1792–1858, Vol. 3, 1814, pp. 302–14; *Unwillen der Französischen Republikaner über die neue Konstitution [that is the Constitution of 1799; MJP]*, in [Minerva] 1792–1858, Vol. 2, 1815, pp. 483–95.
70. Regarding French and British influences on German *Vormärz*-liberalism, see Eyck (1957).
71. In the achievements of the Revolution, Rotteck saw the triumph of the law of reason and the inherent rights of men. Rotteck was especially enthusiastic about the feats of the first stage of the Great Revolution, embodied by the 1791 Constitution (see Rotteck 1834 [1813–27], Vol. 9, especially p. 115).
72. Even Johann Christoph von Aretin, though collaborating with Rotteck, qualified the Constitution of 1791 in his *Staatsrecht der konstitutionellen Monarchie* as a ‘verunglückter Versuch’, originating ‘aus dem eiteln Verlangen, selbst Muster sein zu wollen’. Aretin and Rotteck (1824–8, Vol. 1, 1824, p. 66).
73. See Asmus (1992).
74. For Arndt, due to the ‘überspannten Ideen von menschlicher Freiheit und von Staatsverfassung und Gesetzgebung’ (Arndt 1814, p. 491), the Constitution of 1791 had to end in discord and misery. On Arndt’s anti-French attitude, see Kohn (1949, p. 795f.).
75. See Valjavec (1951, p. 177).
76. See Dippel (1994, pp. 17–31). See also Angermann (1974), Dreyer (1993), Krüger (1996). In 1814–15, neither the Federal Constitution nor the state constitutions were available in new editions.

77. See Depkat (1998).
78. Comments of Leopold von Henning on Jefferson's *A Manual of Parliamentary Practice for the Use of the Senate of the United States*, translated into German in 1819. (in Jefferson 1819, p. 311).
79. See Pölitz (1817–25, Vol. 1, 1817, p. 31f.).
80. See *ibid.*, p. 53. The first of the 12 Constitutional amendments originally submitted to the state legislatures for ratification by the First Congress on 25 September 1789, namely the 'Congressional Apportionment Amendment', is technically still pending before state lawmakers. The second amendment on 'Variance of Congressional Compensation' was only ratified in 1992 as the 27th Amendment of the United States Constitution.
81. That is, the 11th (13th proposed) amendment on immunity of states from suits from out-of-state citizens and foreigners not living within the state border (enacted 7 February 1795) and the 12th (14th proposed) amendment on the revision of presidential procedures (enacted 15 June 1804). On Pölitz's mistakes regarding the constitutional amendments, see also Dippel (1994, p. 25), who, by mistake, dates the 11th amendment back to 1798 instead of 1795.
82. Görres considered a 'Bundesstaat in den Formen des Amerikanischen der Gegenwart' suitable for Germany, arguing that a centralised state would not be workable (Görres 1819, p. 203).
83. See Mohl (1824). A planned second volume on administrative questions was never published.
84. In later studies, Mohl became even more explicit when he remarked in 1835 that 'die positive Nachahmung der amerikanischen Einrichtung' was by no means advisable (Mohl 1835, p. 23).
85. For further information on the pre-1812 constitutional debates, see García Moneris (2003).
86. The Constitution of 1812 had been preceded by the Bonapartist 'Statute of Bayonne' (6 July 1808), which, however, never came into force due to Joseph Bonaparte's authoritarian politics and the fact that Spain was in a state of war. On the constitutional-historical role of the Statute, see Solé Tura (2005 [1977], pp. 9–13), Bernecker and Brinkmann (2006, pp. 606–10).
87. A recent edition of the constitution, including the introductory *Discurso preliminar*, is Fernández García (2003). The length of the text reflects the ambition to include as many legal regulations as possible into the Constitution, cf. the detailed electoral law (Art. 27–103). Still, in contrast to the French Constitution of 1791, a catalogue of fundamental rights was missing.
88. The king had, among other things, only had a suspensive veto (cf. Art. 144–9).
89. On the transnational implications of the Spanish Constitution, see Badía (1963, 1991).
90. In 1814, translations were not only published in Paris, but also in Rome and Milan. In 1820, a number of new editions followed, for example in London, Naples, Piedmont and Lucca (see Badía 1963, p. 154). On the perception of the Spanish Constitution in Germany, see especially Dippel (1999).
91. See [Rheinischer Merkur] 1814–16, No. 34, 29 March 1814, p. 3f.; No. 35, 31 March 1814, p. 3f.; No. 36, 2 April 1814, p. 3.
92. *Spanien und Ferdinand VII*, in *ibid.*, No. 66, 2 June 1814, p. 1f., citation p. 1.
93. See, for example, Sebald Brendel's opinion that the Constitution of 1812 'dem Stand der spanischen Kultur nicht ganz angemessen [ist]' (Brendel 1817, p. 160).

94. See *Die neue, von den Cortes gegebene, spanische Konstitution, im Auszuge*, in [Die Zeiten] 1805–20, Vol. 39, August 1814, pp. 163–85, especially p. 169. The actual summary of the constitutional text (pp. 170–85) was preceded by an introduction (pp. 163–70). For Voß, the Cortes had merely seized its political opportunity. Under these circumstances, the reaction of the King was foreseeable, too: ‘es kann nicht befremden, daß der König, da er sich fähig dazu fühlte, sie [the Constitution; MJP] verwarf; und er handelte hierin konsequenter, wie die Cortes’ (*ibid.*, p. 169).
95. See Dahlmann (1815). The *Kieler Blätter* were one of the most influential organs of liberalism in northern Germany and beyond, published by a number of professors of the University of Kiel, among them Dahlmann, Niels Nikolaus Falck and Carl Theodor Welcker. For more information, see Vogel (1989).
96. Dahlmann (1815, p. 58).
97. See Benzenberg (1816, p. 315f.).
98. [Spanien] 1815, p. 58. The author had no doubt that ‘die Konstitution vom Könige ohne Nachtheil hätte beybehalten werden können’ (*ibid.*, p. 63).
99. Initiated by the Revolution, a number of new editions and contributions were published, for example *Politische Konstitution der spanischen Monarchie*, in [Die Zeiten] 1805–20, Vol. 62, May 1820, pp. 264–92; June 1820, pp. 380–404; July 1820, pp. 66–89. In response to this growing interest, conservatives discovered the Spanish Constitution to be an object of hate. See especially Karl Ludwig von Haller’s sharp criticism in his work *Ueber die Constitution der spanischen Cortes* (Haller 1820). Nonetheless, the debates on the Cádiz Constitution never reached an intensity like in Naples-Sicily or Piedmont, where the Spanish model played a central role in the constitutionalisation processes in 1820/1821 (see Daum 1999).
100. The Constitution was signed and dated 17 May (see [Grundlov] 1968 [1814]).
101. As for the genesis of the Constitution of 1814 and the role of the Storting see, for example, Höjer (1882). In peace negotiations, Christian Frederik had agreed to relinquish claims to the Norwegian crown and return to Denmark if Sweden would accept the Norwegian Constitution and a loose personal union. This union between Sweden and Norway lasted until 1905, when Norway declared the union dissolved.
102. See Andenæs (1976), Unruh (1989, pp. 141–7). On the role of the Eidsvoll Constitution as a European constitutional model, see Unruh (1977).
103. Cf. § 50.
104. Cf. in particular § 108 and § 109.
105. Cf. § 96, § 99, § 100, § 101, § 104.
106. The procedure for overriding a royal veto followed the example of the French 1791 Constitution and the Spanish 1812 Constitution: a bill was considered sanctioned by the king if it had been passed by parliament in three readings.
107. Cf. § 87 and § 88. Facsimiles of the original text in Jägerskiöld and Kroon (1941). On the history of the 1809 Constitution, see Lagerroth (1942) and Karlbom (1964). On its origin, see Rönström (1997).
108. See *Konstitutionen. Grundgesetz des Königreichs Norwegen*, in [Allgemeine Staats-Korrespondenz] 1814–15, Vol. 3, 1815, pp. 128–39, pp. 415–35. Subsequent to the full first version of 17 May 1814, also the revisions of 4 November 1814 were printed (*ibid.*, pp. 431–5).
109. That is also true for the Polish Constitution of 1791, which does not seem to reappear at all in German constitutional discourse around 1815, despite its modest perception in the 1790s (cf. Section 3.1).

110. George Dyer observed wryly in 1812: 'We have at present three predominant parties in the country [...] Yet they all talk of rallying round the Constitution, like different religious sects, who all appeal to the same code.' (Dyer 1812, p. 4).
111. In contrast to older literature, more recent studies reveal that the English model played an important role among liberals throughout Germany.
112. Dahlmann (1815, p. 57).
113. 'zwei Kammern von wesentlich verschiedenem und doch in der Erhaltung des Ganzen wiederum zusammenschlagendem Interesse, die einen [House of Lords; MJP] durch erblichen Rang, das Alterthum des Geschlechts und großen Landbesitz an die Erhaltung des Herkömmlichen und Gültigen gefesselt, die andern [House of Commons; MJP] durch mannichfaltige Einsichten, Gelehrsamkeit und Geschäftserfahrung geeignet, den Gang der Zeit und die notwendigen Forderungen des Augenblicks klar aufzufassen' (ibid., p. 57).
114. Ibid., p. 58.
115. On the influence of English constitutional practices on German liberals, see Wilhelm (1928). See also Eyck (1957).
116. *Grundlagen der englischen Verfassung und deren Anwendbarkeit in Teutschland!*, in [Neuer Rheinischer Mercur] 1816ff., No. 131, 17 August 1817, p. 527f.; No. 132, 19 August 1817, p. 529f.; citation p. 527f. Originally printed in *Stellen aus ältern englischen Parlamentsreden (Beschluß)*, in [Kieler Blätter] 1815–19, Vol. 3, 1816, pp. 370–74, citation p. 370.
117. Defects of political practice in Great Britain were widely discussed in the press and in political journals. See, for example, *Die englischen Minister in der Klemme* (in [Die Zeiten] 1805–20, Vol. 47, August 1816, pp. 270–300); *Politische Krämpfe und Zuckungen des Staatskörpers Großbritannien* (in ibid., Vol. 50, June 1817, pp. 356–81; Vol. 51, September 1817, pp. 363–82; Vol. 52, October 1817, pp. 117–40; Vol. 52, November 1817, pp. 169–204).
118. See, for example, Freiherr vom Stein to Princess Wilhelm; Capenberg, 20 November 1828 (in Pertz 1849–55, Vol. 6, pp. 626–8).
119. [VVLKB] 1815–19, Abt. 6, 1815, p. 7f.; Stein's friend, the diplomat Hans von Gagern, wrote in 1823 in the *Allgemeine politische Annalen* that 'Großbritanniens Verfassung unstreitig Vorbild und Ziel geworden [ist]' (Gagern 1823, p. 233).
120. Blackstone and Montesquieu's works were well known due to extracts being frequently published in the press. See, for example, [Neuer Rheinischer Mercur] 1816ff., No. 130, 28, September 1818, column 813f., with an excerpt from *Esprit des lois*.
121. See Wilhelm (1928, p. 16).
122. See Delolme (1771).
123. Contemporary esteem for Delolme was well expressed by Dahlmann in 1818: 'Der Genfer De Lolme steht neben Locke, Blackstone und Burke unter Englands constitutionellen Classikern.' *Stufen der Gründung der Englischen Staatsverfassung. Auszug aus De Lolmes drei ersten Capiteln*, in [Kieler Blätter] 1815–19, Vol. 5, 1818, pp. 458–71, citation p. 458.
124. Constant (1814, p. 4); cf. Section 6.1.
125. See Schmalz (1806).
126. See Vincke (1815). In his treatise, Vincke praised the self-government of the English counties.
127. 'unsere Hoffnung [geht] nicht soweit, daß wir der Einführung und Dauer einer englischen Freiheit und Verfassung in Deutschland entgegensehen: diese ist eben eine wahrhaft englische, welcher wir bei unserem politischen Sündenfalle

- nicht fähig sind, und welche sogar die wenigsten Deutschen begreifen' (Rudhart 1816, Vol. 1, p. xvii). Nonetheless, Rudhart himself greatly admired the English Constitution for its gradual evolution.
128. Rehberg (1793, Vol. 1, p. 56).
 129. Vincke (1815, p. 6).
 130. See *ibid.*, p. 6f.
 131. See, for example, Friedrich Ancillon's *Ueber die Beurtheilungen der Englischen Verfassung*, in Ancillon (1828–31, Vol. 1, pp. 401–27).
 132. The superior strength of parliament was considered a characteristic and non-transferable element of the English Constitution (see Stahl 1845, p. 34f.).
 133. Rotteck's criticism of British constitutional practices and theories hinged on the charge that the English Constitution was the result of events, not of free reason. Therefore he considered it a 'patchwork' (see Rotteck 1841–3, Vol. 2, p. 98). Regarding English political institutions, Rotteck was especially censorious of the British parliament which he considered to be an outgrowth of a strange electoral system, which would mock all rational concepts of popular representation (*ibid.*, Vol. 1, p. 292). It can reasonably be argued that Rotteck's Anglophobe attitude was proportionate to his Francophile leanings and that the one conditioned the other. But in this as in many other respects, he differed considerably from his fellow liberals who were more often than not Anglophile and Francophobe.
 134. See, for example, Filangieri (1780–5), Destutt de Tracy (1819).
 135. *Nachahmung englischer Institute in Teutschland*, in [Neuer Rheinischer Mercur] 1816ff., No. 37, March 1817, p. 151f.
 136. Almost all important German newspapers reported – with a delay of several days – in detail on the April events in France. See, among many others: [Teutsche Blätter] 1814, No. 42, 11 April 1814, I, pp. 179–84; No. 43, 14 April 1814, I, pp. 185–90; No. 46, 21 April 1814, pp. 199–202; No. 46, 23 April 1814, I, p. 203f.; [Rheinischer Merkur] 1814–16, No. 40, 11 April 1814; No. 41, 13 April 1814.
 137. [Rheinischer Merkur] 1814–16, No. 42, 15 April 1814, p. 2. The draft was called 'das abgeschmackteste, lustigste, untauglichste und nichtigste, was je in dieser Aer die Welt gesehen'.
 138. See *ibid.*, No. 43, 17 April 1814.
 139. See *ibid.*, No. 42, 15 April 1814, p. 3, following the argument of Nicolas Bergasse's influential pamphlet *Réflexions sur l'Acte constitutionnel du Sénat* (Bergasse 1814). In general, the German press was remarkably well informed about French publications on the Senatorial draft, which were largely negative. See, for example, [Rheinischer Merkur] 1814–16, No. 57, 15 May 1814, p. 1f.; No. 65, 31, May 1814, p. 1f.
 140. The Declaration of Saint-Ouen itself was positively evaluated in Germany. See, for example, [Rheinischer Merkur] 1814–16, No. 54, 9 May 1814, pp. 1–3.
 141. See, for example, *Ueber die französische Konstitution vom Jahr 1814. von Gregoire, vormaligem Bischofe von Blois, Senator etc.* in [Europäische Annalen] 1795–1820, Vol. 2(6), 1814, pp. 312–88. Detailed accounts of the French Restoration in journals followed over the next few months. See, for example, *Wiedereinsetzung und Rückkehr Ludewigs XVIII*, in [Die Zeiten] 1805–20, Vol. 41, February 1815, pp. 195–222; Vol. 41, March 1815, pp. 336–68.
 142. See, for example, the *Teutschen Blätter*, in which the whole Royal Session of 4 June, including the speeches of King and Chancellor, was translated: [Teutsche Blätter] 1814, No. 69, 13 June 1814, I, p. 296; No. 70, 16 June 1814, I, pp. 297–302; No. 71, 18 June 1814, I, pp. 303–6.

143. See, for example, [Charte constitutionnelle 1814] 1814a. Bilingual versions were also printed in various journals, for example, [Die Zeiten] 1805–20, Vol. 42, April 1815, pp. 113–35.
144. See [Charte constitutionnelle 1814] 1814a (*Constitutions-Urkunde*), 1814b (*constitutionelle Charte*); [Charte constitutionnelle 1830] 1830a, 1830b (*Verfassungs-Urkunde*) and 1830c (*constitutionelle Charte and Grundgesetz*).
145. *Die neue Constitution*, in [Rheinischer Merkur] 1814–16, No. 72, 15 June 1814, pp. 1–3, citations p. 1.
146. *Ibid.*, p. 2.
147. See *ibid.*, No. 309, 5 October 1815, p. 2: ‘die Sache der Legitimität verlangte, daß Ludwig XVIII. seine Krone wieder erhielt. Niemand behauptet das Gegentheil, die Sache der rechtmäßigen Fürsten ist die heiligste unter Allen, sie ist die aller Völker, denn ihre Ruhe hängt davon ab’.
148. See *ibid.*, No. 44, 19 April 1814, p. 3: ‘Er [Louis XVIII; MJP] hat der Gesetzgebung der alten und neuen Völker ein tiefes Studium gewidmet. Seine politischen Grundsätze sind auf die liberalsten Ideen und auf die eifrigste Liebe des Menschengeschlechts gegründet. Sein Aufenthalt in England hat seine Grundsätze noch mehr befestigt; derselbe brachte eine standhafte Vorliebe für diejenigen Regierungen hervor, welche die öffentliche Freyheit und die individuelle Sicherheit eben so sehr wie die Macht des Regenten garantiren.’
149. [Teutsche Blätter] 1814, No. 70, 16 June 1814, I, p. 300, footnote f. It was argued that a plebiscite would have legitimised the political system, as there were doubts about the binding force of the *Charte* for Louis’ successors, taking the Constitution’s character as an act of royal favour into account.
150. *Die neue Constitution*, in [Rheinischer Merkur] 1814–16, No. 72, 15 June 1814, pp. 1–3, citation p. 3.
151. Against the background of the Hundred Days, a minority group of German intellectuals, such as Christian Daniel Voß, considered – in an idealising manner – a return to the ‘true’ old constitution of the French Kingdom the best alternative. See *Die neue Königliche französische Constitution*, in [Die Zeiten] 1805–20, Vol. 42, April 1815, pp. 103–46, especially pp. 141–6.
152. See, for example, [VVLKB] 1815–19, Vol. 44, 1819, p. 52f.
153. Benzenberg (1816, p. 242). Karl Wilhelm Koppe, another prominent liberal in the Rhineland, flatly repudiated any constitution based on French models. In a spiteful attack on French theories he remarked that there could be no intention ‘die Reihe jener sophistischen Verfassungs-Spekulanten zu verlängern, welche von Jean-Jacques [Rousseau] bis auf jenen Benjamin [Constant] [...] unser theorien-fruchtbare Zeitalter [...] ausgebrüet hat’ (Koppe 1815, p. 46).
154. Resolution of the faction of the *Altrectler* in Würtemberg (1815), quoted in Eyck (1957, p. 333).
155. See [Grondwet] 1815, [Loi fondamentale] 1815.
156. Dutch constitutional law experts are particularly keen on stressing that the Constitution of 1814/1815 was less a unilateral act of royal grace than a contract (see, for example, Pot and Donner 2001 [1940], p. 413).
157. Among other things, in the *Grondwet* the right of initiative was not only a prerogative of the king (Art. 70, 106), but also of the States-General, namely the lower chamber (Art. 113, 114).
158. Chapter 2 of the Constitution was dedicated to the role of the king in the political system. Its sixth section explicitly dealt with ‘royal prerogatives’ (Art. 56–70).

159. Those guarantees and rights were not part of one separate chapter, but split up.
160. *Fundamentalgesetz des Königreiches der Niederlande vom 24. Aug. 1815*, in Pölitz (1817–25, Vol. 2, 1817, pp. 494–534, citation p. 494). See also *ibid.*, Vol. 1, 1817, p. 506.
161. [Rheinischer Merkur] 1814–16, No. 34, 29 March 1814, p. 3.
162. It is significant that the political system of the United Netherlands as such was rarely touched upon in German newspapers of the time. An exception is, for example, the article *Ueber die politische Lage des Königreichs der Niederlande*, in [Neuer Rheinischer Mercur] 1816ff., No. 152, 16 December 1818, columns 1157–63.
163. *Konstytucja Królestwa Polskiego*, in [DPKP] 1815ff., Vol. 1, 1815, pp. 1–103.
164. *Charte constitutionnelle du royaume de Pologne de 1815*, in Chod'zko (1862, pp. 707–24).
165. His personal experience with both the French Senatorial Constitution and the *Charte* following the deposition of Napoleon (cf. Section 2.1.1) obviously left a lasting impression on Alexander I. The actual preparations of the Polish Constitution were handed over to a commission appointed by the Tsar, which finished their activities in November 1815, when Alexander was on his way back to St. Petersburg via Warsaw.
166. Cf. Art. 31 and title four on the 'National Representation' (Art. 85–137), particularly Art. 121 and 131. According to the Constitution, parliament was composed of the king, the Senate and the Chamber of Deputies (Art. 31 and 86). Deputies, numbering 128 (Art. 118), were elected for six years, with one third of them elected every second year (Art. 120). They had legal immunity (Art. 89). In contrast to the French *Charte*, the Polish Constitution imposed an upper limit on the number of senators, namely half of the deputies in the second chamber, that is 64 (Art. 109).
167. *Wiederherstellung und Konstituierung des Königreichs Polen*, in [Die Zeiten] 1805–20, Vol. 47, September 1816, pp. 359–92, the constitutional text as such on pp. 366–92.
168. See *ibid.*, p. 392. In the first edition of Pölitz's collection of constitutional texts, too, any critical remark regarding the Polish Constitution of 1815 was missing. The constitutional text was introduced only by a few general remarks. See *Constitution des Königreiches Polen vom 27. Nov. 1815*, in Pölitz (1817–25, Vol. 2, 1817, pp. 48–68).
169. See, for example, *Debut des Kaisers Alexander als Königs von Polen*, in [Die Zeiten] 1805–20, Vol. 58, May 1819, pp. 279–301. In the article, Poland's 'liberale Institutionen', opposing the 'umstürzenden Lehren, die in unseren Tagen die gesellschaftliche Ordnung, mit einer fürchterlichen Katastrophe bedrohten', were praised (p. 282). However, there was scepticism as to whether the Constitution could guarantee durable stability, the Constitution of 3 May 1791 being a warning example. See *ibid.*, p. 294.
170. In [Rheinischer Merkur] 1814–16, No. 66, 2 June 1814, p. 1.
171. *Die künftige deutsche Verfassung*, in *ibid.*, No. 104, 18 August 1814, pp. 1–3, citation p. 1. With regard to a future German Constitution, such reasoning implied a strong federal state, 'um der Gewalt und Ränkesucht Frankreichs zu widerstehen'. The wish was that Germany kept all its rulers, but that 'Eine feste heilige Grundverfassung die diesen Regenten untergebenen Länder zu einem schönen harmonischen Ganzen [vereiniget].' *Deutschlands Ansprache*, in *ibid.*, No. 76, 23 June 1814, p. 1f.

172. See, for example, *Die künftige teutsche Verfassung (Fortsetzung)*, in *ibid.* No. 106, 22 August 1814, p. 1f.
173. *Deutsche Staatssachen. Was ist das Wenigste, was das Volk bey Errichtung einer ständischen Verfassung verlangen kann?* in [Allgemeiner Anzeiger] 1806–29, No. 197, 31 July 1815, columns 2065–71, citation column 2071.
174. 'In allen Bundesstaaten wird eine Landständische Verfassung statt finden.' *Deutsche Bundesakte vom 8. Juni 1815*, in Huber (1978 [1961]), pp. 84–90, citation p. 88).
175. *Was ist eigentlich landständische Verfassung? und wer müßte und sollte sie entwerfen?*, in [Neuer Rheinischer Mercur] 1816ff., No. 103, 28 June 1818, pp. 411–14, citation p. 411.
176. The practical procedure in most pre-revolutionary systems of corporative representation was that, first of all, an agreement within the various estates had to be reached. To this end, a majority vote was used. Afterwards, however, the votes of the different estates were compared, and a formal decision only followed in the case of unanimity.
177. In this respect, the French States-General is a classical example. Most of the Diets (*Landtage*) of the German states had similar rights. On concepts of *landständische* representation in the late period of the Empire, see Stollberg-Rilinger (1999).
178. *Deutsche Staatssachen. Ueber Landstände*, in [Allgemeiner Anzeiger] 1806–29, No. 269, 12 October 1815, columns 2811–21; No. 270, 13 October 1815, columns 2825–30; No. 271, 14 October 1815, columns 2833–9, citation column 2827.
179. *Ibid.*, column 2829.
180. In most European countries, the peak of political power for the estates had been reached between the fifteenth and seventeenth century.
181. On the interpretation of constitutionalism as the integrative centre of this *neuständische Gesellschaft*, see Blänkner (1998a, 1998b). Regarding the question of continuities and differences between *altständischer* Verfassung and German constitutions of the *Vormärz* see, among others, Vierhaus (1977), Press (1980), Weis (1982). Krüger (2003) offers a historical overview of origins, variations and changing interpretations of *landständische Verfassung*.
182. On changes of the 'Modern World-System' from the 1730s to the 1840s in a global context, see Wallerstein (1989).
183. 'Wenn die Landstände eine wahrhaftige Volksvertretung seyn sollen, so scheint es vor Allen unumgänglich nothwendig, daß sie vom ganzen Volk (im politischen Sinn) gewählt werden; und von dieser Forderung kann man, meine ich, auf keine Weise abweichen.' *Der Landstände Wesen und Zweck. Leichte Bemerkungen, als Einleitung*, in [Allgemeines Staatsverfassungs-Archiv] 1816–17, Vol. 1, 1816, pp. 7–35, 187–220, citation p. 198. The most illustrative example of the replaceability of the terms are the German constitutional texts after 1814/1815. Whereas in the small Principality of Schwarzburg-Rudolstadt a 'representation of the people' was introduced in 1816, to which delegates of the three estates were sent, Baden's representative system of 1818 was called a *landständische Verfassung*.
184. *Patent vom 2. September 1814*, in Pölitz (1817–25, Vol. 2, 1817, pp. 295–305). The Constitution had the character of a monarchical patent. The text started with a long preamble, in which the motives for the release of the Constitution were explained in detail, followed by the constitutional provisions as such, which were subdivided into ten extensive articles.

185. See, for example, *Einige leichte Anmerkungen zu der neuen Staatsverfassung des Herzogthums Nassau*, in [Rheinischer Merkur] 1814–16, No. 119, 17 September 1814, p. 1f.
186. See *ibid.*, p. 2. The first chamber (*Herrenbank*) consisted of the princes of the ruling dynasty and nobles (Art. 4). The second chamber (*Versammlung der Landesdeputirten*), with 22 members, consisted of three representatives of the clergy, one representative of the higher educational system and three representatives of commerce. The rest of its members were large landowners (Art. 6).
187. See *Die Konstitution des Herzogthums Nassau*, in [Rheinischer Merkur] 1814–16, No. 118, 15 September 1814, p. 1f. It was argued that the ‘trendy’ English-like division of the *Landtag* into two chambers was useless, particularly in small countries (see *ibid.*, p. 2).
188. For details, see Gerner (1989).
189. In general, there was more sympathy for the position of the *Landstände* than for the crown. See, among many other articles: *Noch eine Erörterung des königlich württembergischen Verfassungs-Entwurfes*, in [Rheinischer Merkur] 1814–16, No. 202, 3 March 1815, pp. 1–3.
190. In particular, the *landständische* constitution of the Grand Duchy of Saxe-Weimar-Eisenach is worth mentioning. Proclaimed on 5 May 1816, it received great attention and was even praised as ‘ein Muster solcher Verfassung für alle teutsche Bundesstaaten’. *Sachsen-Weimar. Publicationspatent wegen der Landstände, nebst Auszug aus der Constitution*, in [Neuer Rheinischer Mercur] 1816ff., No. 2, 2 July 1816, p. 1f., citation p. 1. Yet also the constitutional projects in other smaller German states such as the Principality of Waldeck, the Duchy of Saxe-Hildburghausen or the Duchy of Cleve attracted attention.
191. This ambivalence, however, was not seen as such by contemporaries, notwithstanding the existence of detailed comparisons of old *ständische* constitutions and new drafts. See, for example, *Was ist von der altwürttembergischen Verfassung in den von dem König mitgetheilten Entwurf der Geheimen Rätthe aufgenommen?*, in *ibid.*, No. 59, 13 April 1817, pp. 237–40.
192. *Einige Gedanken über landständische Verfassung*, in *ibid.*, No. 145, 22 November 1818, columns 1047–53, citation column 1047.
193. *Hauptschluß der außerordentlichen Reichsdeputation* (25 February 1803), in Huber (1978 [1961]), pp. 1–28). Regarding the constitutional importance of the *Reichsdeputationshauptschluß*, see Knecht (2007). As for a general overview of the history of the Holy Roman Empire until 1806 see, among others, Hartmann (2005), Gotthard (2006 [2003]), Stollberg-Rilinger (2006). More detailed is Schmidt (1999). For the late period of the Empire see particularly Aretin (1993–2000, Vol. 3, 1997), Demel (2005). On the constitutional history of the Empire from a cultural perspective see Stollberg-Rilinger (2008), a useful overview of the political situation in the German Empire around 1800 is Liebmann (2006). On 1806 as a watershed in European history, see Mazohl-Wallnig (2005).
194. The ‘Confederation of the Rhine’ or ‘Rhine Confederation’ (German: *Rheinbund*; French: *États confédérés du Rhin* [officially] or *Confédération du Rhin* [in practice]) was initiated by Napoleon after his victory in the Battle of Austerlitz (2 December 1805) and the Peace of Pressburg (26 December 1815), established on 12 July 1806 by the ‘Treaty of the Confederation of the Rhine’ (*Rheinbundakte*, in Huber 1978 [1961], pp. 28–34). In this treaty, 16 German states, among them Bavaria, Baden and Württemberg, formally left the Holy Roman Empire and joined together in a confederation under the ‘protection’ (Art. 12) of Napoleon.

On 6 August, following a French ultimatum, Francis II finally gave up his title of Emperor and declared the Holy Roman Empire dissolved (in Huber 1978 [1961], p. 37f.). In the years that followed, 23 more German states joined the Confederation, which collapsed in 1813 in the course of Napoleon's defeat in Russia and the lost Battle of Leipzig (16–19 October 1813). Interestingly enough, there is as yet no detailed study on the history of the Confederation of the Rhine.

195. For the history of the German *Standesherren* after 1815 still crucial: Gollwitzer (1964 [1957]). On the legal status of the German nobility during the nineteenth century, reflected in scholarly debates of the time, see Gottwald (2009).
196. On the reform projects during the Confederation of the Rhine time see, for example, Weis (1984). Severin-Barboutie (2006) offers an overview in comparative perspective. An interesting case study, namely on Berg, is Severin-Barboutie (2008). For a comparison of political reforms in the Southern German states and Prussia, see Nolte (1990).
197. See the title of W. Demels works on (Bavarian) *Staatsabsolutismus* (Demel 1983, 1993).
198. See, for example, *Wünsche eines Deutschen für Deutschlands künftige Verfassung. Geschrieben im Juni 1814*, in [Allgemeine Staats-Korrespondenz] 1814–15, Vol. 2, 1814, pp. 322–50.
199. *Proclamation an die Deutschen* (25 March 1813), in Huber (1978 [1961], p. 81f.). On Russia's policy towards Germany in the 1810s, see Eich (1986).
200. A contemporary overview of the constitutional deliberations is Klüber (1816). A detailed history of the *Deutsche Verfassungsfrage* between 1812 and 1815 is Schmidt (1890). See also Real (1935).
201. At this time, a *renversement des alliances* took place: Prussia formed a united front with Russia on the Polish question in order to get through its own plan to receive the whole of Saxony. Meanwhile, Prussia's former ally Austria formed a coalition with Britain and France to thwart those Prussian-Russian territorial aspirations.
202. On the *Problem der landständischen Verfassungen* and particularly the Austro-Prussian initiative, see Mager (1974).
203. Karl August Freiherr von Hardenberg (1750–1822), reformer, Prussian foreign minister from 1804 to 1806 and state chancellor from 1810 to 1822. For his services, he was raised to the rank of prince in 1814. Klemens Wenzel Nepomuk Lothar Graf (since 1813 Fürst) von Metternich-Winneburg zu Beilstein (1773–1859), Austrian politician, statesman and minister of state, chairman of the Congress of Vienna.
204. Hindering despotic monarchical rule was an essential element of 'German liberty' in the *Reich*. In August 1813, vom Stein underlined this by declaring that 'Die alte Verfassung Deutschlands versicherte jedem seiner Einwohner Sicherheit der Person und des Eigentums, in den größeren geschlossenen Ländern (territoriis clausis) verbürgten beides Stände, Gerichtsverfassung, in den übrigen die Reichsgerichte, die Oberaufsicht des Kaisers. Die Willkür der Fürsten war durchaus in der Abgabenerhebung, in ihrem Verfahren gegen die Person ihrer Untertanen beschränkt' (Stein 1957–74, Vol. 4, 1963, p. 243).
205. In the course of the Empire's dissolution, many German princes had taken the opportunity to get rid of their *Landtage*. In Württemberg, for example, the *Landtag* had been abolished in late December 1805. If *Landstände* continued to exist, then under new prerequisites. Wilhelm Joseph Behr made clear in

- 1808 that it was 'die jetzt regierenden Bundesglieder als die alleinigen Subjekte der bürgerlichen Oberherrschaft in ihren respektiven Staaten anerkannt, und anzuerkennen seien' and that 'die Stände in den Staaten, wo solche rechtlich existieren oder existieren sollten, auf keinen Fall als wirkliche Teilhaber der Staatsgewalt angesehen werden können' (Behr 1808, p. 208f.).
206. Report from Vienna, concerning 'den preußischen Entwurf die Grundlagen der deutschen Landesverfassung betreffend' (30 September 1814). [GLAK 48 Haus- und Staatsarchiv: III. Staatssachen] 2921.
207. Regarding the failure of the constitutional initiative, see Hartmann (1962).
208. *Note der bevollmächtigten Abgeordneten neun und zwanzig Teutscher souverainer Fürsten und Städte, an den Kaiserlich-Oesterreichischen Staats- und Conferenz-Minister usw., Herrn Fürsten v. Metternich, und an den Königlich-Preußischen Staatskanzler, Herrn Fürsten v. Hardenberg, datirt Wien den 16. Nov. 1814*, in [Allgemeines Staatsverfassungs-Archiv] 1816–17, Vol. 1, 1816, pp. 221–34, the memorandum as such on pp. 229–34.
209. *Ibid.*, p. 231.
210. *Ibid.*, p. 232.
211. *Deutsche Bundesakte vom 8. Juni 1815*, in Huber (1978 [1961], pp. 84–90).
212. Mager (1974, p. 299).
213. Cf. the previous Section 3.2.5.
214. *Acte final du congrès de Vienne, du 9 juin 1815*, in Klüber (1815–17, Vol. 6, 1816, Number 21, pp. 3–96). The importance of the 'Polish question' is symbolised by the fact that the first article of the Act was dedicated to the political future of the country.
215. *Ibid.*, p. 19.
216. There was no consensus of opinion on which newspapers should be prohibited. That explains why the *Rheinische Merkur* was forbidden in Bavaria as early as July 1814 (see *Verbot des rheinischen Merkurs in Bayern*, in [Rheinischer Merkur] 1814–16, No. 84, 9 July 1814, p. 4), but continued to be published in the rest of Germany.
217. See Koriath (1998, p. 46f.). Among others, it was Aretin who promoted *Gewaltenvereinigung*: Aretin and Rotteck (1824–8, Vol. 1, 1824, p. 88f). There was a tradition of such ideas. See, for example, Schlözer (1793, p. 91).
218. Rotteck (1829–35, Vol. 2, 1830), p. 172).
219. The argument was often in terms of 'rights' and 'titles'. See, for example, [Rheinischer Merkur] 1814–16, No. 66, 2 June 1814, p. 2.
220. During the eighteenth century liberal-minded men throughout Europe had considered England as *the* political model. This attitude became so deeply ingrained in the minds of many contemporaries that it persisted well into the nineteenth century. In comparison, the role of German 'Anglo-Saxon traditionalists', who loved to think of the English as *Stammesgenossen*, tribal blood-brothers and natural allies of the Germans' (Eyck 1957, p. 339), was certainly less important, even though not entirely irrelevant for the existing Anglophilism in Germany.
221. Heinrich Heffter once explained the preference for England and the simultaneous repudiation of France in post-Napoleonic Germany as 'Fernliebe aus Nachbarhass' (Heffter 1950, p. 64).
222. The most prominent example of such misunderstandings is the reading of Montesquieu. He had made quite clear that he was interested in the 'spirit' of the laws, and thus also the 'spirit' of English laws and English liberty: 'Ce n'est

point à moi à examiner si les Anglais jouissent actuellement de cette liberté, ou non. Il me suffit de dire qu'elle est établie par leurs loix, & je n'en cherche pas davantage' (Montesquieu 1950 [1758; OV 1748] XI 6, p. 221). By many of his contemporaries, however, his appraisal of the English Constitution was interpreted as a precise description of existing realities. The same disparity between the actual intentions of the author and his reading can be seen in the case of Blackstone (1765–9).

223. In the years after 1814/1815, there were but a few instances of a close relationship and ideological cross-fertilisation between German liberals and their counterparts in other European countries, particularly France. One of the exceptions that prove the rule was Karl von Rotteck, who had some interesting correspondence with both Constant and La Fayette. Rotteck was much impressed by Constant's political theories and La Fayette's political activities and drew repeatedly on Constant's works. He actually included several references to these treatises in his own *Staatsrecht der konstitutionellen Monarchie* (Aretin and Rotteck 1824–8). Constant, on his part, generously acknowledged these quotations and spoke of Rotteck's work, some of which he translated into French, as more important than his own (see Eyck 1957, p. 334). But almost all other German liberals who at this time wrote political treatises omitted specific references to their French contemporaries. Not until the final fall of the Bourbon monarchy were there signs of a strong attraction by and orientation towards France.
224. Not only conservatives, but also some German liberals had doubts in this direction (see, for example, Wilhelm 1928, pp. 175–93).
225. Friedrich Murhard in [Allgemeine politische Annalen] 1821–4, Vol. 10, 1823, p. 71.
226. Above all, conservative political thinkers continued to stress the 'non-transferability' of models. See, for example, Friedrich Julius Stahl in 1845, who considered the English Constitution to be 'ausser aller Vergleichung und aller Nachahmung für andere Staaten' (Stahl 1845, p. 35). For states other than Great Britain itself, such a constitution would only mean misfortune and confusion.

4 Transfer and Reception: Bavaria and Baden as Case Studies

1. For a detailed study on Montgelas' life and politics, see Weis (1988 [1971], 2005). For a broad overview of Montgelas' role in the formation of the modern Bavarian state, see Cronenberg and Gray (1990), Weis (2003b).
2. A concise picture of Bavaria's political history during the reign of Maximilian Joseph (1799–1825) is Weis (2003a). On the constitutional dimension, see Möckl (1979).
3. In the course of the Confederation of Rhine (12 July 1806), Bavaria gained territories in Franconia and Swabia.
4. See Kellmann and Drewes (2006, p. 715). On the territorial changes in the Napoleonic Age in detail, see Kiessling and Schmid (1976, pp. 19–22 for explanatory notes, pp. 25–43 for sources).
5. On the traditional forms of corporative government and *landständische* representation in Bavaria, see Hammermayer (1988 [1969]).
6. See [Landschaftliche Bibliothek] 1800–4, containing 96 pamphlets published around 1800. See also Tiainen (1967, pp. 178–80).
7. *Verordnung über die Aufhebung der Steuerprivilegien und der landschaftlichen Steuerverwaltung*, in Schimke (1996, pp. 63–8). On the end of the *Landständische Verordnung*, see Seitz (1999).

8. On the elaboration of the Constitution: Rumschöttel (2008).
9. *Protocoll über jene Gegenstände, die in der heute gehaltenen königlichen Geheimen Staats-Conferenz vorgetragen und entschieden worden* (20 January 1808), in Doeberl (1924, p. 73f.).
10. See *ibid.*, pp. 73f., 78f.: 'Seine Königliche Majestät [haben] die Anträge des Freyherrn von Montgelas wegen Entwerffung [sic!] einer Constitution für das gesamte Königreich nach den Grundlinien der vorliegenden Constitution des Königreiches Westphalen und wegen Annahme des Code Napoleon in dem gesamten Königreiche allergnädigst genehmiget' (*ibid.*, p. 79).
11. *Konstitution für das Königreich Baiern* (25 May 1808), in [GKB] 1806–17 1808, columns 985–1000. Printed in, for example, Wenzel (2002 [1990], pp. 11–17).
12. The Westphalian Constitution, designed as a formal decree of Napoleon and enacted by the King of Westphalia, Napoleon's brother Jérôme Bonaparte, was entitled *Königliches Dekret vom 7. Dezember 1807, wodurch die Publikation der Constitution des Königreichs Westfalen verordnet wird* (7 December 1807), in [BLRW] 1808–13, 1808(1), pp. 1–31.
13. For a detailed comparison between the Bavarian Constitution of 1808 and the Westphalian of 1807, see Oeschey (1914, pp. 29–45). There were, nevertheless, also important differences between the two. See already Hazzi (1819, pp. 15–21). On the Bavarian Constitution of 1808 see, for example, Zimmermann (1940), Wegelin (1958), Tiainen (1967), Möckl (1984), and especially Schmid (2008).
14. Hazzi (1819, p. 6).
15. See Doeberl (1918, p. 7).
16. On the guiding role of the principle *Staatsouveränität* for Montgelas' politics, see Doeberl (1925).
17. Edited in Weis (1970b).
18. See Demel (1983).
19. On the actual legal output of Montgelas' reform agenda, see Schimke (1996). See also Kiessling and Schmid (1977, 1978).
20. *Konstitution für das Königreich Baiern* (25 May 1808), in [GKB] 1806–17, 1808, columns 985–1000, preamble columns 985f. The Constitution of 1808, together with all subsequent edicts and regulations of implementation, also in [BAYHSTA Staatsrat] 1640.
21. See Ullmann (1983, p. 52f.). Concerning the relation between public debt and reforms in Southern Germany, see also Ullmann (1986a, 1986b, 1996).
22. The plan of a 'framework constitution' for the Confederation of the Rhine though prominent in the political debates of the time did not materialise in the end. On the relation between this plan and the enactment of the Bavarian Constitution in 1808, see Doeberl (1924).
23. The *Code Napoléon* was rewritten by Anselm von Feuerbach (*Allgemeines bürgerliches Gesetzbuch für das Königreich Baiern*), but actually never put into force in Bavaria. This also provides evidence of the ambivalent character of legal adoptions from France.
24. In this context, the term *Scheinkonstitutionalismus* is frequently stressed to characterise the constitutional projects in Germany during the Confederation of the Rhine. See, for example, Huber (1967 [1957], p. 91), Botzenhart (1993, p. 13). An argument against the thesis of pure 'fake constitutionalism' is presented by Willoweit (2005 [1990], p. 277).
25. Cf. title four of the Constitution: *Von der National-Repräsentation*.
26. See Kritzer (1992, p. 26).

27. See *Vertrag von Ried zwischen Bayern und Österreich* (8 October 1813), in Kiessling and Schmid (1976, p. 43f.).
28. § 1 of the Constitution explicitly stated: ‘Das Königreich Baiern bildet einen Theil der rheinischen Föderation.’
29. Among other things, certain privileges of the nobility had been restored in 1811, thus negating the Constitution’s principle of equality before the law (see Möckl 1984, p. 162).
30. See Doeberl (1918, p. 18).
31. The immediate importance of the *Charte* is stressed by *ibid.*, p. 20, Weis (1976, p. 414f.). Explicit references in the printed and archival sources cannot be found, but the pieces of circumstantial evidence are overwhelming.
32. Montgelas (1908 [1817], p. 76).
33. On this last aspect and the role of the Congress of Vienna as a catalyst in particular see also the memoirs of Karl Heinrich Ritter von Lang, who became a member of the constitutional commission (Lang 1842, p. 202f.).
34. See Montgelas (1908 [1817], p. 76). On Ludwig’s role in the constitutionalisation during the following years see [BAYHSTA GH NL Ludwig I.] 88/4/2, Heigel (1884), Körner (1986).
35. Original in [BAYHSTA Staatsrat] 1654. Printed in Lerchenfeld (1854, pp. 336–51), in his *Compte rendu*, Montgelas mentions himself as the originator of the rescript. See Montgelas (1908 [1817], pp. 76–84).
36. The original appointment documents in [BAYHSTA Staatsrat] 1642.
37. For details see Heunisch (1857), for the period 1803–11 especially pp. 32–66. An overview on the demographic development during the *Vormärz* in Hörner (1987, pp. 23–34). On Baden’s history at the beginning of the nineteenth century in outline see, for example, Ullmann (1992). See also Engehausen (2008 [2005]). On the German Southwest during the Confederation of the Rhine, see Sauer (1987).
38. See Wierichs (1978).
39. Lloyd E. Lee speaks by mistake of ‘thirteen’ constitutional edicts. See Lee (1975, p. 94). Obviously, he mistakes the earlier 13 ‘organisational’ (see Andreas 1913b, pp. 38–80; see also Andreas 1909) for the nine ‘constitutional edicts’ of 1807–9.
40. See in detail Andreas (1913b, pp. 168–81).
41. For more biographical information see Schumann (1994).
42. Karl Friedrich (1728–1811) ruled as the Margrave of Baden-Durlach from 1746 until 1771, when he inherited Baden-Baden and thus re-united the former – since 1515 divided – land of Baden as Margravate Baden. Further biographical information in Weech (1875, Vol. 1, pp. 16–18). For a full biography see Borchart-Wenzel (2006).
43. *Organisationsedikt* (26 November 1809), published with six enclosures in [BRB] 1807–16, 1809, No. II–LII. See also Andreas (1912c).
44. *Unterthänigste Anzeige die Nothwendigkeit einer Constitution betr.* (22 September 1806). Printed in Weech (1892, pp. 292–8). Included in Brauer’s memorandum was a *Skizze der wesentlichen Theile einer neuen Constitution des badischen Staats* (*ibid.*, pp. 294–8). On Brauer’s initiative see also Andreas (1913b, p. 168). For Brauer’s political life, see Würtz (2005); for a short biographical overview, see Kroener (1991).
45. See Weech (1892, p. 252f.).
46. The outlines of both edicts, which were submitted to the Grand Duke’s privy council in late March 1808, are printed with related archival material in *ibid.*, pp. 255–313.

47. See Ullmann (1984, p. 100). On Baden's financial situation in the Napoleonic Age and the government's financial policy see also Ullmann (1982).
48. Emmerich Joseph von Dalberg (1773–1833) joined the administration in 1803. In 1809, Dalberg resigned from his ministerial office and went back to France, where he was made duke and councillor of state in 1810 by Napoleon I. On his political activities between 1803 and 1810, see Jürgens (1976).
49. *Landesherrliche Verordnung. Organisation der obersten StaatsBehörden* (8 July 1808), in [BRB] 1807–16, 1808, No. XXI.
50. See *ibid.*, p. 185.
51. See *ibid.*, p. 185f.
52. See Arndt (1953, pp. 444–55). The collected material of these deliberations in [GLAK 48 Haus- und Staatsarchiv: III. Staatssachen] 6063, partly printed in Weech (1868, pp. 151–90).
53. Notes on the first constitutional draft (30 September 1808). [GLAK 48 Haus- und Staatsarchiv: III. Staatssachen] 6063.
54. Notes on the first constitutional draft (10 October 1808). *Ibid.*
55. See Andreas (1913b, p. 186). The marginality of these first concrete concepts for a constitution in Baden manifests itself in the fact that they had no influence on the Constitution of 1818 and were not even known to Karl Friedrich Nebenius, the author of the latter. See Nebenius' collected papers on the Constitution in [GLAK N NL Nebenius] Conv. 35. Cf. Section 4.2.2.
56. Karl Ludwig Friedrich (1786–1818) became Grand Duke of Baden on 10 June 1811. See also Weech (1875, Vol. 1, p. 19f.).
57. See Andreas (1912a).
58. Largely, indifference towards the constitutional project dominated public opinion after 1808. See Goldschmit (1918, p. 5). A look at newspapers of the time underlines this overall impression.
59. Popular interest was mainly focused on dealing with the legacies of war and uncertainty and on re-establishing peace. See, for example, *Stimmung des Volks in südwestlichen Deutschland*, in [Rheinischer Merkur] 1814–16, No. 84, 9 July 1814, pp. 1–3. Continuation in *ibid.*, No. 85, 11 July 1814, pp. 1f. On the perception of war in the German Southwest, see Planert (2007).
60. In Andreas (1913b, p. 358).
61. See Lee (1975, p. 99).
62. Cf. Chapter 3 note 66.
63. By March 1814, before the collapse of the Napoleonic Empire, vom Stein had submitted a memorandum for a German federal constitution. In Stein (1848, pp. 14–22).
64. See the entries of vom Stein in his diary, in Goldschmit (1918, p. 6).
65. Karl Wilhelm Freiherr Marschall von Bieberstein (1773–1817) became Baden's minister of the interior in 1806. In 1814 he was appointed Baden envoy at the Congress of Vienna. After the end of the Congress, Marschall became Baden's ambassador in Stuttgart. For more biographical information, see Weech (1875 Vol. 1, pp. 39–42).
66. Memorandum of vom Stein to Tsar Alexander I, in Pertz (1849–55, Vol. 4, pp. 217–20). The propositions boiled down to a bicameral system with a chamber of peers and a chamber of elected deputies, who should come together annually from 1815 onwards.
67. Memorandum of Grand Duke Karl to the princes Hardenberg and Metternich (Vienna, 1 December 1814). Printed in Klüber (1815–17, Vol. 1, I Doc. XXII, p. 100f.).

68. Cf. Section 3.3.
69. Cf. Chapter 3 note 208.
70. Kroener (1991, p. 63).
71. See *Rescript Maximilian Josephs vom 17. September 1814. Die Revision der Verfassung von 1808 betreffend*. [BAYHSTA Staatsrat] 1654. A detailed analysis of the decree in Montgelas (1908 [1817], pp. 76–81).
72. These edicts had specified or supplemented the constitutional text in various respects. Besides the ‘organic edicts’, a number of additional implementing regulations were released after the proclamation of the Constitution. For an overview see Wenzel (2002 [1990], pp. 18–20).
73. The royal decree used the German translation *Kammer der Deputirten*. In Montgelas’ *Compte rendu*, the French term *Chambre des Députés* appears (see Montgelas 1908 [1817], p. 78), and it is also remarkable that Montgelas uses the term *Charte constitutionnelle* for the Bavarian Constitution, indicating that he was familiar with the new French Constitution. Apart from that, however, Montgelas just remarks briefly that ‘Je profitai des leçons du passé et du changement favorable et sage survenu dans l’opinion, pour diviser les États généraux en deux chambres’ (ibid.).
74. As in other parts of Germany, *Grundhold* was a peasant who managed his own farm, but who still had to pay an annual tithe to a lord of the manor, either in cash or in kind. In most cases, the peasant had a *Miteigentum* (‘co-ownership’; Lat. *dominium utile*), the lord of the manor the *Obereigentum* (‘superior-ownership’, Lat. *dominium directum*) of the same property. See Weis (1970a), Sandberger and Pankraz (1988 [1969]).
75. The detailed protocols of the 22 sessions of the constitutional commission in [BAYHSTA Staatsrat] 1643, 1644, 1645, 1646, 1647. Besides the official protocols, there are also two critical commentaries of participants available, namely of Lerchenfeld and Lang: Lerchenfeld (1887, pp. 35–55, documents pp. 233–54); Lang (1842, pp. 203–16). The actual value of the latter, however, is restricted. A detailed analysis of the deliberations and the voting behaviour of the members of the commission in Weis (1976).
76. Lerchenfeld to Freiherrn Karl August von Wangenheim (Munich, 5 November 1814), in Lerchenfeld (1887, p. 234f., citation p. 235).
77. See Lerchenfeld to Crown Prince Ludwig (Munich, 28 November 1814), in ibid., pp. 245–9, especially p. 248.
78. Cf., for example, the fifth session of the constitutional commission on 8 November 1814, in which Graf von Arco called the practical use of a binding constitutional oath into question by taking French constitutional history as a negative example: ‘gerade von [den] französischen Constitutionen, deren man 7 bis 8 von allen Franzosen beschwören sah, sei keine gehalten und jeder von den Franzosen selbst umgestoßen worden. Hatten sie nicht Haß dem Königthum und dann Treue dem Kaiser – eben dem Kaiser, welcher sich nach wenigen Jahren der Krone verlustig erklärten, geschworen. Was sollten dergleichen Eide? Sie taugten Ihres Erachtens zu nichts. Innige Anhänglichkeit an Verfassung und an das Fürstenhaus sein Jahrhunderte lang in den Herzen der Deutschen auch ohne Eid geschrieben gewesen.’ [BAYHSTA Staatsrat] 1643.
79. See especially the session of 13 December 1814 ([BAYHSTA Staatsrat] 1645).
80. [BAYHSTA Staatsrat] 1654. It seems that the actual initiator of the decree was Montgelas himself (see Doeberl 1918, p. 28; Weis 2003a, p. 114).
81. See [BAYHSTA Staatsrat] 1654.

82. Original in [BAYHSTA Staatsrat] 1653: *Entwurf der Constitution für das Königreich Baiern, angefertigt im Jahre 1815 nach Inhalt der Ausschuss-Protocolle von 1814 & 1815. Nach den Beschlüssen der Mehrzahl der Mitglieder des Ausschusses mit kurzer Bemerkung der Meinungen der Minderzahl derselben.*
83. Original in [BAYHSTA Staatsrat] 1654. An annotated edition in Körner (1986, introduction pp. 421–9; edition pp. 429–48). See also Heigel (1884). On the contemporary political positions of Ludwig in general, see Weis (1990 [1986]), Kraus (1995), Gollwitzer (1997 [1986], pp. 213–35).
84. 'der Reinheit unserer Sprache entgegen sind die Benenungen *constitution* und die halbwelsch und halbteutsche *deputirten*, jener aber angemessen ‚Verfaßung‘ und ‚Abgeordnete‘ folglich ‚Kamer der Abgeordneten.‘ [BAYHSTA Staatsrat] 1654.
85. The draft of the commission had provided the term *Reichsrath* ('Councillor of the Realm'), which Ludwig considered inappropriate: 'Die Benennung ‚Reichsrath‘ scheint nicht passend da die Mitglieder dieser/ wie auch der andern/ Kamer, mehr als zu rathen haben. ‚Reichsherr‘ welcher Name in Schweden üblich möchte geeigneter seyn, folglich jener, Kamer der Reichsherrn‘ oder mehr vielleicht noch ‚Standesherr‘ und ‚Kamer der Standesherrn‘ was keine Nachahmung wäre und nicht so hoch klänge.' *Ibid.* It must remain open how detailed Ludwig's concrete knowledge of the Swedish or other foreign constitutional systems was. His written records reveal, in any case, that he was certainly aware of most contemporary constitutions in Europe.
86. The protocols of the sessions, which took place on the 14 and 16 April 1815, in *ibid.*
87. In his *Compte rendu*, Montgelas mentions the war after Napoleon's return from Elba, the Bavarian-Austrian negotiations regarding the marriage of Princess Charlotte to Emperor Francis I in 1816, travels of the King, and his – Montgelas' – own illness (Montgelas 1908 [1817], p. 83).
88. See La Garde to Richelieu, Munich 28 January 1817, in Chroust (1935–7, Vol. 1, p. 12f.).
89. See Wahrlieb (1817). Written under the pseudonym Gottlieb Wahrlieb, this pamphlet was meant as an apology of the Bavarian politics under Max I Joseph and Montgelas.
90. In September 1815, Montgelas had ordered the strict surveillance of any kind of constitutional movement in Munich, but the chief of police was not able to report a single concrete proof for the existence of such a movement in the following months (see [BAYHSTA M Inn] 45165).
91. See Wahrmuth (1816).
92. See *ibid.*, p. 34f.
93. See *ibid.*, p. 29.
94. 'Die brittische Verfassung wird gegenwärtig noch von Verhältnissen gehalten, die bloß local sind, und daher keine Nachahmung gestatten' (Aretin 1816, p. 41, see also p. 39).
95. *Ibid.*, p. 40.
96. *Ibid.*, p. 42.
97. The French envoy in Munich reported to Paris about the very slow progress the set up of a new constitution made, even under the new government: 'Les progrès de l'amélioration désirable du système sont encore si lentes qu'il est impossible de ne pas remarquer le défaut de direction, qui en est la véritable cause'. La Garde to Richelieu, Munich 20 April 1817, in Krauss (1987, p. 337).

98. On the final stage in the elaboration of a Bavarian constitution, see Dobmann (1962, pp. 127–51), Winter (1968, pp. 286–96), Aretin (1976, pp. 213–68). Overviews in Huber (1967 [1957], pp. 319–22), Weis (2003a, pp. 113–17).
99. See Doeberl (1918, p. 39). On 5 November 1817 Aretin wrote ‘daß es rätlich seyn dürfte, wenn die deutschen Regierungen ernstliche Anstalten treffen wollten, zur Erfüllung des 13. Artikels der Bundesacte, und zwar nicht blos zum Schein, [zu] schreiten’, in Aretin (1976, p. 242f., citation p. 243). In late 1816, the question of a Bavarian constitution became indeed increasingly important in the contemporary German press. See, for example, *Bayern's Hoffnungen in Ansehung einer landständischen Verfassung*, in [Neuer Rheinischer Mercur] 1816ff., No. 63, 17 October 1816, pp. 254–6; No. 64, 19 October 1816, pp. 257–60.
100. This possibility was widely discussed in the German press, too. See, for example, *Ueber die Vollziehung des Art. 13 der teutschen Bundesacte, besonders in Baiern*, in [Neuer Rheinischer Mercur] 1816ff., No. 14, 24 January 1818, pp. 53–6; No. 15, 25 January 1818, p. 57f.
101. See Aretin (1955). ‘Das einzige Mittel’, Metternich wrote on 12 January 1818, ‘welches die Regierungen haben, im Verfassungswesen voranzugehen, beschränkt sich auf ein Nichtberühren der Bestehenden guten oder schlechten Verfassungen und das Erteilen ständischer Verfassungen (par charte) [that is by octroy; MJP] da, wo es noch keine gibt’ (in *ibid.*, p. 725).
102. The royal decree was directed to the *Staatsrat*, in [BAYHSTA Staatsrat] 1654.
103. The collected protocols are in [BAYHSTA Staatsrat] 1655, 1656, 1657.
104. Metternich to Gentz, 30 June 1824, in Metternich (1880–4, Vol. 3, p. 134).
105. An overview biography in [Allgemeine Deutsche Biographie] 1875–1912, Vol. 45, 1900, pp. 67–70. On his activities as a Bavarian statesman between 1799 and 1821, see Dobmann (1962), regarding his role for the Bavarian Constitution in particular pp. 127–51.
106. See Doeberl (1924, p. 34f.).
107. See the protocol of the *Geheime Staatskonferenz* of 20 April 1808 in [BAYHSTA Staatsrat] 8.
108. Those deliberations took place in July and August 1811 and culminated in the draft of an edict, which was, however, never passed. Protocols and draft in [BAYHSTA Staatsrat] 1642.
109. In his memoirs, Ritter von Lang gives a vivid account of Zentner’s key role in the commission (Lang 1842, pp. 213, 216).
110. See [BAYHSTA Staatsrat] 1643, 1644, 1645, 1646, 1647.
111. See [BAYHSTA Staatsrat] 1654.
112. See [BAYHSTA Staatsrat] 1655, 1656, 1657.
113. Due to its crucial importance, the edict on the *Ständeverammlung* was prepared by Zentner himself together with Lerchenfeld. See the protocol of the ministerial conference of 4 May 1818 in [BAYHSTA Staatsrat] 1657.
114. In the session of 9 April 1818, Rechberg argued that the ‘Repraesentation System [...] wie es in Frankreich bestünde’ was a ‘Kinde der Revolution’. This system, ‘welches immer und unter allen Gestalten auf die Grundsätze der droits de l’homme hinführe’, had proved its value under no circumstances whatsoever ([BAYHSTA Staatsrat] 1656).
115. Among them were Lerchenfeld and von der Becke.
116. See the protocol of the constitutional commission of 25 October 1814 in [BAYHSTA Staatsrat] 1643.

117. Twelfth session of the constitutional commission on 9 April 1818 ([BAYHSTA Staatsrat] 1656).
118. *Ibid.* His argumentation was similar to Wrede's and Lerchenfeld's. On Wrede's role for the drafting of the Constitution, see Winter (1968, pp. 286–96).
119. [BAYHSTA Staatsrat] 1657.
120. The commission actually followed Zentner's suggestions, but refrained from making the president of the first chamber a hereditary position (see [BAYHSTA Staatsrat] 1656).
121. Fourteenth session of the ministerial conference on 15 April 1818. *Ibid.*
122. *Ibid.*
123. The authority of Zentner in the constitutional commission is underlined by the fact that a similar initiative by another member had failed one month earlier. On 14 March, von Ringel had stated that he missed 'in der entworfenen Verfassungs-Urkunde eine Bestimmung, die Sie in mehreren Constitutionen, unter andern auch in dem Entwurfe der Verfassung für das Königreich Würtemberg und in der neuesten französischen gefunden, nemlich jene, wodurch die Heiligkeit und Unverletzbarkeit der Person des Königs ausgesprochen werde.' In reply, several colleagues had argued 'daß man diesen Satz um deswillen in der Verfassung umgangen, weil dadurch ein Fall vorausgesetzt würde, den man sich bei der baierischen Nation als unmöglich denken könnte, und man es der Ehrerbietung und der Verehrung gegen Seine Majestät den König angemessen geglaubt, diesen Satz nicht zu berühren.' In France, this provision had just been added 'in die Karte [sic!]' as a 'Folge der vohergegangenen Revolution.' Sixth session of the ministerial conference on 14 March 1818. *Ibid.*
124. Ludwig to Lerchenfeld, Rome 31 March/4 April 1818, in Lerchenfeld (1887, pp. 265–7).
125. Ludwig thus preferred an agreed constitution to an imposed constitution. The decision on the future constitution in the constituent assembly should be based on majority vote, not an *itio in partes* (see *ibid.*, p. 266).
126. See, for example, *ibid.* p. 266: 'Des Königs Macht in Ernennung zu Standesherrn (peers) hatte ich in meinen Bemerkungen [1815] als begränzt gewünscht, mir ist aber hierüber andere Ansicht geworden und ich bin der Meinung, daß ihm daßelbe Recht hierinnen, welches Englands König besitzt, werde.'
127. In this context, Ludwig also repeated his wish for a German nomenclature in the constitutional text: 'Ich wünsche so viel thunlich reine deutsche Benennungen, keine Constitution sondern Verfaßung, Abgeordnete, nicht Deputirte, und keine Repräsentanten sondern Vertreter' (*ibid.*, p. 267).
128. Ludwig to Lerchenfeld, Rome 9 April 1818, in *ibid.* p. 267f., citation p. 268. In early 1818, Ludwig not only corresponded with Lerchenfeld about the future constitution. On 4 April, for example, Ludwig also reminded Wrede that the rights of the Bavarian people should not be restricted in narrow-minded reasoning, namely to avoid the harmful effects of a 'half-solution'. See Ludwig to Wrede, Rome 4 April 1818, in [BAYHSTA GH NL Ludwig I.] VI 293e.
129. See a remark of Ludwig in a later letter to Rechberg. Ludwig to Rechberg, 22 August 1818, in [BAYHSTA GH NL Ludwig I.] 88/4/2.
130. The protocols of the last sessions in [BAYHSTA Staatsrat] 1657.
131. The resolution is printed in Weech (1868, p. 6). On the making of the Badenese Constitution between 1814 and 1818, see also Andreas (1912b, 1913b) and Goldschmit (1918, especially pp. 1–32).
132. Text printed in Weech (1868, pp. 7–10).

133. Cf. note 65.
134. The collected materials in [GLAK 48 Haus- und Staatsarchiv: III. Staatssachen] 6066. Not even a minute-taker was consulted by the commission, whose members wrote the protocols themselves alternately.
135. It is remarkable that, unlike in Bavaria, foreign constitutional models were explicitly taken into consideration right from the beginning of the constitutional debates. By the first session of the commission, the potential value of the Westphalian Constitution of 1807 and the Bavarian Constitution of 1808 was examined. See the protocol of the sitting on 23 January 1815 (*ibid.*).
136. Printed in Weech (1868, pp. 13–19).
137. Printed in *ibid.*, pp. 19–22.
138. See Andreas (1912b, p. 14f.). See also Fehrenbach (1996b, p. 16).
139. On public opinion in *Vormärz*-Baden, see Meerwarth (1907).
140. In this respect Fehrenbach (1996b, p. 16) is mistaken, since she qualifies the constitutional movement in a one sided manner as ‘altständisch-altrechtlich motiviert’.
141. Cf. the coverage of the movement in the contemporary press. For example, *Ständische Angelegenheiten im Großherzogthum Baden*, in [Rheinischer Merkur] 1814–16, No. 343, 12 December 1815; No. 344, 14 December 1815; No. 350, 27 December; *Stimmen aus Baden über das Bedürfniß eines Zusammentretetens der Regierung mit den Bevollmächtigten des Landes*, in [Allgemeines Staatsverfassungs-Archiv] 1816–17, Vol. 1(3), 1816, pp. 391–467. Compared to other German states, the press in Baden itself was underdeveloped and hence only played a marginal role in the shaping of public opinion. Since 1810, the official *Badische Staatszeitung* (till 1810 and again from 1817 *Karlsruher Zeitung*) was the only newspaper permitted to circulate political news. The upturn of the press during the *Befreiungskriege* was only an interlude. After the Congress of Vienna ‘verfiel die badische Presse [...] wieder in ihren politischen Dämmer Schlaf der vergangenen Jahrzehnte’ (Arnold 2003, p. 246).
142. As for the archival documentation of this constitutional movement, see [GLAK 48 Haus- und Staatsarchiv: III. Staatssachen] 6071, 6072, 6073.
143. Cited in Meerwarth (1907, p. 102). As for the role and status of the nobility in post-Napoleonic Baden, see Mangold (1933). See also Fehrenbach (1983, 1996a), Furtwängler (1996).
144. The constitutional initiative did have at least some indirect effects, since the rate for direct taxes was reduced from 25 to 18 per cent, and the ministry of finance initiated a campaign to inform the population about the advantages of the new tax system (see Weech 1868, p. 34).
145. The materials in [GLAK 48 Haus- und Staatsarchiv: III. Staatssachen] 6068. A detailed summary of the deliberations in Weech (1868, pp. 35–8).
146. Wilhelm Ludwig Leopold Reinhard Freiherr von Berstett (1769–1817) entered the Baden administration in 1809. Berstett was member of the Baden delegation at the Congress of Vienna and took part in the negotiations of the Second Treaty of Paris, before he became deputy at the Diet of the German Confederation. In 1816 Berstett was appointed foreign minister, a position, from which he continued to work for a constitution (see Weech 1875, Vol. 1, pp. 75–81).
147. Berstett’s memorandum was sent to Karlsruhe on 4 February 1816 (see Andreas 1912b, p. 32; Goldschmit 1918, p. 16). Berstett transmitted his memorandum also to Freiherr vom Stein, who supported Berstett’s argument for a bicameral system. Vom Stein’s observations in Pertz (1849–55, Vol. 5, pp. 35–8).

148. In [BRB] 1807–16, 1816, No. VIII, 19 March 1816, p. 29. Original in [GLAK 48 Haus- und Staatsarchiv: III. Staatssachen] 6069.
149. See *Beitrag zur Geschichte der im Großherzogthume Baden zu hoffenden landständischen Verfassung*, in [Neuer Rheinischer Mercur] 1816ff., No. 26, 13 August 1816, pp. 103–6, especially p. 105f. The report was continued in the following issues: 27, 15 August 1816, pp. 107–10; 28, 17 August 1816, p. 111f.
150. A contemporary documentation of the aristocratic interventions and the government's reaction is *Geschichtliche Darstellung der Schritte, welche von dem Adel im Badenschen, zur Vorbereitung einer ständischen Verfassung geschehen, und der Art, wie dieselben von der Regierung aufgenommen sind; mit beygefügeten Aktenstücken*, in [Die Zeiten] 1805–20, No. 47, August 1816, pp. 183–213.
151. In [BRB] 1807–16 1816 No. XIV (7 May 1816), p. 51–4.
152. Ernst Philipp von Sensburg (1752–1831) studied law and started his career at the *Reichshofrat* ('Aulic Council', literally meaning 'Court Council of the Empire') in Vienna as one of the two supreme courts of the Empire, the other being the 'Imperial Chamber Court' (*Reichskammergericht*). In 1817, he was appointed director of the Badenese ministry of the interior (see Weech 1875, Vol. 2, pp. 295–8).
153. Printed in Weech (1868, pp. 43–51). Original: [GLAK 48 Haus- und Staatsarchiv: III. Staatssachen] 6069, Doc. 3. Also in [GLAK N NL Nebenius] Conv. 34. In detailed *Bemerkungen zu dem Kommissarischen Entwurf über die Einführung einer landständischen Verfassung* (in [GLAK N NL Nebenius] Conv. 34; also in [GLAK 48 Haus- und Staatsarchiv: III. Staatssachen] 6069, Doc. 4), Sensburg explained the reasons for the differences between his draft and the draft of the constitutional commission set up in 1815.
154. For a biographical overview, see Weech (1875, Vol. 2, pp. 99–105). As for Nebenius' (political) life and work, see also Andreas (1913a), Beck (1866), Böhlingk (1899). A critical biography of Nebenius is still missing.
155. For more information see Weech (1875, Vol. 1, pp. 95–104).
156. The most important source for the reconstruction of Nebenius' role and activities in the constitutionalisation process are his personal notes in the *Generallandesarchiv Karlsruhe*. See [GLAK N NL Nebenius] Conv. 34, Conv. 35. Conv. 34 contains the constitutional drafts and Nebenius' correspondences relevant for the constitutionalisation (1816–23) as well as a collection of *Materialien für den Verfassungsentwurf*. Conv. 35 comprises a detailed collection of materials on the history of the constitution, a number of memoranda on specific constitutional questions and a collection of contemporary reports of the press on the Constitution of 1818.
157. See [GLAK N NL Nebenius] Conv. 35.
158. *Verfassungsentwurf 1a* and *Verfassungsentwurf 1b*, in [GLAK N NL Nebenius] Conv. 34.
159. Nebenius' draft with the modifications of Sensburg and the other members of the constitutional commission in [GLAK 48 Haus- und Staatsarchiv: III. Staatssachen] 6069, Doc. 5. A detailed comparison of the three versions of Nebenius' draft (original version; redaction of Sensburg; redaction in the commission) in Weech (1868, pp. 55–88).
160. See [GLAK 48 Haus- und Staatsarchiv: III. Staatssachen] 6069, Doc. 6.
161. In his *Erinnerungen über den Sensburgischen Entwurf II*, dated 22 July 1816, Marschall expressed quite openly his discontent about several of the conservative restrictions in the draft, particularly as far as the reduced rights of the

- Landstände* were concerned. More generally, he also declared his reservations against a single chamber, whose disadvantages were contrasted with the advantages of a bicameral system (see Weech 1868, p. 89f.).
162. [BRB] 1807–16, No. XXIV, 30 July 1816, p. 99.
 163. Cf. the coverage in contemporary newspapers and magazines.
 164. See, for example, *Fortgesetzte Beiträge zu der Geschichte der im Großherzogthume Baden zu hoffenden landständischen Verfassung*, in [Neuer Rheinischer Mercur] 1816ff., No. 47, 19 September 1816, p. 192.
 165. See Weech (1868, p. 92), see also Weech (1863, p. 58f.). By mistake, Weech implies that these reshuffles took place already in 1816, and not 1817.
 166. Reitzenstein had been dismissed in 1810 on Napoleon's initiative.
 167. [BRB] 1817–44, No. XXIV, 4 October 1817, p. 93–6, citation p. 94.
 168. Württemberg had a natural interest to thwart every Bavarian ambition to enlarge its territory, whereas Prussia had the ambition to keep the power of Bavaria – the largest state in the German Confederation besides Prussia and Austria, the latter supporting Bavarian aspirations in Baden – as small as possible. Russia again intervened for Baden particularly in view of the dynastic relations between the two countries.
 169. See Weech (1868, p. 94).
 170. [GLAK 48 Haus- und Staatsarchiv: III. Staatssachen] 6075, Doc. 5.
 171. See [GLAK N NL Nebenius] Conv. 35.
 172. Ibid. As for the collected materials of the commission see [GLAK 48 Haus- und Staatsarchiv: III. Staatssachen] 6075.
 173. See [GLAK N NL Nebenius] Conv. 35. Even though Nebenius' recollection of the set up of the constitution was written 35 years later, the value of his papers cannot be overestimated.
 174. Ibid.
 175. In [GLAK N NL Nebenius] Conv. 34, *Correspondenz*. In this letter, Nebenius admitted quite openly his missing expertise in the field: 'Der Gegenstand, der durchaus in keiner Beziehung mit den Geschäften eines Finanzraths steht, war mir zwar nicht ganz fremd, doch war ich damit auch nicht vollkommen vertraut.'
 176. See *ibid.*, *Materialien*.
 177. In Nebenius' eyes, France had to undergo the most unsteady development towards constitutional government: 'Frankreich ging [...] vom Zustand der Anarchie zum Despotismus u[nd] vom Desoptismus durch eine furchtbare revolutionäre Crisis zum repräsentativen System über' (*ibid.*).
 178. *Ständische und Repräsentativ-Verfassung [Kleinere Aufsätze, die Verfassung betr.]*, in [GLAK N NL Nebenius] Conv. 35. In his remarks on the formation of the Badenese Constitution, Nebenius also makes clear that 'der später in den höchsten politischen Sphären als eine Frage von hoher Bedeutung geltend gemachte Unterschied zwischen landständischer Verfassung und Repräsentativverfassung in keiner Weise auch nur berührt [wurde]' (*ibid.*).
 179. [GLAK N NL Nebenius] Conv. 34, *Materialien*.
 180. Ibid.
 181. *Volkssouveränität [Kleinere Aufsätze, die Verfassung betr.]*, in [GLAK N NL Nebenius] Conv. 35. Nebenius argued against the contemporary mainstream that *Volkssouveränität* was linked to representative constitutions: 'Man bringt die Ideen der Volkssouveränität in Verbindung mit dem Repräsentativ System. Das ist ganz irrig. Jene Idee kann[n] den ständischen wie der all[gemeinen]

Repräsentation zugrunde liegen gegenüber dem Regenten'. *Ständische und Repräsentativ-Verfassung [Kleinere Aufsätze, die Verfassung betr.]*, in [GLAK N NL Nebenius] Conv. 35.

182. [GLAK N NL Nebenius] Conv. 34, *Materialien*.
183. [GLAK N NL Nebenius] Conv. 35. It is remarkable that Nebenius' draft was consciously assessed in a broader perspective and compared 'mit den in anderen Ländern bestehenden Einrichtungen oder in kurz zuvor veröffentlichten Verfassungsurkunden oder vorliegenden Entwürfen gegebenen Vorbildern' (ibid.). It remains unclear, however, whether only Nebenius or all commissioners had the necessary competence to draw these comparisons.
184. See [GLAK 48 Haus- und Staatsarchiv: III. Staatssachen] 6075.
185. *Verfassungs-Urkunde für das Grossherzogthum Baden* (29 August 1818), in [BRB] 1817–44, 1818, No. XVIII. There is no original copy of the Constitution signed by Karl, but only the final draft.
186. Cf. Section 2.2.2.
187. Nebenius' lack of understanding of, in his eyes arbitrary, differentiations between representative and *landständische* constitutions bears witness to his intellectual distance to traditional forms of corporative government.
188. Fourteenth session of the Bavarian ministerial conference, 15 April 1818. [BAYHSTA Staatsrat] 1656.
189. *Verfassungs-Urkunde des Königreichs Baiern* (26 May 1818). Original handwritten version of the constitutional text in [BAYHSTA Staatsrat] 1660. Official printed version in [GKB] 1818–73, 6 June 1818, column 101ff. Printed versions in, for example, [Verfassungsgesetze] 1894 [1863], pp. 1–25, Huber (1978 [1961], No. 53, pp. 155–71), Wenzel (2002 [1990], pp. 23–41). For an English translation see, for example, [Constitutional Act of the Kingdom of Bavaria] 1837. The Bavarian was the seventh constitution to be released in Germany after 1814, but the first of a larger state. Together with the Constitution ten complementary edicts (*Beylagen*) were proclaimed on 26 May 1818. An annotated edition of them in [Verfassungsgesetze Bayern] 1909 [1899], pp. 65–227.
190. Preamble of the Constitution.
191. The aim to avoid any 'revolutionary' and/or 'Napoleonic' terminology is manifest in that the preamble of the *Verfassungs-Urkunde* refers to the Constitution of 1808, however not accurately as *Konstitution*, but as *Verfassung*. Similarly, the parliamentary assembly of 1808 is not called *National-Repräsentation*, but *ständische Versammlung*.
192. Cf. Section 4.2.1. Cf. Art. 13 of the *Charte* of 1814, 'La personne du roi est inviolable et sacrée', and Art. 14, 'Le roi est le chef suprême de l'Etat'.
193. A textual comparison of the Bavarian Constitution with the French *Charte* and other constitutional texts of the time in Usée (1910, pp. 58–79). More general *Ueber die Standpuncte der baierischen Verfassungs-Urkunde von 1818 in Beziehung anderer Constitutionen*: Hazzi (1819). Concerning the French *Charte*, see also Oeschey (1914).
194. Usée (1910, p. 73).
195. The Sections VI (*Von der Stände-Versammlung*) and VII. (*Von dem Wirkungskreise der Stände-Versammlung*) in particular adopted regulations from the draft of the Constitution of Württemberg, which had been submitted to the *Stände-Versammlung* by the King on 3 March 1817. Text in Pölitz and Bülau (1847, Vol. 1, pp. 377–411). Cf., for example, VU VI § 17 and Württ. 1817 Art. 275, VU VII § 24 and Württ. 1817 Art. 300. Also in section VIII. (*Von der Rechtspflege*) literal

- correspondences are apparent, for example, VU VIII. § 3 and Württ. 1817 Art. 160. In all likelihood, the wording of the provision in the Bavarian Constitution that 'Der König ist das Oberhaupt des Staats, vereinigt in sich alle Rechte der Staatsgewalt, und übt sie unter den von Ihm gegebenen in der gegenwärtigen Verfassungs-Urkunde festgesetzten Bestimmungen aus' was not taken directly from the French *Charte*, but from the draft of the Württemberg Constitution (Art. 4): 'Der König ist das Haupt des Staats, vereinigt in sich alle Rechte der Staatsgewalt, und übt sie unter den, durch die Verfassung festgesetzten, Bestimmungen aus.'
196. Cf., for example, VU II. § 4 and 1808 II. § 2, VU II. § 7 and 1808 II. § 8, VU II. § 10 and 1808 II. § 9, VU IV. § 6 and 1808 I. § 7, VU IV. § 14 and 1808 I. § 8, VU IX. § 2 and 1808 VI. § 1.
 197. See Rimscha (1973, p. 40f.).
 198. Cf. VU IV. § 8 and *Charte* Art. 4, 10 and 62.
 199. See, for example, Hazzi (1819, pp. 58–66).
 200. Regarding the composition of the *Chambre des Pairs*, Art. 27 of the *Charte* merely stipulated that 'La nomination des pairs de France appartient au roi. Leur nombre est illimité; il peut en varier les dignités, les nommer à vie ou les rendre héréditaires, selon sa volonté.' Thus, at least in theory it was up to the king to appoint whomever as member of the first chamber. The admission to the second chamber was 'open' insofar as the qualification criterion, besides a minimum age of 40, was the annual tax amount, but not a specific societal status. Cf. Art. 38: 'Aucun député ne peut être admis dans la Chambre, s'il n'est âgé de quarante ans, et s'il ne paie une contribution directe de mille francs.'
 201. Besides those limited number of peers who had a right to a seat in the first chamber as members of the royal dynasty (VI. § 2 para. 1), as representatives of the mediatised nobility (VI. § 2 para. 4) or *ex officio* (VI. § 2 para. 2, 3 and 5), such as the two archbishops, only aristocratic landowners could be appointed hereditary peers by the king (VI. § 3). The king had the right to nominate life-peers without preconditions (VI. § 2 para. 6), but VI. § 4 limited their number to no more than one third of the number of hereditary peers.
 202. The number of representatives was not fixed in absolute terms, but to be determined by the number of families in the kingdom before every election so that 7,000 families were represented by one parliamentarian (VI. § 8). The French *Charte* kept the number of representatives open, too, but took the population of the *départements* as a basis.
 203. In the 12th session of the ministerial conference on 9 April 1818 it was expressly decided that the 'System der Repraesentation' should be abandoned in favour of 'jenes der Stände-Versammlung' ([BAYHSTA Staatsrat] 1656). In the same session, Zentner also got his proposal accepted that the name of the representative body should be changed.
 204. It is remarkable, though, that the *Charte* condensed the legislative competences of the chambers in one single article, which codified that every bill had to pass the two chambers (cf. Art. 18). In Bavaria, the constitutional text was vaguer (cf., for example, VII. § 2). Moreover, the fiscal rights of the *Stände-Versammlung*, but also a number of important limitations of these rights in cases of 'außerordentliche[n] äußere[n] Verhältnisse[n]' (VII. § 7) and 'außerordentlichen und unvorhergesehenen Bedürfnisse[n]' (VII. § 8) were laid down in detail (cf. VII. § 3–18). Comparable regulations are missing in the *Charte*.
 205. In Great Britain, parliament traditionally forwarded complaints to the government in the form of 'petitions'. On the general role of England as a model for

- Bavarian constitutional debates in the late eighteenth and early nineteenth century, see Lenk (1969).
206. Unlike in Great Britain, however, parliamentary control of the executive body in terms of political accountability remained a desideratum not only in France, but in Bavaria, too.
 207. One example of such 'implicit' adoptions is that the Bavarian Constitution of 1818 imitated the *Charte* in presenting constitutional guarantees for the citizen no longer as universal rights in terms of natural law, as in the revolutionary period, but as simple legal guarantees granted by the sovereign for his subjects. This is why the *Charte* does not talk about *Droits de l'homme* but just *Droit public des Français*.
 208. Sylvia Krauss expresses astonishment that the 'Vorbildcharakter der französischen Charte für die bayerische Verfassung – ein Faktum', was ignored by La Garde (Krauss 1987, p. 88). See, for example, his reports on the new Bavarian Constitution of 13 April 1818, 26 April 1818, 10 May 1818, and 27 May 1818, in Chroust (1935–7, Vol. 1, pp. 52–6).
 209. Report of Zentner on the *Stände-Versammlung*, held in the ministerial conference of 7 July 1819. Cited in Doeberl (1918, p. 50f.). In line with this interpretation, the *Stände-Versammlung* was not 'Theilhaberin an der eigentlichen Staats-Gewalt, sondern nur mitwirkend bei der Ausübung einiger Regierungs-Rechte, welche einen vorzüglichen Einfluß auf das Wohl der Staats-Angehörigen haben' (ibid., p. 51). It was thus only logical that the preamble of the Bavarian Constitution did not characterise the two chambers as an integrative element of the legislation, but only as an institution 'mit den Rechten des Beyrathes, der Zustimmung, der Willigung'.
 210. The constitutional text was actually dated 'Griesbach, den 22. August 1818', but did not appear in the law gazette until one week later: [BRB] 1817–44, 1818, No. XVIII. Printed in, for example, Weech (1868, pp. 99–110), Huber (1978 [1961], No. 53, pp. 171–86). For an English translation see, for example, [Constitution of the Grand Duchy of Baden] 1837.
 211. Nebenius' papers reveal that the conciseness of the text, which avoided detailed regulations, aimed not to pre-empt or even hinder the future development of the constitutional text. See [GLAK N NL Nebenius] Conv. 35.
 212. Usée (1910, pp. 121–4, citation p. 123).
 213. [GLAK N NL Nebenius] Conv. 35.
 214. In Weech (1868, p. 98). The original quotation can no longer be found in Nebenius' *Nachlaß*. It is likely that the corresponding document, like other parts of his constitutional papers, have been lost.
 215. Immediate structural parallels cannot be found, though: while the Constitution of Baden contains 83 paragraphs arranged in five sections, the Polish Constitution consists of 165 paragraphs in seven sections. The Polish Constitution of 27 November 1815 is printed in [DPKP] 1815ff., 1815, Vol. 1, pp. 1–103.
 216. For a comparative analysis of the constitutional texts see Goldschmit (1918, pp. 33–44).
 217. Cf. Section 3.2.4.
 218. The principle of monarchical inviolability as such was not a particular innovation of the *Charte*, but appears even in earlier constitutions, for example, the Spanish of 1812, and is also a core element of English constitutional law.
 219. Very similar is also the wording of the regulation on the immunity of parliamentarians (*Charte* Art. 52, Poland § 89, Baden § 49), the pre-eminence of the

- second chamber regarding fiscal legislation (*Charte* Art. 17 and 47, Poland § 97, Baden § 60), the right of the ministers to be heard in the two chambers (cf. *Charte* Art. 54, Poland § 101, Baden § 76) and on the publicity of the parliamentary sessions (cf. *Charte* Art. 44, Poland § 95, Baden § 78).
220. The wording of the Bavarian Constitution was ‘§ 1. Der König ist das Oberhaupt des Staats, vereinigt in sich alle Rechte der Staatsgewalt, und übt sie unter den von Ihm gegebenen in der gegenwärtigen Verfassungs-Urkunde festgesetzten Bestimmungen aus.’ A textual comparison of the Constitution of Baden with other texts in Usée (1910, pp. 125–39).
221. Cf. VU X. § 4. The responsibility of all state officials went hand in hand with corresponding impeachment procedures. Cf. § 67 para. 1 of the Badenese Constitution.
222. Cf. VU VII. § 21.
223. Cf. VU X. § 7. Unlike in Bavaria, however, in Baden those guarantees of the Constitution were not put together in one specific section of the constitutional text.
224. The common-sense character of many adoptions may be one explanation why Nebenius, with the exception of the Polish Constitution, did not explicitly mention the models he used.
225. [GLAK N NL Nebenius] Conv. 35.
226. Cf. Section 3.2.5. Unlike many other contemporaries, Nebenius was aware that *landständisch* and *repräsentativ* was not exactly the same, even though he doubted the practical use of a strict distinction. See *Ständische und Repräsentativ-Verfassung [Kleinere Aufsätze, die Verfassung betr.]* in *ibid.*
227. See Rousseau (1996 [1762]).
228. See, for example, Tit. II, Chapter I (3), Art. 7 of the French Constitution of 1791.
229. Printed in Weech (1868, pp. 13–19, here p. 14f.).
230. It is remarkable that the lower house did not have a special designation, but was only referred to as ‘Second Chamber’ (*zweyte Kammer*) in the constitutional text.
231. These 63 representatives were not directly elected, but indirectly by the members of an electoral college (cf. § 34).
232. Cf. § 37.
233. The linking of local citizenship and suffrage excluded all non-independent inhabitants from the right to vote, among them villeins, servants and farm labourers (see Andreas 1913b, p. 481).
234. The independence of each of the two chambers included a strict separation of their parliamentary activities, too. Cf. § 75 (1).
235. See Montesquieu (1950 [1758; OV 1748] XI 6).
236. *Erinnerungen über den Sensburgischen Entwurf II.* (22 July 1816), in [GLAK 48 Haus- und Staatsarchiv: III. Staatssachen] 6069.
237. Unlike in Great Britain and France, the appointment of hereditary peers was not explicitly provided for in Baden and indeed never practised in constitutional reality.
238. This subordination was underlined by keeping a low profile as regards the character of the chambers as legal entities. Cf. § 75 (2).
239. Cf. section two of the Constitution, entitled *Staatsbürgerliche und politische Rechte der Badener, und besondere Zusicherungen*.
240. In Baden, the *Code Napoléon* had been introduced as *Land-Recht für das Großherzogthum Baden* in 1810. What followed was ‘eine wohlthätige Überflutung

- auch der öffentlich-rechtlichen Verhältnisse mit liberalen, rechtsstaatlichen Gedanken' (Voigt 1948, p. 108).
241. See Kirsch (1999b).
 242. In like manner, the *Charte* was also a broker for universal fundamental rights (see Rimscha 1973, p. 43).
 243. Cf. section five of the Bavarian Constitution: *Von besondern Rechten und Vorzügen*.
 244. Cf. attachments four to eight of the Bavarian Constitution.
 245. See Aretin (1976, p. 264).
 246. Of the male population older than 25 years, actually 70 to 72 per cent had the right to vote, that is about 16.5 to 17 per cent of the whole population of the Grand Duchy. This proportion was far higher than in any other European state of the time. In France, for example, just about 0.4 per cent of the population were entitled to vote in 1814. Even the liberal Norwegian Constitution of 1814 did not come close to Baden with a percentage of about 11.4 (see Hörner 1987, p. 131).
 247. See Weis (2003a, p. 116).
 248. The substratum of this 'constitutional topos', like the idea of a balanced constitution and bicameralism, was for a good part of English origin, but not necessarily perceived in a national framework and exclusively linked to Great Britain any longer.
 249. See, for example, Hazzi (1819, p. 69f.).
 250. Montesquieu's argument (*Esprit des lois*, XI 6) was that in view of its hereditary power, the upper house was likely to put its own interests before those of the public. Thus, in areas where the probability of corruption was high, like in financial affairs, the first chamber should only have a right to obstruct (see Montesquieu 1950 [1758; OV 1748], p. 213f.). Even though there are no immediate indications in Nebenius' papers for that, it is likely that § 60 was modelled on the English Constitution.
 251. The terminology goes back to Montesquieu (see *ibid.*, p. 214).
 252. Due to its corporative character, the Swedish *Regeringsform* of 1809 provided a rather complicated procedure in the event of disagreement about fiscal bills. If no other solution could be found among the estates, the absolute majority of the individual votes should finally decide (cf. § 69 of the *Regeringsform*).
 253. In Norway, 'voting per capita' was not only applied for controversial money bills, but for all bills which had not passed the *Lagthing* after two attempts. In such a case, a two-thirds majority was needed (cf. § 76 of the 1812 Constitution).
 254. See Sellin's terminology of the 'geraubte Revolution' (Sellin 2001).
 255. See Heinrich (1948, pp. 63–5).
 256. See also Jellinek (1964 [1887], p. 314).
 257. See Oeschey (1944, especially p. 387).
 258. Heinrich (1948, p. 64).
 259. Cf. section VII § 2–19 and section X § 7 of the Bavarian, § 53, 57–9, 64 and 65 of the Badenese Constitution.
 260. Cf. Art. 18. The only exception from these rules were the emergency powers of the king, regulated in Article 14 of the *Charte*.
 261. That was since the constitutional texts stipulated that not only fiscal bills and bills aiming at an amendment or change of the existing constitution were subject to the 'Zustimmung' of parliament, but also all bills concerning 'die Freyheit

- der Personen oder das Eigenthum der Staatsangehörigen' (section VII § 2 of the Bavarian Constitution; § 65 of the Badenese Constitution is literally identical).
262. On this 'decomposition' of the legislative spheres, see Jellinek (1964 [1887], p. 110).

5 Constitutional Practice: A Comparison

1. Attempts in this direction have been made recently. See, for example, Kirsch (1999a, pp. 167–70). See also volume two of the *Handbuch der Europäischen Verfassungsgeschichte*, to be published in 2012, which provides the basis for comparisons of *Verfassungswirklichkeit* at a European level. Even comparisons between the Southern German states are rare. One exception that proves the rule is Conklin (1972).
2. See Brandt (1987, p. 802), characterising 1830 as a 'Wendepunkt der politischen Kultur'. In France, the July Revolution even marked a more distinct political and constitutional shift.
3. On *Verfassungskultur* as an element of constitutional history: Brandt, Schlegelmilch and Wendt (2005).
4. In his introductory speech to the ceremony, which took place at the royal residence in Munich, the King left no doubt about the Constitution's character as a *constitution octroyée*. At the end of the ceremony, Max I Joseph personally decorated Zentner for his services in the drafting of the Constitution: certainly the best proof for the crucial role he had played (see Doeberl 1918, p. 46).
5. On the perception of and reaction to the Bavarian Constitution of 1818 see Oeschey (1913), Doeberl (1918, pp. 57–62), Franz (1926, pp. 3–55).
6. *Verkündigung der landständischen Verfassung in Baiern*, in [Neuer Rheinischer Mercur] 1816ff., No. 87, 31 May 1818, p. 351f., citation p. 352. Just a few days after its official proclamation the Constitution was available in printed form all over Germany, including Northern Germany. See, for example, *Verfassungsurkunde des Königreichs Baiern*, in [Deutscher Beobachter] 1815–19, No. 636, 5 June 1818; No. 637, 9 June 1818; No. 638, 12 June 1818. In the Bavarian press, the release of the Constitution met with general assent, even though with slight regional differences: while the new Constitution was perceived as a 'royal gift' in *Altbayern*, where former constitutional experiences were lacking, in the Palatinate with its liberal traditions the appraisal was less gushing. See, for example, the report on the proclamation of the Constitution in [Neue Speyerer Zeitung] 1816–53, 27 May 1818.
7. Cited in Doeberl (1918, p. 59).
8. [Patriotische Wünsche] 1818, p. 3. The euphoria in 1818 was similar to that directly after the Napoleonic Wars in 1814.
9. See, for example, the report of the Bavarian *chargé d'affaires*, Schoepff, to King Max I Joseph, dated 12 August 1818, in which he described the positive echo which the release of the Bavarian Constitution had caused in the French media. [BAYHSTA MA] III 2091. Partly printed in Krauss (1987, p. 439f.).
10. See Oeschey (1913, p. 290f.).
11. See Heydemann (1995).
12. In a letter to his foreign minister, the British envoy in Frankfurt (1817–23) and Munich (1815–20), Frederick James Lamb, later bluntly criticised the Bavarian Constitution as 'senseless'. Lamb to Castlereagh, Munich 4 January 1820,

- in [Castlereagh] 1848–53, Vol. 12, pp. 165–8, citation p. 167. One point of criticism from the British was that the Southern German Constitutions were too theoretical and abstract for the broad population, since they lacked ‘practice’: ‘The usual mode of framing constitutions has not begun by employing them. The usual mode of framing constitutions has been to commit the task to some Professor, who reduces an abstract Theory into so tedious a shape that nobody can read it’. Lamb to Castlereagh, Frankfurt/Main 20 June 1820. Partly printed in Heydemann (1995, p. 50f., citation p. 51).
13. [Times] 1783ff., 8 June 1818, p. 3.
 14. Harl (1818, p. 19). In his text, Harl enumerates 19 explicit ‘Vorteile und Vorzüge der neuen bayerischen Verfassungsurkunde’ (ibid., pp. 25–8). Similar in Effner (1818).
 15. Aretin (1818, p. VI). The aim of his pamphlet was, according to Aretin, ‘im Ganzen das stolze Freudengefühl, welches sich bei dem ersten Erscheinen der Urkunde allenthalben geäußert, zu rechtfertigen und zu verewigen’ (ibid., p. IV).
 16. See [Patriotische Wünsche] 1818, p. 4.
 17. See [Briefe eines Baiers] 1818, p. 1f.
 18. Feuerbach (1853 [1852], Vol. 2, p. 113). His undiminished Bavarian consciousness was quite remarkable, since he had plainly sided with the national movement in the previous years. See especially Feuerbach (1966 [1814]).
 19. Hornthal (1818, p. 102f.).
 20. Behr (1818, p. 5f.).
 21. Hornthal (1818, p. 103).
 22. Section VII § 1 of the Constitution stated that ‘Jeder Bayer ist verpflichtet, zur Vertheidigung seines Vaterlandes [...] mitzuwirken’, excluding only the clergy from this duty. Section V, § 4 and § 5, however, granted a special status for sons of aristocrats and high state officials.
 23. *Stimme aus Baiern über die neue Verfassung*, in [Neuer Rheinischer Mercur] 1816ff., No. 93, 11 June 1818, pp. 371–74, citation p. 372.
 24. Soden (1818, p. 28f.).
 25. Ibid., p. 34. He underpinned his argument for the need of a strong aristocracy by referring to Montesquieu. See ibid., p. 32f.
 26. [Briefe eines Baiers] 1818, p. 9.
 27. See Behr (1818, p. 32).
 28. See [Patriotische Bemerkungen] 1818.
 29. See Hazzi (1819). Joseph Ritter (since 1816) von Hazzi (1768–1845), physiocrat, writer and Bavarian official, had served in France during the Napoleonic Age.
 30. [Patriotische Bemerkungen] 1818, p. 4. The Constitution of the United Netherlands, ‘die in Form eines wechselseitigen Vertrages von einsichtsvollen und patriotischen Männern entworfen, hernach der Nation zur Annahme vorgelegt wurde’, is considered a splendid example for such an agreed constitution (ibid., p. 5).
 31. See Hazzi (1819, p. 22).
 32. Ibid. Similar, but perhaps less harsh, criticism of the unilateral proclamation of the Constitution can also be found in many other writings of the time. See, for example, Behr (1818, p. 8f.). There is, nevertheless, also a lot of literature in defence of the *octroi*. See, for example, Aretin (1818, especially pp. 9–12).
 33. Hazzi’s pamphlet caused quite a stir in contemporary Germany. While his writing was praised as a sophisticated analysis of the Constitution and sharp critique of its weaknesses in the liberal press, it met with fundamental opposition by others.

- See especially [Bemerkungen] 1819, most probably written by a member of the nobility.
34. The decree of 12 June had promised the execution of the *Verfassungs-Urkunde* in the *Rheinkreis* would only take place with modifications appropriate to the existing institutions. The decree of 5 October 1818 finally made these promised modifications explicit. The *Erlaß über die Anwendung der Verfassung im Rheinkreis* (5 October 1818) in Döllinger (1835–9, Vol. 1, pp. 382–5).
 35. [Rheinische Blätter] 1816–20, No. 188, 24 November 1818, p. 802. Similar is the message of the final sentence of Hazzi's pamphlet on the Constitution (Hazzi 1819, p. 120). His hopeful ending and the praise of the King was certainly a form of a *captatio benevolentiae*, but also the expression of firm belief that it was possible to perfect the as yet deficient Constitution.
 36. Letter of Eduard Freiherrn von Stainlein, Bavarian diplomat in Vienna, dated 12 June 1816. [BAYHSTA MA] II 206a.
 37. Metternich to Karl Eduard von Hruby, Karlsbad 10 July 1818, in Chroust (1939–42, Vol. 1, p. 203f., citation p. 204). 'Alles, was aus München ergeht, ist gegen Österreich'. *Ibid.*, p. 204.
 38. Wilhelm I, Elector of Hesse. Report of the Bavarian envoy at the Federal Diet, Aretin, Frankfurt/Main 4 November 1818. Cited in Oeschey (1913, 287f.).
 39. On the Bavarian *Stände-Versammlung* during the *Vormärz*, see Götschmann (2002, bibliography pp. 908–49). See also Sachs (1914) and Grösser (1929). The history of the *Landtag* in broader historical perspectives is analysed in Ziegler (1995), with detailed evaluations of the available sources in the *Hauptstaatsarchiv* (see pp. 225–39, 241–9, 269–316).
 40. See, for example, Puchta (1818), [Patriotische Wünsche] 1818, Rösling (1819). An overview of the journalistic debate before and during the first *Landtag* in Franz (1926, pp. 56–81).
 41. See, for example, [Zur Stände-Versammlung in Baiern] 1819.
 42. See, for example, Rühl (1819, p. 15). The prerogatives demanded for the parliamentarians differed considerably from the constitutional text, too, and included, among others, the right of initiative.
 43. A detailed analysis of the first *Landtag* in Lerchenfeld (1854, pp. 135–224). The minutes of the two chambers: [VAKKB] 1819–31, [VKRKB] 1819ff.
 44. The inauguration of the first *Landtag* in February proved previous misgivings wrong, which had speculated that the *Stände-Versammlung* might perhaps never be convened like the *National-Repräsentation* of 1808. See, for example, *Aus Bayern*, in [Neuer Rheinischer Mercur] 1816ff., No. 142, 11 November 1818, column 1012f.
 45. In Doeberl (1928 [1912], p. 594f.). The *Landtag* of 1819 was well covered by contemporary newspapers, see especially [Baierische National-Zeitung] 1807–20.
 46. In Doeberl (1928 [1912], p. 595).
 47. This was promptly criticised in the contemporary press as an attitude 'welche dem Geist der bayerischen Konstitution nicht mehr entspricht und welche der erfreuenden Entwicklung dieser zarten Pflanze zu einem fruchtreichen Baum in hohem Grade gefährlich werden könnte' ([Repräsentativ-Monarchie] 1819, p. 3f.).
 48. Weis (2003a, p. 124).
 49. See, for example, [Neue Stuttgarter Zeitung] 1819, No. 36, 20 February 1819, p. 143. On constitutional conflict between crown and *Landtag* during the *Vormärz* see, for example, Weitzel (2006).

50. On details about the various initiatives during the first *Landtag*, see [VAKKB] 1819–31, Vols 1 to 14, 1819. On the legislative role of the *Stände-Versammlung*, see Schwertmann (2006).
51. For the first time after many years the budget for the fiscal period 1819–25 was balanced, with estimated expenses of 31,017,596 guilders and public revenues of 31,126,811 guilders. The *Landtag* guaranteed the whole existing debt of no less than 105 million guilders and initiated a plan for the settlement of the existing debts. See Doeberl (1928 [1912], p. 597).
52. See Franz (1926, p. 82).
53. The Constitution of 1818 did not explicitly mention the procedure or wording of the oath taking.
54. Key information about all Bavarian deputies in the *Kammer der Abgeordneten* from 1819–45 in Leeb (1996, Vol. 2, pp. 711–815).
55. Sturz referred to § 16, § 17 and § 23 of the *Edict über die Stände-Versammlung*, which in his eyes backed his restrictive interpretation.
56. See, for example, [Fresko-Gemälde] 1819.
57. See Spaun (1819). For key biographical information on Franz von Spaun (1753–1826) see [Allgemeine Deutsche Biographie] 1875–1912, Vol. 35, 1893, p. 69f.
58. Spaun (1819, Vol. 2, p. 65).
59. See *ibid.*, Vol. 2, p. 41.
60. See [VAKKB] 1819–31, Vol. 14, pp. 617–29, especially pp. 625–7. The speech aroused some attention in the rest of Germany, too, and was also printed in a number of non-Bavarian newspapers. See, for example, [Karlsruher Zeitung] 1758–1810; 1817–1933, No. 210, 31 July 1819, p. 985f.; No. 211, 1 August 1819, p. 994f.; No. 212, 2 August 1819, p. 997f.; No. 213, 3 August 1819, p. 1001f.; No. 214, 4 August 1819, p. 1005; No. 215, 5 August 1819, p. 1009f.
61. In Chroust (1949–51, Vol. 1, pp. 204–6, citation p. 204f.).
62. *Bemerkungen über die ersten Vorgänge in der bayerischen Ständeversammlung*, in Stern (1893, pp. 332–9, citation p. 332).
63. Sir Robert Gordon to Castlereagh, Florence 12 July 1819. Cited in Heydemann (1995, p. 44). See also Brandt (2002, p. 145). On Article 13 of the German Federal Act, see also Wunder (1978).
64. Freiherr vom Stein to Schlosser, 19 June 1819, in Pertz (1849–55, pp. 278–80, citation p. 278). Unlike Metternich, vom Stein was positive about the constitutions and the Bavarian in particular.
65. Report of the Bavarian envoy at the Federal Diet, Aretin, Frankfurt/Main 16 June 1819. Cited in Oeschey (1913, p. 289).
66. Christian Günther Graf von Bernstorff, Prussian foreign minister, to Friedrich Wilhelm von Zastrow, Prussian envoy in Munich, Berlin 11 May 1819, in Chroust (1949–51, Vol. 1, p. 209f., citation p. 209).
67. See Ludwig to Egid Ritter von Kobell, Bad Brückenau 15 July 1819. Printed in Meiser (1938, p. 139f.). In his letter, Ludwig even showed some sympathy for the decision of the *Stände-Versammlung* to frustrate the governmental plans to raise the military budget (*ibid.*, p. 139).
68. See Hazzi (1819, p. 13). The lengthy and complex character of the document contributed its part that the perception was not too enthusiastic.
69. See, for example, Soden (1818, p. 10f.).
70. See [Verfassungs-Katechismus] 1819. The author of the text is not known, but in view of its marked appraisal of king, government and fatherland there can be no doubt that the catechism was launched by the government or at least written with its approval.

71. See, for example, Aretin (1819), [Verfassungs-Katechismus] 1823, [Bayerischer Verfassungs-Katechismus] 1832.
72. Constitutional catechisms were not entirely new and had already been used as an instrument of political (counter-)propaganda during the Napoleonic Age.
73. [Verfassungs-Katechismus] 1819, p. 6.
74. See, for example, *ibid.*, p. 7f. Very similar was the line of argument in the French *Charte* of 1814.
75. See *ibid.*, p. 13.
76. See *ibid.*, p. 14.
77. The Constitution itself was presented as an important tool to strengthen existing patriotism. See *ibid.*, p. 64.
78. *Ibid.*, p. 17.
79. *Ibid.*, p. 27.
80. *Ibid.*, p. 32.
81. See *ibid.*, p. 42f.
82. Like most writings of the time the text perpetuates the common indifference towards the distinction between representative and *landständische* constitutions, for example by putting 'constitutionnelle Monarchie' on a level with 'ständische Verfassung'. *Ibid.*, p. 26.
83. *Ibid.*, p. 45.
84. *Ibid.*, p. 14.
85. While the school system provided an institutionalised and promising basis to address the young, the question-and-answer form of the catechisms facilitated their use as teaching material.
86. Whether constitutional catechisms were also used in church service remains open, though.
87. See Kobler (1980).
88. [Baierische National-Zeitung] 1807–20, No. 126, 26 May 1819, front page.
89. The verse is taken literally from the fourth Eclogue of Virgil (line 4). The same verse had already served as inspiration for the motto on the back of the Great Seal of the United States, *Novus ordo seclorum* ('New Order of the Ages'). A reproduction of the coin in Glaser (1980, plate 16).
90. On the hopes the authorities placed in the Constitution and the coin to commemorate it see [Baierische National-Zeitung] 1807–20, No. 126, 26 May 1819, front page.
91. The donor of the columns was Graf Franz Erwein von Schönborn-Wiesentheid (1776–1840), its architect Leo von Klenze (1784–1864), who designed the *Konstitutionssäule* in compliance with the Trajan's Column in Rome. The inscription at the bottom of the monument: 'Der Verfassung Bayerns, ihrem Geber Max Joseph, ihrem Erhalter Ludwig zum Denkmale'. Count Schönborn-Wiesentheid also initiated the installation of a *Konstitutionssaal* ('Constitutional Hall') in the castle, containing medallions with the main principles of the constitution on its walls.
92. On the celebration of constitutions by the means of festivities, see Stollberg-Rilinger (2003).
93. See Vorländer (2004 [1999], p. 66).
94. Literature on the Hambach Festival is manifold. See, for example, Foerster (1988), Kernmann, Nestler and Schiffmann (2006).
95. Not only coins, but also medals were produced to commemorate the Constitution of 1818. (see [BAYHSTA GH MKH] 152).

96. 'Constitutional patriotism' (*Verfassungspatriotismus*) is not a nineteenth-century terminology, but a twentieth-century concept originating from political scientist Dolf Sternberger. See, for example, *Unvergleichlich lebensvoll, aber stets gefährdet. Ist unsere Verfassung nicht demokratisch genug?*, in [FAZ] 1949ff., 27 January 1970, p. 11; *Verfassungspatriotismus*, in [FAZ] 1949ff., 23 May 1979, p. 1. Even though particularly important in postnational theories and European Studies, the term and the underlying idea that 'identity' often relies on a shared sense of values rather than a common history or ethnic origin is also fruitfully applicable in historical contexts (see Sternberger 1990, for example, p. 30).
97. Altogether, 2,340 complaints are known for the period between 1819 and 1918. The records of the *Beschwerdeausschuss* in the archives of the Bavarian *Landtag* contain the vast majority, namely 2,250. Ninety additional complaints are exclusively published in the *Landtagsverhandlungen* (see [VAKKB] 1819–31, 1832ff.). For an analysis of those complaints, see Götschmann (1997), for the *Vormärz* especially Vol. 1. See also Götschmann (1998).
98. All in all, only 11 appeals were passed on to the monarch in person, who transferred all of them to the Council of State. Two of them were not answered at all, eight were rejected wholesale, and only one was acknowledged as justified, at least partly.
99. Ancillon to Zastrow, Berlin 17 August 1819, in Chroust (1949–51, Vol. 1, pp. 225–7, citation p. 226).
100. *Ibid.*, p. 226f.
101. In his reports from Karlsbad, Rechberg campaigned for reactionary measures by amplifying the spectre of foreign intervention. In Doeberl (1918, p. 69).
102. Above all it was the draft of an *Executionsordnung*, providing the legal basis for direct, even military, intervention of the *Bund* against its members, which was cause for serious concern. Besides the 'Executive Order', the three other integral parts of the Karlsbad Decrees were the *Bundes-Universitätsgesetz*, the *Bundes-Preßgesetz* and the *Bundes-Untersuchungsgesetz*. The text of the decrees in Huber (1978 [1961], pp. 101–5).
103. Ludwig to Maximilian I. Joseph, Würzburg 1 October 1819, in Lerchenfeld (1887, p. 292f., citation p. 293). The same sentence appears in Ludwig's letter to Rechberg (Würzburg 1 October 1819, in *ibid.*, p. 294).
104. Ludwig to Maximilian I. Joseph, Würzburg 1 October 1819, in *ibid.*, p. 292f., especially p. 293.
105. Since the German Federal Act stipulated no formal liability to promulgate resolutions of the Federal Assembly on the level of the member states, not to make such resolutions public was a way of preventing them gaining legal force.
106. [GKB] 1818–73, 16 October 1819. Concerning the repercussions of the Karlsbad Decrees on the Bavarian Constitution and Bavarian foreign policy, see Lerchenfeld (1883), Treitschke (1883).
107. Various addresses to the King were prepared to thank him for the defence of the Constitution, not least by Behr and Hornthal.
108. Lerchenfeld to Ludwig, Munich 30 October 1819, in Lerchenfeld (1887, p. 296f., especially p. 296).
109. See [BAYHSTA MA] II 38, II 41.
110. The King's message to Zentner in Doeberl (1918, p. 70).
111. On Zentner's diplomatic activities and role during the *Ministerkonferenz* in Vienna see Dobmann (1962, pp. 171–91). The conference as such is exhaustively covered in Aegidi (1860–9).

112. *Schlussakte der Wiener Ministerkonferenzen* (15 May 1820), in Huber (1978 [1961], pp. 91–100).
113. Cf. also Art. 61.
114. *Ibid.* Under certain circumstances, an exception from this rule was possible: ‘Art. 25 [...] Als Ausnahme kann jedoch, in Rücksicht auf die innere Sicherheit des gesammten Bundes, und in Folge der Verpflichtung der Bundes-Glieder zur gegenseitiger Hilfsleistung, die Mitwirkung der Gesammtheit zur Erhaltung oder Wiederherstellung der Ruhe, im Fall einer Widersetzlichkeit der Unterthanen gegen die Regierung, eines offenen Aufruhrs, oder gefährlicher Bewegungen in mehreren Bundesstaaten, Statt finden.’
115. On 27 January 1820 the Crown Prince expressed his thanks to Zentner effusively. Ludwig to Zentner, Munich 27 January 1820, in [BAYHSTA GH NL Ludwig I.] 89/4/4. Zentner himself was very proud of his achievements and accordingly wrote to the King on 28 January with a good amount of self-confidence. Zentner to Maximilian I Joseph, Vienna 28 January 1820, in [BAYHSTA MA] II 42.
116. *Schlussakte der Wiener Ministerkonferenzen* (15 May 1820), in Huber (1978 [1961], pp. 91–100).
117. For his defence of Bavarian state interests in Vienna, Zentner was rewarded with the post of a secretary of state, even though without portfolio, and the highest Bavarian decoration, the *Großkreuz des Verdienstordens der Bayerischen Krone*. Moreover, Zentner was enfeoffed with a crown fiefdom in Franconia.
118. The assessment of the *Wiener Schlussakte* in Europe was inconsistent. The Russian government, for example, welcomed its release, not least because Tsar Alexander I was increasingly convinced that all over Europe the danger of revolution was on the advance (see Eich 1986, p. 409). Other governments and politicians, including Castlereagh, took perhaps a less favourable view, but accepted the constitutional path set in Vienna as a domestic issue which gave no reason for diplomatic interventions (see Heydemann 1995, p. 49).
119. See Franz (1926, p. 97). On the political press between 1819 and 1825 see *ibid.*, pp. 81–107.
120. See Treml (1977). Adjustments to the reactionary politics of the *Bund*, however, did not take place on a constitutional, but rather administrative and hence subtler level. On press policy and censorship in Bavaria around and after 1814, see also Piereth (1999).
121. See Stolleis (1976). For the *Landtag* of 1822 see Götschmann (2002, pp. 399–429).
122. On the *Landtag* of 1825: Götschmann (2002, pp. 430–66).
123. Legally, preventing representatives from taking their seat by refusing them the necessary leave-of-absence if they were state officials was in conformity with the text of the Constitution (cf. *Zehnte Beylage*, title I, § 44).
124. Cf. § 81 of the standing orders of the Bavarian *Stände-Versammlung*, in Lerchenfeld (1854, p. 287f.).
125. The *Landtagsabschied* praised that ‘wir am Ende dieser langen Sitzung mit Beruhigung und Zufriedenheit das Gleichgewicht im Staatshaushalt hergestellt, den Staatscredit auf für die Zukunft auf dauerhaften Grundlagen befestigt [finden]’. In *ibid.*, p. 315. Already in the years before, the development of the budget showed a positive tendency. Cf. the statistics for the period 1820–3 in Lerchenfeld (1854, pp. 414–16).
126. See Lerchenfeld (1887, p. 171f.). On the crucial political and constitutional importance of the ministry of the interior, see Götschmann (1993a).

127. Legal grounds for censorship in domestic policy matters are present in Article 59 of the *Schlussakte der Wiener Ministerkonferenzen* (15 May 1820). In Huber (1978 [1961], pp. 91–100).
128. See Wellmer (1826).
129. See the contemporary replies to Wellmer's pamphlet, especially Miller (1826) and Soden (1826). An overview of constitutional literature between 1825 and 1828 in Franz (1926, pp. 108–47).
130. *Thronrede Sr. Majestät des Königs Ludwig I. bei Eröffnung der 4. Ständeversammlung, am 17. November 1827*, in [Thronreden und Adressen] 1893, p. 11f., citation p. 11.
131. Not only did the first chamber have severe reservations against reform ambitions, but also an active conservative opposition in the second chamber.
132. Even at the time of the *Landtag*, discord was tangible and manifest, for example in the liberal criticism of the continual exclusion of Behr from the *Ständeversammlung*. See, for example, Dalberg (1828). At the beginning of the fourth *Landtag*, Behr himself had cherished the hope that the state authorities would grant him leave-of-absence, not least, because Behr had been in close contact with Ludwig at the time he had been crown prince (see Behr 1828, Vol. 1).
133. See Behr (1830, p. 51).
134. On the volte-face of Ludwig I at the beginning of the 1830s, see Gollwitzer (1997 [1986], pp. 443–71). An overview of Ludwig's reign with further biographical references is Kraus (2003).
135. [BAYSTBM Handschriftenabteilung Ludwig I.-Archiv] Tagebuch 3,85 (6 July 1830).
136. Cited in Doeberl (1918, p. 77).
137. In [BAYHSTA GH NL Ludwig I.] ARO 19.
138. See the protocol of the *Ministerrat* (1 October 1830) in [BAYHSTA Staatsrat] 107.
139. The only effect was that Ludwig refrained from involving the German Confederation. See the protocol of the *Ministerrat* of 1 October 1830 in *ibid*.
140. *Verordnung den Vollzug der Bestimmungen des §. 2 der III. Beilage zur Verfassungs-Urkunde betreffend*, in [RBl.] 1826–73, No. 4 1831, 31 January 1831, columns 33–40.
141. Cf. the *Dritte Beylage* of the *Verfassungs-Urkunde* of 1818.
142. A contemporary list considered 66 of the 128 representatives to be members of the opposition. The opposition as well as the 'governmentalists' still lacked the character of 'parliamentary parties', yet the level of organisation became higher (see Kraus 2003, p. 204). On the *Landtag* of 1831, see Gölz (1926). See also the protocols of the two chambers: [VAKKB] 1819–31 (28 volumes, enclosures 14 volumes), [VKRKB] 1831ff. (13 volumes).
143. Schenk, a passionate poet, had taken over the ministry of the interior from Armansperg on 1 September 1828.
144. See [BAYHSTA Staatsrat] 117.
145. *Thronrede Sr. Majestät des Königs Ludwig I. bei Eröffnung der Ständeversammlung*, in [Thronreden und Adressen] 1893, p. 14.
146. On the standing orders of the *Stände-Versammlung* during the *Vormärz*, see Götschmann (1993b).
147. Despite the agreement on a *Zivilliste*, however, the financial situation of the Bavarian crown continued to be strained and an object of quarrel, basically until the end of the monarchy. See also Aretin (2006).
148. See Gollwitzer (1997 [1986], p. 454).

149. [BAYHSTA Staatsrat] 129 (31 July 1831).
150. Memorandum of Ludwig, dated 25 June 1831, in [BAYHSTA GH NL Ludwig I.] 48/4/2.
151. On the watershed-function of the early 1830s in Bavarian history, see Mayring (1990).
152. *Verfassungs-Urkunde für das Grossherzogthum Baden* (29 August 1818), in [BRB] 1817–44, 1818, No. XVIII. The announcement of the Constitution in the press followed one day later. See [Karlsruher Zeitung] 1758–1810; 1817–1933, No. 240, 30 August 1818, pp. 1153–6.
153. *Dankadresse der Stadt und der Gemeinden des Bezirksamts Durlach wegen der Verfassungs-Urkunde*, in *ibid.*, No. 248, 7 September 1818, p. 1191f., citation p. 1192.
154. See, for example, *Dankadresse der Aemter Rastatt, wegen der Verfassungsurkunde*, in *ibid.* No. 255, 14 September 1818, p. 1223f., *Dankadresse der Stadt Karlsruhe wegen der Verfassungs-Urkunde*, in *ibid.*, No. 249, 8 September 1818, p. 1195f.
155. *Dankadresse des Stadtraths zu Mannheim wegen der neuen Verfassungsurkunde*, in *ibid.*, No. 253, 12 September 1818, p. 1211f.
156. See, for example, *Dankadresse der Stadt und des Bezirksamts Lahr wegen der Verfassungsurkunde*, in *ibid.*, No. 258, 17 September 1818, p. 1235f.
157. See Goldschmit (1918, p. 45f.).
158. See Fehrenbach (1996b, p. 19f.).
159. Cf. the announcement of these festivities in [Karlsruher Zeitung] 1758–1810; 1817–1933, No. 247, 6 September 1818, p. 1188.
160. *Verfassungswesen*, in [Deutscher Beobachter] 1815–19, No. 663, 8 September 1818.
161. See *Bemerkungen über die Badische Verfassungsurkunde vom 22. August 1818*, in [Oppositions-Blatt] 1817–20, No. 216, 12 September 1818, columns 1719–22, especially column 1719. The text of the Constitution had been printed in the previous editions of the newspaper (No. 211, 212 and 213); its analysis, including a section on ‘Treffliches, was diese Verfassung mit anderen Verfassungen gemein hat’, was continued in the following numbers.
162. See [Aarauer Zeitung] 1814–21, No. 110, 14 September 1818, p. 577f.
163. See, for example, [Times] 1783ff., 11 September 1818, p. 2.
164. See *ibid.*, 24 September 1818, p. 2.
165. Bader (1973, p. 52).
166. *Ueber die Vorzüge der Badenschen Verfassung vor der Baierschen*, in [Der Patriot] 1818, Vol. 3, No. 14, September 1818, columns 105–10; No. 15, September 1818, columns 113–17.
167. The criticism of the Badenese Constitution formulated in the *Volksfreund aus Schwaben* (Stuttgart) was an exception. See [Volksfreund] 1818–21, No. 53, 12 September 1818, p. 341f.
168. [Der Patriot] 1818, Vol. 3, No. 15, September 1818, column 117. His papers reveal that Nebenius attentively observed the perception of ‘his’ Constitution in the German press and excerpted from various articles, including that in *Der Patriot*. See *Urtheile der Presse über die Verfassung. Excerpte*. In [GLAK N NL Nebenius] Conv. 35.
169. *Ein Wort über die neuverkündete Landesverfassung*, in [Freiburger Wochenblatt] 1810–20, No. 73, 12 September, pp. 681–3, citation p. 681f. The full text of Rotteck’s speech: *Ein Wort über Landstände (1818)*, in Rotteck (1841–3, Vol. 2, 1841, pp. 405–14).

170. *Ein Wort über die neuverkündete Landesverfassung*, in [Freiburger Wochenblatt] 1810–20, No. 73, 12 September, pp. 681–3, citation p. 683.
171. Cf. § 81 of the *Verfassungs-Urkunde*.
172. See Nebenius' letter to Reizenstein, dated 5 December 1818, in [GLAK N NL Nebenius] Conv. 34. Nevertheless, Nebenius took the opportunity to complain about the ungratefulness with which he had been treated after the drafting of the constitutional document, manifest especially in his exclusion from the final deliberations in Griesbach.
173. The need for such a complementation was also emphasised in the contemporary press. See, for example, *Die neue Badensche Verfassung*, in [Deutscher Beobachter] 1815–19, No. 669, 29 September 1818.
174. [BRB] 1817–44 1818, No. XXVII, 24 December 1818, pp. 171–93.
175. On the history of Baden's early parliamentary life, see especially Becht (2009). Older works include, for example, Müller (1900, 1901). Even in 1836 Rotteck published the first *Geschichte der badischen Landtage* (Rotteck 1836).
176. See *Rede Seiner Königlichen Hoheit des Großherzogs von Baden gehalten bey Eröffnung der Ständeversammlung am 22. April 1819*, in [VSVGB2] 1819–1904, Vol. 1, pp. 14–16, here p. 15.
177. See *ibid.*, p. 16.
178. For details of the electoral law and the elections during the *Vormärz*, see Hörner (1987). On members, structure and social composition of the Badenese *Landtag*, see Becht (1980, 1985).
179. See Becht (1984).
180. On the decisive political role of the liberal movement in Baden after 1814, see Gall (1968).
181. On the formation of factions in German parliaments from 1819 to 1849, see Kramer (1968).
182. Ludwig August Friedrich von Liebenstein (1781–1824), civil servant, representative of the town Lahr. For biographical details see [Allgemeine Deutsche Biographie] 1875–1912, Vol. 18, 1883, p. 564f. For his political activities, see Schnabel (1927).
183. *Edict, die Standes- und Grundherrlichen Rechtsverhältnisse im Großherzogthum Baden betreffend* (16 April 1819). [BRB] 1817–44, 1819, No. XIV, 21 April 1819, attachment.
184. An exhaustive analysis of the *Landtag* in 1819 is Müller (1900). The works of contemporaries are also of value, for example, Rotteck (1836), Soiron (1843).
185. See the *Mémoire* of Franz Joseph Haecker, member of the Bavarian second chamber (May 1819). Printed in Chroust (1949–51, Vol. 1, pp. 214–18).
186. See Heydemann (1995, p. 46f.).
187. [Castlereagh] 1848–53, Vol. 12, p. 179. See also Gruner (1990).
188. See Eich (1986, p. 388f.).
189. La Garde to Dessolle, Munich 4 June 1819, in Chroust (1935–7, Vol. 1, pp. 102–5).
190. See the letter of Joann Kapodistrias, secretary of state in the Russian foreign ministry, to Palen, Warsaw 29/17 March 1818, in [BAYHSTA Russische Gesandtschaft München] 2.
191. See Blittersdorf to Berstett, St. Petersburg 4 November 1819, in [GLAK 48 Haus- und Staatsarchiv: III. Staatssachen] 2686.
192. See Eich (1986, p. 386f.).

193. In [BRB] 1817–44, 1819, No. XXVIII, 10 November 1819.
194. *Verordnung, wie die Zensur der Druckschriften nach dem Beschluß des Deutschen Bundes vom 20sten September d. J. auf fünf Jahre einzurichten ist*, in [GKP] 1810–1906, No. 564, 1819, pp. 287–96.
195. Due to a grand-ducal decree of 16 July 1819, new political newspapers had been allowed to be published in Freiburg, Constance and Mannheim.
196. See Arnold (2003, here p. 247). It was only in the 1830s and 1840s that the liberal press in Baden saw a revival (see Müller 1986).
197. In Weech (1868, p. 117).
198. Metternich to Berstett, Vienna 4 May 1820, in Klüber (1845 [1844], pp. 315–20, citation p. 317).
199. See [BRB] 1817–44 1820, No. VIII, 27 May 1820.
200. On the session of 1820 see Müller (1901, pp. 15–98). See also the protocols of both chambers: [VSVGB1] 1819–20, [VSVGB2] 1819–1904. The lengthy protocols and attachments were made accessible by a detailed register, published in 1821 ([VSVGB] 1821).
201. See *Rede Sr. königlichen Hoheit des Großherzogs beym Schlusse des ersten Landtags am 5ten September* (5 September 1820), in [VSVGB2] 1819–1904, 1820, Vol. 9, p. 231f.
202. Instead, the government now sought for individual negotiations with those concerned. In return for the granting of certain privileges, the mediatised nobles should renounce special administrative and judiciary rights. On the Badenese *Standesherrn*, see Furtwängler (1996).
203. See Ullmann (1992, p. 66f.).
204. In the end, the quarrel was about 50,000 guilders of a total (proposed) military budget of 1.25 million guilders.
205. See [Allgemeine Deutsche Biographie] 1875–1912, Vol. 14, 1881, p. 649f.
206. The formal closure of the *Landtag* only followed on 11 December 1824. For an overview of the sessions in 1822 and 1823 see [VSVGB] 1823.
207. See [BRB] 1817–44, 1823, No. III, 10 February 1823, pp. 9–16, especially p. 9.
208. See Ullmann (1992, p. 67). In January 1823, Baden also took part in deliberations of various conservative member states of the German Confederation in Vienna, discussing means to restrict existing constitutions by federal legislation.
209. [Allgemeine Deutsche Biographie] 1875–1912, Vol. 2, 1875, p. 706f.
210. In Weech (1868, p. 118).
211. See Goldschmit (1918, p. 57).
212. In June 1824 Blittersdorf directed another memorandum to Metternich, in which he declared the Badenese Constitution, which had been modelled in compliance with the French *Charte*, inappropriate for the needs of the country: ‘Vielleicht lässt sich mit der Zeit die Repräsentativverfassung in eine dem deutschen Geiste mehr entsprechende ständische Verfassung umwandeln.’ In Weech (1868, p. 120f., citation p. 121).
213. See [Allgemeine Deutsche Biographie] 1875–1912, Vol. 44, 1898, pp. 646–52.
214. In Weech (1868, pp. 121–6, citation p. 121).
215. See *ibid.*, p. 122.
216. In Weech (1868, p. 126–30, especially p. 127).
217. See Goldschmit (1918, p. 61f., citation p. 62).
218. Report of the government to Grand Duke Ludwig I (14 January 1825), in Weech (1868, p. 131f., citation p. 131).

219. See *ibid.*, p. 132.
220. Hörner (1987, p. 434). On ways of exerting influence on the outcomes of elections in *Vormärz*-Baden see *ibid.*, pp. 432–68, for the elections of 1825 especially pp. 434–8.
221. In the first two *Landtage*, Rotteck had been the representative of the University of Freiburg in the first chamber. In 1825 he tried to become elected for the second chamber. In his *Staats-Lexikon* (entry: *Baden als constitutioneller Staat*), Rotteck later reported vividly about the manipulations of the elections in 1825 (see Rotteck and Welcker 1834–43, Vol. 2, p. 117f.).
222. See the protocol of the session on 29 March 1825 in [VSVGB2] 1819–1904, Vol. 3, 1825, pp. 519–69. One of the two complaints had been drafted by Rotteck. On its main contents see *ibid.*, pp. 472–5.
223. In *ibid.*, Vol. 1, 1825, pp. 17–20, citation p. 20.
224. [BRB] 1817–44 1825, No. VI, 21 April 1825. The law itself was dated 14 April.
225. A contemporary report about the *Landtag* of 1825 in [Hermes] 1819–31, Vol. 27, 1826, pp. 241–311 (*Verhandlungen der badischen Landstände im J. 1825*). For a detailed overview of the agenda see the official register: [VSVGB] 1825.
226. For the subjects of the fourth *Landtag*, see [VSVGB] 1828.
227. Report of Karl Graf von Reigersberg (18 March 1828), in [BAYHSTA MA] 2022. The creation of an institution for deaf-mutes had actually been on the agenda for the *Landtag*.
228. A general *Rechts-Katechismus* was already published in 1824. See [Rechts-Katechismus] 1825 [1824]. Specific ‘constitutional catechisms’, however, became only popular in the 1830s: [Katechismus] 1833, Kintzinger (1831), [Katechismus des Gemeinderechts] 1838.
229. Alike constitutional catechisms, political festivities became an important element of Badenese constitutional culture not earlier than in the 1830s (see Nolte 1993, Wien 2001). One of the few political festivities in the 1820s was the *Karl-Friedrich-Säkularfest* in November 1828.
230. See [Allgemeine Deutsche Biographie] 1875–1912, Vol. 43, 1898, pp. 465–8.
231. See Fenske (1992, p. 85).
232. See the memorandum Winter’s *Über Ausübung eines Einflusses der Regierung auf die Wahlen*, dated 18 November 1830. Printed in Weech (1894, pp. 601–5).
233. *Circular an die Kreisdirektoren* (18 November 1830), attached to Winter’s memorandum. Printed in *ibid.*, pp. 605–7.
234. For statistical information about the composition of the chamber, see Becht (1980). On the overwhelming success of the progressive forces, see also Rotteck (1833, p. 17).
235. In [Karlsruher Zeitung] 1758–1810; 1817–1933, No. 83, 24 March 1831, pp. 586–8, citation p. 586.
236. [BRB] 1817–44 1831, No. X, 13 June 1831. The law is dated 8 June 1831.
237. *Ibid.*, No. VIII, 17 February 1832.
238. On agrarian policy in Baden during the *Vormärz*, see Zeile (1989).
239. *Gesetz über die Polizei der Presse und über die Bestrafung der Preßvergehen*, in [BRB] 1817–44, 18320, No. II, 12 January 1832, pp. 29–42.
240. The politicisation finds expression in that no less than 2,200 popular petitions were directed to the *Ständeversammlung* on the occasion of the fifth *Landtag* (see Fenske 1992, p. 85).
241. See Wien (2001, pp. 67–96).
242. See [BRB] 1817–44 1832, No. 42, 30 July 1832, p. 371f.

243. Brandt (2002, p. 146).
244. Langewiesche (2004 [1985], p. 61).
245. For biographical details see [Allgemeine Deutsche Biographie] 1875–1912, Vol. 41, 1896, pp. 660–5.
246. See, for example, Blittersdorf's letter to the envoy of Baden in Vienna, Freiherrn von Tettenbor, dated 12 April 1839. In Blittersdorf (1849, pp. 24–7).
247. On the interrelation between constitutionalism and social movement in Baden from 1830 to 1848/1849, see Nolte (1996).
248. The international perception of the *Charte* is well reflected in that translations of the constitutional document, in journals and in book form, soon became available in various European languages.
249. *Saint-Pétersbourg, 6/18 juillet 1814*, in Maistre (1860, Vol. 1, p. 379). On the differences in the interpretation of the new Constitution even among monarchists cf. Section 2.4.
250. Grégoire (1814, p. 6). On Grégoire: Necheles (1971).
251. [De la Charte constitutionnelle] [1814], p. 2.
252. *Ibid.*, p. 3.
253. *Ibid.*, p. 7.
254. The London *Times*, for example, referred to the differences between the French *Charte* and the English Constitution as early as in June 1814: 'It [the *Charte*; MJP] approaches much nearer to our own in form than in substance; but it is most obvious that the British constitution, such as it exists in presence, would in no manner suit the present circumstances of the French nation; and if it suits them, where are its materials to be found? Where is an independent Peerage possessing four millions of rental, and an House of Commons possessing two millions? Yet this is the real strength of the English Constitution. Without this, the bossied balance of the three Estates would be an infant's dream. When therefore, we hear of a King, a Chamber of Peers, and a Chamber of Representatives, we must not expect that they will perform the functions of the analogous bodies in our own government.' [Times] 1783ff., 9 June 1814, p. 3.
255. See Eich (1986, p. 303). Tsar Alexander I had supported the Senatorial draft (cf. Section 2.1.1 and especially note 54), but had no reservations against the *Charte*, either. That was demonstrated in that the Tsar made the *Charte* the actual model for the Polish Constitution of 1815 (cf. Section 3.2.4 and especially note 165).
256. See, for example, [Times] 1783ff. 15 June 1814, p. 3: 'The Government of Louis XVIII has [...] the most prudent views as to foreign affairs, and, certainly, the very best intentions.'
257. Metternich's *Autobiographische Denkschrift* (1844), in Metternich (1880–4, Vol. 1, pp. 7–219, citation p. 213). Even harsher was the criticism of Friedrich von Gentz, who did not mince matters in a private letter to Metternich, dated Vienna 24 April 1814: 'Lieber hätte ich Napoleon selbst mit der Rhein- und Alpengrenze behalten, als unter dem täuschenden Scheine der Wiederherstellung der Bourbons den vollständigen Triumph aller falschen und verderblichen politischen Grundsätze erlebt' (in Gentz 1909–13, Vol. 3(1), pp. 292–5, citation p. 293). Even though the opinion of Metternich's aide might have been slightly less critical after the proclamation of the *Charte* in June, the fact that Louis XVIII was able to repudiate the principle of popular sovereignty expressed in the Senatorial Constitution was only a cold comfort for the Austrian government: despite the principle of 'monarchical sovereignty' being codified, the constitutional document was still considered as essentially 'revolutionary'.

258. In [Edinburgh Review] 1802–1929, Vol. 24, No. 48, February 1815, p. 533. The *Edinburgh Review*, founded in 1802, became one of the most influential British magazines of the nineteenth century. The magazine began as a literary and political review. Under its first editor, Francis Jeffrey, it was a strong supporter of the Whig party and laissez-faire politics, and regularly called for political reform. Its main rival was the *Quarterly Review*, supporting the Tories.
259. *Ibid.*, p. 535f.
260. On the personal role of Louis XVIII see, for example, Mansel (2005 [1981]).
261. On strategies of national reconciliation in Restoration France, see Frederking (2008).
262. See Pilbeam (2000, p. 4f.).
263. Actually, the members of the cadre were not dismissed, but just released with their half pay in order to fulfil Art. 69 of the *Charte*.
264. See Teyssier (2000, p. 295f.). The restoration of the *Maison militaire* as the basis of a later *Garde Royale* (see Mansel 1988, pp. 117–28) was not only a prestige project, but should also provide the crown with loyal military forces in the capital.
265. The parliamentary report of Baron Louis, the minister of finance, on 22 July 1814 about the budget for 1814 and 1815 offers a detailed account of the dramatic financial situation in France. See [AP] 1862ff. [1800–60], Vol. 12, 22 July 1814, pp. 165–200.
266. See Bury (1948, p. 182). The text of the peace contract, which reduced France's borders to the state of 1792, in [AP] 1862ff. [1800–60], Vol. 12, 30 May 1814, pp. 27–31.
267. In an emergency sitting of both parliamentary chambers, Louis XVIII made a stirring appeal to the French nation. In [AP] 1862ff. [1800–60], Vol. 14, 16 March 1814, pp. 338.
268. The decree of the King in *ibid.*, 16 March 1814, pp. 349f.
269. *Acte additionnel aux Constitutions de l'Empire* (22 April 1815), in [BL] 1815, Vol. 1, No. 19 (No. 112), pp. 131–40. The *Acte additionnel*, drafted by Benjamin Constant, liberalised some of the provisions of the *Charte*, especially the right to vote (see *Des collèges électoraux et du mode d'élection*; Art. 27–33), but did not contain many innovations. The right of initiative for the parliament remained restricted (see Art. 23–5), and ministerial responsibility remained limited to legal offences (see *Titre IV Des ministres, et de la responsabilité*; Art. 38–50).
270. *Déclaration au peuple français* (22 June 1815), in [AP] 1862ff. [1800–60], Vol. 14, p. 504.
271. *Traité du 20 novembre 1815, conclu entre la France et les puissances alliées* (20 November 1815), in *ibid.*, Vol. 15, pp. 308–12. On the same day, the Quadruple Alliance was renewed. *Traité de la quadruple alliance entre l'Autriche, la Grande-Bretagne, la Prusse et la Russie, conclu à Paris, le 20 novembre 1815* (20 November 1815), in *ibid.*, p. 325f.
272. The establishment of this Conference in particular was detrimental to the reputation of Louis XVIII, accused of having restored his throne as an entourage of the allied armies anyway (see Juge 1815, p. 5; Beugnot 1866, Vol. 2, p. 306; and also Duprat 2000).
273. *Proclamation du Roi* (25 June 1815), in [BL] 1815–24, Vol. 1, No. 1, p. 1f.
274. *Proclamation du Roi aux Français* (28 June 1815), in *ibid.*, No. 2, pp. 2–4.
275. *Ibid.*, p. 4.
276. See Pilbeam (2000, p. 7), Thamer (1994, p. 381).
277. See Prutsch (2006, pp. 66–9).

278. *Ordonnance du Roi* (24 July 1815), in [AP] 1862ff. [1800–60], Vol. 15, p. 23.
279. *Ordonnance du Roi* (17 August 1815), in *ibid.*, p. 29f.
280. *Projet d'Acte constitutionnel, présenté par la commission centrale de la Chambre des représentants* (29 June 1815), in *ibid.*, Vol. 14, pp. 570–3.
281. A pure affront to Louis was that the draft did not even mention the Bourbon dynasty as the heir apparent, thus implying the French nation's ability to freely choose their king or perhaps even emperor (cf. Art. 11).
282. The parliamentary minutes recorded shortly: 'les portes du palais étant fermées, les avenues gardées par la force armée, et les officiers qui la commandaient, ayant annoncé qu'ils avaient l'ordre formel de refuser l'entrée du palais.' *Ibid.*, 8 July 1815, p. 625.
283. *Ordonnance du Roi portant dissolution de la Chambre des Députés, convocation des Collèges électoraux, et Règlement provisoire pour les Élections* (13 July 1815), in [BL] 1815–24, Vol. 1, No. 9, pp. 13–19, citation p. 13f.
284. In a first step, the electoral colleges at the level of the *arrondissements* were supposed to elect representatives for the level of the *départements*. In a second ballot, these representatives had to elect the members of the *Chambre des Députés*. See Art. 2–7 of the electoral provisions. *Ibid.*, p. 14f.
285. See Art. 8 and 10. *Ibid.*, S. 15.
286. Louis' political style somewhat corresponded with his calm and pragmatic disposition. In his autobiography, Chateaubriand later summarised the personality and reign of Louis XVIII as follows: 'Égoïste et sans préjugés, Louis XVIII voulait sa tranquillité à tout prix: il soutenait ses ministres tant qu'ils avaient la majorité; il les renvoyait aussitôt que cette majorité était ébranlée et que son repos pouvait être dérangé; il ne balançait pas à reculer dès que pour obtenir la victoire; il eût fallu faire un pas en avant. Sa grandeur était de la patience; il n'allait pas aux événements, les événements venaient à lui' (Chateaubriand 1849–50, Vol. 7, p. 217).
287. In [AP] 1862ff. [1800–60], Vol. 15, 7 October 1815, p. 36.
288. The success of the ultra-royalists in the elections was not least due to the intimidation of the people by the White Terror in the summer of 1815.
289. On the ultra-royalist movement see Oechslin (1960).
290. See Vitrolles (1815).
291. See Chateaubriand (1816, p. 95): 'introuvables, comme un bienfait de la Providence.'
292. *Ordonnance du Roi portant dissolution de la Chambre des Députés, et convocation des Collèges électoraux* (5 September 1816), in [BL] 1815–24, Vol. 3, No. 1081, pp. 177–82. On the background and the motivations of the royal ordinance of 5 September, see Duvergier de Hauranne (1857–71, Vol. 3, pp. 422–544).
293. See Bertier de Sauvigny (1999 [1955], p. 146), Prutsch (2006, p. 77). The law confirmed the annual partial renewal of the chamber and the electoral age restrictions provided in the *Charte*.
294. The text of the law in [AP] 1862ff. [1800–60], Vol. 20, 5 February 1818, pp. 638–42.
295. On 2 March 1819, the centre-right orientated Chamber of Peers demanded the modification of the electoral colleges. See *ibid.*, Vol. 23, 2 March 1819, p. 126. A few days later, the Chamber refused its consent for a financial project of the government (*ibid.*, 6 March 1819, p. 167). In reaction, 59 new peers were appointed. See *Ordonnance du roi portant nomination de 59 pairs* (9 March 1819), in *ibid.*, p. 185f.

296. Three laws prescribed the definition of press offences and a catalogue of penalties, procedures to prevent such offences, and prerequisites for the publication of periodical writings.
297. Regarding the persistence of Napoleonic centralism after 1814, see Thadden (1972).
298. On French contemporary foreign politics and diplomacy, see Contamine (1970), Marcowitz (1997).
299. In 1815, the Council of Ministers was instated. Its first president (*président du conseil des ministres*) was Talleyrand, appointed on 9 July 1815. *Ordonnance du Roi qui nomme à differens Ministères* (9 July 1815), in [BL] 1815–24, Vol. 1, No. 5, p. 6f.
300. See Gangl (1966, pp. 296–306).
301. Notwithstanding that the text of the *Charte* only provided for the right to approve taxes, the view gained acceptance as early as 1814 that the chambers also had the right to decide about public expenses and individual budgetary items.
302. The right to interrogate, which was particularly used during deliberations on governmental bills, was restricted insofar as there was no obligation to reply to parliamentary questions.
303. On the formation of an early party system in France, see Artz (1931), Albertini (1961).
304. Charles René Pictet de Rochemont was the first Bavarian envoy in Paris after Napoleon's fall. His main task was to observe the internal state of France, in particular the prospects for a stable domestic order and the consolidation of the monarchical system. See Montgelas' instructions for Rochemont: *Instructions pour le Sr Charles René Pictet de Rochemont comme chargé d'affaires près S.M^{te}. le Roi de France et de Navarre*, Munich 4 January 1816, in [BAYHSTA MA] III 2090.
305. Pictet de Rochemont to Montgelas, Paris 1 March 1816, in *ibid.* Partly printed in Krauss (1987, p. 421).
306. Pictet de Rochemont to Montgelas, Paris 23 May 1816, in [BAYHSTA NL Montgelas] 86. Partly printed in Krauss (1987, p. 421f.).
307. Pictet de Rochemont to Montgelas, Paris 27 March 1817, in [BAYHSTA MA] III 2090. Printed in Krauss (1987, p. 423).
308. Rechberg to Max I Joseph, Paris 20 September 1817, in [BAYHSTA MA] III 2090. Partly printed in Krauss (1987, p. 423f.).
309. *Ibid.*
310. *Stricto sensu*, the terms 'parliamentarism' and 'parliamentary government' are not synonymous. Parliamentarism describes a method of decision-making, according to Hans Kelsen the 'Bildung des maßgeblichen staatlichen Willens durch ein vom Volke auf Grund des allgemeinen und gleichen Wahlrechts, also demokratisch, gewählten Kollegialorganen nach dem Mehrheitsprinzip' (Kelsen 1926, p. 5f.). In contrast, 'parliamentary government' is a specific form of government, characterised by mutual interrelations between the legislative and executive body. It thus corresponds to Montesquieu's maxim 'il faut que [...] le pouvoir arête le pouvoir' (Montesquieu 1950 [1758; OV 1748], p. 206).
311. The imminent political importance of this event is reflected in that just a few hours after the Duke of Berry had died from his wounds, both chambers were convoked for a special session (see [AP] 1862ff. [1800–60], Vol. 26, 14 February 1820, pp. 192–8). For background information on the assassination and the assassin, see Malandain (2000).
312. Presentation of the bill in the second chamber, in [AP] 1862ff. [1800–60], Vol. 26, 15 February 1819, p. 198f., citation p. 199.

313. Text of the law in *ibid.*, Vol. 28, p. 520f.
314. In *ibid.*, Vol. 28, 23 May 1820, p. 60f.
315. In *ibid.*, 27 May 1820, pp. 152–5, citation p. 152.
316. See *ibid.*, p. 153.
317. The law was passed on 12 June 1820 in the Chamber of Deputies and on 28 June 1820 in the Chamber of Peers.
318. See Bertier de Sauvigny (1999 [1955], p. 170f.).
319. A corresponding law for the *répression des délits de la presse* was passed in March 1822. See [AP] 1862ff. [1800–60], Vol. 35, 7 March 1822, p. 290; 23 March 1822, p. 610.
320. See Mansel (2005 [1981], p. 410).
321. A valuable analysis of the portrayal and orchestration of the Restoration monarchy under Louis XVIII is Wrede (2003).
322. See Schoch (1975, pp. 34–6).
323. François Gérard, *Louis XVIII in His Study at the Tuileries* (1817, Versailles, Musée National). Printed in Wrede (2003, p. 236). See also Prutsch (2006, cover). On the positive public perception of the painting see Gérard (1867, p. 337).
324. The metaphor of the King as a *pater patriae* was frequently used by Louis in his addresses to the chambers, but also in other contexts. See Mennechet (1832–3, Vol. 1, p. 363).
325. See Mansel (2005 [1981], pp. 282–4).
326. On deficits in this respect during the *Ancien Régime*, see Viguerie (1987).
327. See Waresquiel and Yvert (2002 [1996], p. 154, 229).
328. See Wrede (2003, p. 244f.). On political festivities in the Restoration, see Waquet (1981).
329. On the French courts between 1789 and 1830, see Mansel (1988). Mansel underlines that despite its size and splendour, the court was not at all incompatible with constitutional government after 1814, but indeed an important legitimising factor. Besides that, the court helped to ‘adapt’ the nobility to the new constitutional order. *Ibid.*, p. 190.
330. Worthy of note is François Gérard’s painting *Entry of Henry IV into Paris* (1817, Versailles, Musée National), which allegorised the return of Louis XVIII. See Kaufmann (1975); a print of the painting in *ibid.*, p. 795.
331. See, for example, Jones (1993).
332. See Thomas (1996, p. 56, 180).
333. See Waresquiel and Yvert (2002 [1996], pp. 67–77).
334. Programmatic for the synthesis of *Charte* and King is a portrait of Louis XVIII by Paulin Guérin (1820, Versailles, Musée National; reproduction in Wrede 2003, p. 258), which shows the crown insignia resting on the constitutional document, and a fresco in the Panthéon, depicting King and *Charte* as inseparably bound up with each other (reproduction on the front page of Sellin 2001).
335. See, for example, Le Gendre (1820).
336. See Yvert (1991).
337. Rechberg to Max I Joseph, Paris 31 March 1819, in [BAYHSTA MA] III 2092/1. Partly printed in Krauss (1987, p. 429f.). In Rechberg’s eyes it was favourable for the stabilisation of the regime that, unlike 1789, there was no longer a ‘revolutionising’ spirit predominant in the society, but rather a ‘preserving’.
338. Besides older works on Charles-Philippe, Comte d’Artois (1757–1836), such as Vedrenne (1878) and Lucas-Dubreton (1962 [1927]), there are also more recent biographies, for example, Cabanis (1972), Castelot (1988).

339. Bagge (1952, p. 183).
340. Hillebrand (1881 [1877], p. XX).
341. Speech of Charles X at the occasion of the opening of the parliamentary session 1824, in [AP] 1862ff. [1800–60], Vol. 42, 22 December 1824, p. 577f., citation p. 578.
342. The *sacre du roi* ('consecration') was performed by the Archbishop of Reims and even featured a ceremony where Charles touched sufferers of the 'King's Evil' (*scrofula*), the last time this ancient ritual was performed. On this anachronistic tradition, see Marc Bloch's classical work *Les Rois thaumaturges* (Bloch 1924). On the coronation of the French kings in general, see Jackson (1984).
343. See Gain (1928, Vol. 2, p. 412). For details see Franke-Postberg (1999). The estimated value of the *biens nationaux* was 1 billion francs.
344. See Schulze (1993).
345. See [AP] 1862ff. [1800–60], Vol. 44, 15 April 1825, p. 694; Vol. 45, 9 May 1825, p. 404.
346. Particularly after Charles' ascension to the throne, the memory of Louis XVI and the regicide of 1793 was kept alive by different means, for example church services, processions and commemorative coins (see Wrede 2003, p. 254f.).
347. The *Code civil* already offered the possibility to abstain from the distribution of an estate among heirs. The new bill, which should be applicable for estates with an annual tax of more than 300 francs, now aimed to set primogenital right as a standard, while keeping distribution as an option.
348. See, for example, the speech of the Duke of Broglie on 4 April, in [AP] 1862ff. [1800–60], Vol. 46, 4 April 1826, pp. 610–24.
349. See *ibid.*, Vol. 47, 8 April 1826, pp. 17–26.
350. Even the venerable *Académie française* protested formally against the initiative of the government. See Bertier de Sauvigny (1999 [1955], p. 389).
351. *Ordonnance du roi portant retrait du projet de loi sur la presse* (17 April 1827), in [AP] 1862ff. [1800–60], Vol. 51, p. 215.
352. *Ordonnance du Roi portant dissolution de la Chambre des Députés et convocation des collèges électoraux* (5 November 1827), in *ibid.*, Vol. 52, p. 522.
353. For the – more or less fraudulent – toolset of electoral influence and manipulation in France during the Restoration, see Bertier de Sauvigny (1999 [1955], pp. 296–8).
354. See Kirsch (1999b, p. 342).
355. See [AP] 1862ff. [1800–60], Vol. 53, 25 March 1828, pp. 147–52; 14 April 1828, pp. 294–301. Both bills were passed by the chambers with a few modifications.
356. See Bertier de Sauvigny (1999 [1955], pp. 413–16).
357. It is significant that Martignac, unlike his predecessors and his successor, was not bestowed the title *Président du Conseil des Ministres* (see Gangl 1966, p. 299).
358. Garnier (1967, p. 114).
359. *Ordonnances portant changement de ministère* (8 August 1829), in [AP] 1862ff. [1800–60], Vol. 61, p. 513f. On 17 November Polignac was formally appointed head of the government. *Ordonnance nommant le prince de Polignac, président du conseil des ministres* (17 November 1829), in *ibid.*, p. 515.
360. The new minister of the interior, La Bourdonnaye, had been actively involved in the *terreur blanche* of 1815, and the minister of war, Bourmont, was reputed to have betrayed Napoleon on the eve of the Battle of Ligny, three days before the Battle of Waterloo.

361. [JD] 1815–1944 10 August 1814, p. [2].
362. *Ibid.*
363. In a conversation with Polignac, Chateaubriand elaborated on the irrevocability of his decision to resign as French ambassador in Rome (see Chateaubriand 1849–50, Vol. 9, p. 153).
364. In [AP] 1862ff. [1800–60], Vol. 61, 2 March 1830, p. 543f., citation p. 544. On the immediate effect of the speech in the parliament, see Duvergier de Hauranne (1857–71, Vol. 10, p. 420).
365. See Prutsch (2006, pp. 95–8). For the debates on 15 and 16 March see [AP] 1862ff. [1800–60], Vol. 61, pp. 568–89 and 593–618.
366. In [AP] 1862ff. [1800–60], Vol. 61, 18 March 1830, p. 618f.
367. In *ibid.*, p. 619.
368. *Ordonnance du roi portant dissolution de la Chambre des Députés et convocation des collèges électoraux pour le 3 août* [sic!; the electoral colleges were actually convened for the 23 June; on 3 August the chambers should be reopened] (16 Mai 1830), in *ibid.*, Vol. 61, p. 621.
369. Cottu (1830, p. 119).
370. *Proclamation du roi aux électeurs* (13 June 1830), in [AP] 1862ff. [1800–60], Vol. 61, p. 623.
371. On the composition of the chamber in the final years of the Restoration, see Higonnet (1968).
372. Pilbeam (1990, p. 163).
373. These three ordinances were supplemented by a fourth, regulating the convening of the electorate committees. The text of the decrees in [AP] 1862ff. [1800–60], Vol. 61, p. 639–41.
374. On constitutional aspects of the July Revolution, see Prutsch (2006, pp. 103–42; 2008; 2009c).
375. Concerning the socioeconomic and political prerequisites for the Revolution, see Haupt (1971).
376. These protest notes (text in [AP] 1862ff. [1800–60], Vol. 61, p. 641f.) were published on 27 July in a number of newspapers who disobeyed the ban on publication. A detailed contemporary account of the events in Paris is [Narrative] 1830.
377. Louis-Philippe was presented as the best political alternative, as a *roi citoyen*, who had never opposed the French nation. See [Le National] 1830ff., 31 July 1830.
378. In [AP] 1862ff. [1800–60], Vol. 61, 31 July 1830, p. 644f., citation p. 645.
379. See the parliamentary protocols of 7 and 9 August 1830 in *ibid.* Vol. 63, pp. 61–89. Charles X and the Dauphin had renounced the throne on 2 August 1830, but basically only in favour of Charles' grandson Henri, the Duke of Bordeaux, who was still a child.
380. The new Constitution was proclaimed on 14 August: *Charte constitutionnelle* (14 August 1830), in [BL] 1814–48; 1830–48, Vol. 1, No. 59, pp. 51–64. A comparison of the two versions in Prutsch (2006, pp. 203–31).
381. This title had already been used in the first French Constitution of 1791 (Chapter II, article 2).
382. Ponteil (1966, p. 150).
383. Art. 13: 'Le roi [...] fait les règlements et ordonnances nécessaires pour l'exécution des lois, sans pouvoir jamais ni suspendre les lois elles-mêmes, ni dispenser de leur exécution.'

384. A definitive regulation or even an abolition of property qualifications did not take place but was postponed for the time being. A new electoral law was finally passed on 19 April 1831 (edited in Berlia 1952 [1898], pp. 200–11), which did not meet expectations in society for a radical liberalisation. Census was only reduced from 300 to 200 francs (right to vote) and from 1,000 to 500, respectively (right to be elected). Nevertheless, the number of voters at least doubled from about 100,000 to around 200,000.
385. On Guizot's specific concept of legitimacy and sovereignty, see Craiutu (2002).
386. Bage (1952, p. 179). See especially Rosanvallon (1994).
387. The Second Empire under Napoleon III was certainly 'monarchical', too, but fundamentally differed from both the Bourbon kingdom of 1814–30 and the Orleanist of 1830–48.
388. For the European dimension of the July Revolution see, for example, Church (1983). An overview of the state of research in Langewiesche (2004 [1985], pp. 156–62).
389. Text of the Constitution in Huyttens de Terbecq (1844–5, Vol. 4, pp. 124–32). On the references to the *Charte* of 1830 in the debates for a new Belgium Constitution, see Gilissen (1967, especially p. 54), Thielemans (1990). A comparison of the two constitutional texts in Kirsch (1999b, pp. 143–9).
390. See, for example, Phillips and Wetherell (1995). On the role of the July Revolution for the Reform Act, see Quinault (1994). Among the most prominent foreign critics of the Act at the time was Hegel, who polemicise against the liberalisation of the electoral system in his treatise *Über die englische Reformbill* (see Hegel 1995 [1831]).
391. In the terms of Ernst Rudolf Huber, the constitutions complemented 'administrative integration' with 'parliamentary-representative integration' (Huber 1967 [1957], p. 317).
392. See Kirsch (1999a, p. 167f.).
393. It would be misleading to deny that foreign political considerations played a role in French constitutional life during the Restoration. In 1830, for example, it was not least Charles' hope that the beginning of the French intervention in Algeria would strengthen the acceptance of his regime and provide public support for the July Ordinances. Yet when compared to the German states, the foreign political dimension was of minor importance only.
394. In this respect the German Confederation had a similar role as today's European Union, namely that of an authority which is held responsible for unpopular measures.
395. The conflict between Charles X and the Chamber of Peers in the second half of the 1820s and Ludwig I and the *Kammer der Reichsräthe* in 1827 are exceptions that prove the rule. Usually, the first chambers served as devoted supporters of governmental policies. Thus, they basically failed to live up to the politico-theoretical model of an independent, aristocratic chamber capable of holding the balance between the king and the popular second chamber. On the role of first chambers in post-Napoleonic constitutional systems in general, see Vincent (1911). For France in particular, see de Dijn (2005).
396. For Southern Germany see, for example, Speitkamp (1996, especially pp. 37–42).
397. See Rader (1973). On agenda-setting research in general, see McCombs and Shaw (1993).
398. An overview of cultural politics during the Restoration is offered by Kroen (1992).

399. [AMAE MD France] 646, fol. 42^r.
400. Polignac (1845, p. 291).
401. It is noteworthy that the July Revolution in 1830 had quite another effect on Ludwig and Leopold: while the Bavarian King felt vindicated in his growing reservations against liberalisation by the events in France, the same events dynamised the liberal turn under the new Grand Duke Leopold of Baden, followed by a cabinet reshuffle, free elections and the productive *Landtag* of 1831.
402. The concept of 'good governance' was developed in the 1980s and is therefore a rather new approach, though, but is also applicable in historical contexts.
403. See Weber (1980 [1922]), pp. 828, 832, 848, 859f.).
404. Cf. the following Chapter 6.
405. *Zweiter Bundesbeschuß über Maßregeln zur Aufrechterhaltung der gesetzlichen Ordnung und Ruhe in Deutschland* (5 July 1832), in Huber (1978 [1961]), p. 134f.).
406. *Bundesbeschuß über Maßregeln zur Aufrechterhaltung der gesetzlichen Ordnung und Ruhe in Deutschland* (28 May 1832), in *ibid.*, p. 132f.
407. *Schlußprotokoll der Wiener Ministerkonferenzen* (12 June 1834), in *ibid.*, p. 137–49. Only the articles 3–14 (arbitral jurisdiction in the Federation), 42–56 (surveillance of the universities) and the article 57 (prohibition to dispatch official documents in case of criminal procedures) were made public. The rest of the protocol remained secret, but was brought into the open in 1843, then causing quite a sensation and anger.

6 Constitutional Monarchism: Reflections in Political Thought

1. As a matter of fact, there were frequent complaints in the German press that the coverage of Germany and its political situation was either unsatisfactory or misleading in foreign countries, particularly in France and Britain. See, for example, *Englische Zeitungsberichte über Deutschland*, in [Neuer Rheinischer Mercur] 1816ff., No. 132, 8 October 1818, column 859.
2. On general problems to achieve the goal of objectivity, see Gadamer (1990 [1960]).
3. See Chateaubriand (1814). Cf. also Section 2.4.
4. In Chateaubriand (1830–1, Vol. 18, pp. 193–242).
5. See Chateaubriand (1816).
6. 'Avec l'ancien régime, il y a impossibilité [...] Avec le despotisme, il faut avoir, comme Buonaparte, six cent mille soldats dévoués, un bras de fer, un esprit tourné vers la tyrannie' (*ibid.*, p. 5).
7. *Ibid.*, p. 6.
8. *Ibid.*, p. 12.
9. *Ibid.*
10. *Ibid.*, p. 6.
11. See *ibid.*, p. 9. In Chateaubriand's eyes, that was not least of good for the crown: 'l'initiative laissée aux chambres est manifestement dans les intérêts du roi: la couronne ne se charge alors que de la proposition des lois populaires, et laisse aux pairs et aux députés tout ce qu'il peut y avoir de rigoureux dans la législation' (*ibid.*, p. 10f.).
12. *Ibid.*, p. 22. However, no parliamentary right to determine the cabinet was derived from this principle.
13. *Ibid.*, p. 87f.

14. There are several biographical works on Constant. Recommendable are, among others, Holdheim (1961) and Wood (1993). One year before his death, in 1829, Constant summarised his life's work as follows: 'J'ai défendu quarante ans le même principe, liberté en tout, en religion, en philosophie, en littérature, en industrie, en politique: et par la liberté j'entends le triomphe de l'individualité, tant sur l'autorité qui voudrait gouverner par le despotisme, que sur les masses qui réclament le droit d'asservir la minorité à la majorité' Constant (1997, p. 623). On Constant's political and in particular constitutional theory: Weber (2004).
15. Constant published his first important constitutional writing, *Réflexions sur les constitutions, la distribution des pouvoirs, et les garanties, dans une monarchie constitutionnelle*, on 24 May 1814, just ten days before the proclamation of the *Charte constitutionnelle* (Constant 1814). For a good part, the *Réflexions* had the character of a liberal comment of the *Charte*. This work is also the introductory text of Constant's four-volume *Collection complète des ouvrages. Publiés sur le gouvernement représentatif et la Constitution actuelle de la France, formant une espèce de Cours de politique constitutionnelle*, which provides a detailed account of his constitutional thought (Constant 1818–20).
16. *Réflexions*, in Constant (1818–20, Vol. 1(1), pp. iii–170, citation p. vf.).
17. *Session des Chambres, de 1818 à 1819*, in *ibid.*, Vol. 4(8), pp. 5–222, citation p. 18f.
18. Constant's appreciation of the *Charte* was clearly demonstrated in 1830. As one of the leading figures in the July Revolution, Constant did not argue for a new constitution, but only for specific revisions of those parts of the *Charte* which had proved weak and been arbitrarily interpreted by Charles X.
19. On the model role of England for nineteenth-century French political thought, see Jennings (1986).
20. *Des réactions politiques*, in Constant (1818–20, Vol. 3(6), pp. 61–114, citation p. 77).
21. *Réflexions*, in *ibid.*, Vol. 1(1), pp. iii–170, citation p. 52.
22. See Gall (1963, p. 167).
23. *Réflexions*, in Constant (1818–20, Vol. 1(1), pp. iii–170, citation p. 13).
24. *Ibid.*, p. 15.
25. Constant (1815, p. 37).
26. 'Le pouvoir royale est [...] le pouvoir judiciaire des autres pouvoirs.' *Réflexions*, in Constant (1818–20, Vol. 1 (1), pp. iii–170, citation p. 20).
27. See Meisner (1995 [1913], p. 108f). According to Constant, sovereignty should never be unlimited (see Constant 1815, p. 23).
28. *Ibid.*, p. 34.
29. Not least, ministerial responsibility was left open by Constant (see Hartman 1976).
30. *Réflexions*, in Constant (1818–20, Vol. 1(1), pp. iii–170, citation p. 15).
31. Lanjuinais (1819, Vol. 1, p. 198).
32. Radical royalists remained fierce opponents of Constant, condemning his theory as 'hollow' and full of 'subtleties', basically destroying the nature of monarchy (see Gall 1963, p. 174).
33. See Manique (1996).
34. See Gall (1963), Evers (1987).
35. See Hegel (2000 [1820] § 279, pp. 444–9).
36. Accordingly vast is not only the amount of German politico-theoretical writing on the monarchical principle in the nineteenth and early twentieth century, but

- also of secondary literature on this topic. See, among others, Jablonowski (1851), Noellner (1856), Rabus (1862), Kaufmann (1906), Hintze (1911), Meisner (1995 [1913]). Even later the monarchical principle remained an important object of research. See, for example, Brunner (1968 [1956]), Boldt (1975), Füßl (1988), Schlegelmilch (2009).
37. See Eich (1986, p. 386).
 38. During the *Vormärz*, the Constitution of Baden with its distinct representative system continued to be accused of being '(pseudo-)republican' in domestic political debates, too. See, for example, a speech of Freiherr von Andlaw in the Badenese first chamber in 1844, when he declared that 'diese von fast allen bestehenden Verfassungen ab[weiche], wenn man nicht einige republikanische oder aus Revolutionen hervorgegangene quasi-republikanische ausnehme' (cited in Beck 1866, p. 52).
 39. Dobmann (1962, p. 170).
 40. Gentz (1844 [1819]). Also in Brandt (1979, pp. 218–23).
 41. *Ibid.*, p. 221. Gentz's struggle to find a consistent argument for the distinction between *landständische* and representative constitution are evident in the remark that 'in einer landständischen Verfassung gibt es allerdings Repräsentation, und man würde sie eine Repräsentativ-Verfassung nennen können, wenn diesem Wort nicht in der neuersten Zeit eine ganz eigene, auf landständische Verfassungen nicht mehr anwendbare Bedeutung beigelegt worden wäre. Nur in dieser jetzt herrschend gewordenen Bedeutung tritt der Unterschied oder vielleicht der Gegensatz zwischen landständischen und Repräsentativ-Verfassungen ein' (*ibid.*).
 42. *Ibid.*, p. 222.
 43. *Ibid.*
 44. *Ibid.*
 45. *Ibid.*
 46. *Ibid.*, p. 225.
 47. *Ibid.*, p. 226.
 48. *Ibid.*, p. 227.
 49. *Ibid.*, p. 228.
 50. 1 September 1819, in Metternich (1880–4, Vol. 1, p. 275).
 51. *Schlussakte der Wiener Ministerkonferenzen* (15 May 1820), in Huber (1978 [1961], pp. 91–100).
 52. See Mössle (1993, 1994).
 53. Exceptions were conceded for the city states Hamburg, Bremen, Lübeck and Frankfurt/Main.
 54. See Gangl (1975, p. 52f).
 55. Many contemporaries were critical enough to recognise and name the dangers immanent in the restrictive provisions of 1820 for Germany's constitutional and political development. The British diplomat Frederick James Lamb, for example, was sceptical about the practical value of the *Wiener Schlussakte*. For him, the main function of the deliberations in Vienna had been 'to reassure the timid, and to flatter the vanity of the weak'. The constitutional questions would remain the cardinal problem of political conflict in Germany 'for a long period of years', before they could possibly be 'brought to a final settlement'. In Lamb's eyes, the uncompromising defence of the existing orders was in any case no sound political strategy, and he therefore expressed his hope 'that Germany may never learn how weak positive Restrictions are against a force which is in its

nature encroaching and expansive'. Lamb to Castlereagh, Frankfurt/Main 20 June 1820. Partly printed in Heydemann (1995, p. 50–2). In suggesting constitutional alternatives for Germany, Lamb was clearly captivated by English constitutional practice. Among other things, he declared that: 'Stipulations requiring a uniform construction of the Chambers founded upon the basis of property would have afforded a much better security' and that 'Germany possesses the elements of a Peerage, and of a good representative Body, but She has not begun by employing them' (*ibid.*, p. 51).

56. Meisner (1995 [1913], p. 282).
57. See Aretin and Rotteck (1824–8). After Aretin's death in 1824, the second volume (in two parts) was finished by Karl von Rotteck in 1827 and 1828 respectively.
58. *Ibid.*, Vol. 1, p. 88f.
59. *Ibid.*, p. 174. Essentially, Aretin's work is based on social-contract considerations (see, for example, *ibid.*, p. 155).
60. See *ibid.*, p. 93.
61. *Ibid.*, p. 90.
62. Aretin was convinced that the Constitutions of Bavaria, Württemberg and Baden 'durch ihre Bestimmungen und klarere Ansichten verschiedener wichtiger Verfassungsgegenstände die Wissenschaft selbst beförderten' (*ibid.*, p. 82).
63. According to Hans Boldt (see Boldt 1975, pp. 282–93), six different models of monarchical rule can be distinguished in *Vormärz* Germany: 1) the patrimonial model; 2) the law preservation model; 3) the cohabitation model; 4) the appeal model; 5) the *pouvoir neutre* model; 6) the parliamentary model. The patrimonial model basically represented the concept of the reactionary forces and hardly provided for minimum constitutional requirements. Model two was the model of German conservative constitutionalism, with an emphasis on strong monarchical prerogatives as argued by Stahl. The cohabitation model, again, reflected the positions of German liberal constitutionalism with authors like Pölitz, Jordan, Dahlmann and Welcker, providing for an effective political participation of parliament. The appeal model, in which 'eine besondere Zuständigkeitsvermutung für den Monarchen aus dem monarchischen Prinzip nicht folgt' (Boldt 1975, p. 286), corresponded with liberal-reformist thinkers like Rotteck, Pfizer and Murhard. Compared to these four models, the *pouvoir neutre* model, following closely Chateaubriand's and especially Constant's constitutional concepts, and the parliamentary model, in which the monarch appears as hardly more than formal head of state, were only of marginal importance in the constitutional-theoretical discourse. Nevertheless, there were at least some references to these models, as from Benzenberg and Mohl.
64. See Haller (1816–25). Symptomatic for his constitutional thought is a letter written in February 1833 to Karl Friedrich Nebenius, with whom he had already corresponded on political matters before (see his letter of 29 January 1833 in [GLAK N NL Nebenius] Conv. 34). Haller considered it as the 'Hauptfehler' of the Badenese *Verfassungs-Urkunde* to be a constitution at all, 'mithin der Idee nach, die Natur des Fürstenthums zu verändern und in eine quasi Republic umzuwandeln'. Haller to Nebenius, Solothurn 28 February 1833. Printed in Weech (1868, pp. 198–200, citation p. 198).
65. Oeschey (1944, p. 388).
66. See Stahl (1845).
67. See Schlegelmilch (2009, p. 67). On Stahl's (1802–61) role both as a legal theorist and Prussian politician, see Füßl (1988). See also Orr (1976). Particularly on his political thought: Pyclik (1972).

68. Stahl (1845, preface p. IIIf.).
69. *Ibid.*, p. 2.
70. *Ibid.*, p. 1.
71. Stahl (1854–6 [1830–7], Vol. 2(2), p. 241).
72. Stahl (1845, p. 12).
73. *Ibid.*, p. 14.
74. *Ibid.*, p. 18.
75. *Ibid.*, p. 21, and also p. 30.
76. *Ibid.*, p. 32.
77. *Ibid.*, p. 34.
78. *Ibid.*, p. 39.
79. *Ibid.*, p. 41.
80. See *ibid.*, p. 36.
81. See *ibid.*, p. 36.
82. See Stahl (1849 [1848]). Compared to the first edition, the second was considerably longer.
83. *Ibid.*, pp. 78–80.
84. *Ibid.*, pp. 83f.
85. *Ibid.*, pp. 85.
86. *Ibid.* p. 93f.
87. *Ibid.* p. 97.
88. *Ibid.* p. 97f.
89. Stahl criticised that the French Restoration had strung ‘die widersprechendsten Einrichtungen: Ausschließung ständischer Initiative und unbedingte Steuerverweigerung, enormen Census und bloß numerisches Repräsentationssystem, Rücksichtslosigkeit bei Wahl der Minister und unbeschränkte Preßfreiheit, politische Emancipation ohne Freiheit der Culte’ (Stahl 1845, p. 26). The constitutionalised states in Germany were so far neither ‘ein Beweis für die Möglichkeit solcher Vereinigung, da hier die monarchische Gewalt in den nichtconstitutionellen Großmächten Deutschlands eine Stütze hat’ (*ibid.*).
90. *Ibid.*, p. 44.
91. See Mohl (1846). The article was published in the *Zeitschrift für die gesamte Staats-Wissenschaft*, edited by Mohl and becoming one of the most important German political and legal journals in the second half of the nineteenth century. On Mohl’s life and work, see Angermann (1962). An overview of his political and constitutional thought in Boldt (1975, pp. 233–61). For Mohl, the specificity of the constitutional systems in Germany was a given fact, since ‘in jedem der deutschen constitutionellen Staaten die französische oder englische Grundlage mehr oder weniger mit einheimischen Einrichtungen vermischt, dadurch aber manches eigenthümliche Verhältnisse erzeugt [worden ist].’ Review of Henry Lord Brougham’s *English Constitution* in [Kritische Zeitschrift] 1829–56, Vol. 18, 1846, pp. 195–215, citation p. 197. Altogether, Mohl considered ‘die neuen deutschen Verfassungen weit mehr aus der französischen, als aus der englischen oder gar nordamerikanischen Modification des Grundgedankens hervorgegangen’ (*ibid.*, p. 196).
92. Mohl (1846, p. 479).
93. See Mohl (1966 [1852]). Mohl’s constitutional theory differed considerably from other contemporary ‘liberals’ such as Carl von Rotteck and Gustav von Struve (e.g., Struve 1847–8).
94. Mohl (1966 [1852], p. 150).

95. Ibid., p. 151.
96. See *ibid.*, p. 151f.
97. Ibid., p. 152f.
98. Ibid., p. 153f.
99. To demonstrate the inability of a 'corruption system' to guarantee political stability in the longer-term perspective, Mohl particularly referred to the French July Monarchy under Louis-Philippe.
100. Mohl (1966 [1852], p. 157).
101. Ibid., p. 157f.
102. Ibid., p. 183.
103. See Boldt (1975, p. 259). The 'immer gewaltigere Vordrängen demokratischer Ansichten unter den Völkern von europäischer Kultur' (*Amerikanisches Staatsrecht*, in [Kritische Zeitschrift] 1829–56, Vol. 8, 1836, pp. 359–87, citation p. 359) was a given fact for Mohl.
104. Not only in political theory, but also in politics Mohl's contemporary importance remained limited: neither in the Frankfurt Parliament of 1848/1849, nor later in the Badenese first chamber, whose member he became in 1863, was Mohl able to give lasting impetus to liberal constitutional practice in Germany.
105. One exception is Rudolf von Gneist, who in his work *Das heutige englische Verfassungs- und Verwaltungsrecht* (Gneist 1857–63) supported Mohl's parliamentarisation paradigm and tried to offer a concrete implementation strategy for Germany. See also Pöggeler (1995, pp. 80–8).
106. See Boldt (1975, p. 297).
107. Arthur Schlegelmilch's study *Die Alternative des Monarchischen Konstitutionalismus* (Schlegelmilch 2009) refers to the differences of German, and Austrian, 'monarchical constitutionalism' in the second half of the nineteenth century compared to the first. What is considered as symptomatic examples for this 'revised' form of monarchical-constitutional rule are the Constitution of the North German Confederation (1866) and the Constitution of the German Empire (1871), both of which were essentially drafted by Bismarck.
108. Hintze (1911, p. 387).
109. After the failure of both the Bourbon Restoration Regime in 1830 and the July Monarchy in 1848, going hand in hand with the replacement of the *Charte* by a republican constitution, the politico-theoretical discourse on constitutional monarchy grinded to a halt in France. In the second half of the nineteenth century it was rather 'Bonapartism' than 'constitutional monarchism' that attracted intellectual attention.
110. By 1812 George Dyer observed that 'No country in the world [...] possesses so many constitutional writings as England' (Dyer 1812, p. 3). 'Writing about the constitution was', indeed, 'a national disease, and over the course of the nineteenth century it reached pandemic proportions' (Saunders 2008, p. 72). There were, for example, books on the subject by William Gladstone, Benjamin Disraeli and Lord John Russell, and parliamentary manuals by Walter Bagehot and Erskine May. On the limited scope of political rhetoric in British constitutional and parliamentary life in the late eighteenth and nineteenth century, see Steinmetz (1993, 2002).
111. Review of Polignac's work *Histoire de la Restauration* in [Quarterly Review] 1809–67, Vol. 48, No. 95, October 1832, pp. 234–85, citation p. 242.
112. Cf. all the domestic debates on the Reform Act of 1832, finally culminating in wide-ranging changes to the electoral system of the United Kingdom.

113. Review of Chateaubriand's *The Monarchy according to the Charter* in [Quarterly Review] 1809–67, Vol. 15, No. 30, July 1816, pp. 419–40, citation p. 421. 'We declare we have not found one single principle, we had almost said one single expression, in this able production which might not have been advanced by an English whig of the best days of our constitution' (ibid.).
114. Ibid., p. 423. The wish Croker had for the political future of France was unmistakably clear: 'we care nothing who the ministers may be, or which party be in power, provided only it be a royalist and constitutional party' (ibid., p. 440).
115. *State and Prospects of Europe*, in [Edinburgh Review] 1802–1929, Vol. 23, No. 45, April 1814, pp. 1–40, citation p. 15. 'the restoration of the Bourbons [...] was an act, not merely of wisdom, but of necessity' (ibid., p. 14).
116. See ibid., p. 18, 35.
117. At least up until the 1820s, however, there was optimism that the constitutional system was not closed to reform: 'The foundations of a representative government are now laid, we think, indestructibly in the French constitution; [...] if every thing is not again cast down by the shock of another popular revolution, the monarchy will be substantially limited, and a certain considerable and growing portion of power vested in the people.' *France*, in ibid., Vol. 25, No. 50, October 1815, pp. 501–26, citation p. 524.
118. *Spain*, in ibid., Vol. 38, No. 75, February 1823, pp. 241–64, citation p. 257. An explicit review of Chateaubriand's *The Monarchy according to the Charter* is missing in the *Edinburgh Review*.
119. See Butterfield (1931).
120. *The State of Europe*, in [Edinburgh Review] 1802–1929, Vol. 88, No. 178, October 1848, pp. 514–58, citation p. 532. The European dimension of the events in France was well noticed: 'the effect of this metamorphosis was most sensibly felt in the several revolutions which followed, then as now [1848], in the train of Parisian catastrophes' (ibid.).
121. The conviction of Britain as the world leader, both in power and reasoning, and the special role France played in British self-perception, is well expressed by Richard Chenevix in 1821: 'Perhaps since the diffusion of Christianity, but surely during the last and wisest centuries, Britain has stood foremost in the infinite course of reason. It is she who has carried the undiscovered centre forwards, and made the inscrutable circumference expand. She is the foremost beacon of the civilized world; and the best security that her lights, and with them those of all mankind, shall not be extinguished is, that other nations shall follow and contemplate. The nearest in place we should hope to see the nearest in emulation; and that wisdom, virtue, and liberty should confirm to us the associates and competitors which vicinity had given; in order that what is termed Art in the construction of society, may not be opposed to nature. It is by these principles that we would be judged; [...] The nation we wish to know the most improved, is France. France is the country which, next to our own, we have the most immediate interest to see happy, tranquil, moral, wise, and free; in peace with ourselves, in harmony with the world;' *France and England*, in [Quarterly Review] 1809–67, Vol. 25, No. 50, July 1821, pp. 534–75, citation p. 575.
122. Reinhard (2002 [1999]), p. 429).
123. Even during the First World War the identification of the *Staatsrechtslehre* with the concept of 'German constitutionalism' remained predominant. Shortly

before the end of the War, Georg Anschütz, for example, continued to plead for a preservation of the German Constitution by reforms in order to avert parliamentaryisation (see Anschütz 1918, especially pp. 24–38).

124. Not only was there general rejection of the concept of monarchical sovereignty, but also widespread conviction that the nation had a natural right to intervene in the succession: ‘hereditary monarchy, without a power and a right in the people to change the line of succession, is the old slavish absurdity of the *jus divinum* of kings; and cannot decently be asserted in any country that has the smallest pretension to liberty.’ *France*, in [Edinburgh Review] 1802–1929, Vol. 25, No. 50, October 1815, pp. 501–26, citation p. 521.

7 Results

1. *State and Prospects of Europe* (in *ibid.*, Vol. 23, No. 45, April 1814, pp. 1–40, citation p. 14f.).
2. Schmale (1991, p. 476).
3. *Ueber den historischen Standpunkt bei dem Verfassungs-Werke*, in [Journal für Deutschland] 1815–19, Vol. 8, 1817, pp. 231–55, citation p. 252.
4. In 1818, for example, Johann Christoph von Aretin felt obliged to rouse his fellow countrymen to an intensified study of French and English constitutionalism (see Aretin 1818, p. 54).
5. Görres (1854–74 Vol. 2, p. 13).
6. Self-reference corresponded to clear hierarchies of perception in the press, as manifest in the order in which news from different regions and states were presented in the contemporary newspapers. The *Karlsruher Zeitung* can be taken as a typical example, where all reports were printed according to the following template (from most important, presented at the beginning of the individual issues, to least important, printed at the very end): Baden – German Confederation – neighbouring German countries, that is Bavaria and Württemberg – other German states – European states – ‘Others’, for example, United States.
7. Johann Emanuel von Küster der Ältere, Prussian envoy in Munich, to Hardenberg (*Politisches Gemälde von Baiern*), Stuttgart 1 January 1817, in Chroust (1949–51, pp. 88–111, citation p. 97).
8. Particularly from post-Napoleonic rulers’ point of view, the term ‘constitution’ obviously had, and continued to have, an air of ‘Revolution’ and ‘Napoleonism’ about it. Thus, not only were the French *Charte* and the Bavarian *Verfassungs-Urkunde* separate in their terminology, but also, for example, the later monarchical constitution drawn up by Carlo Alberto of Sardinia in March 1848, which was not labelled *Costituzione*, but *Statuto*.
9. Crown Prince Ludwig on Zentner. Cited in Gollwitzer (1997 [1986], p. 446).
10. Bornhak (1935, preface p. VI).
11. See, for example, Pombeni (2005).
12. In this context, centres of intellectual exchange such as universities deserve more attention than in the past. The University of Göttingen, for example, was such an important centre in the late eighteenth and early nineteenth century, at which important members of the Bavarian constitutional commissions

(Zentner, Reigersberg, Krenner, Lang), but also Crown Prince Ludwig, had studied.

13. While one can easily pinpoint the 'initial motivation' of the players involved (for example, for or against the idea of popular sovereignty) from such circumstantial evidence, it is much more difficult to discern particular decisions (for example, whether or not to adopt a certain provision or rule).
14. [Ueber Verfassungsvertrag] 1817, p. 35.
15. Its systemic character also distinguishes the confrontation between crown and parliament from other 'constitutional struggles': between liberals and conservatives in society, between different groups in the government and the parliament respectively, or between federal states and *Bund*, as in the case of Bavaria and Baden.
16. 'Hilfsorgan des Beamtenstaats'. Fehrenbach (1996b, p. 18).
17. *Ueber den historischen Standpunkt bei dem Verfassungs-Werke*, in [Journal für Deutschland] 1815–19, Vol. 8, 1817, pp. 231–55, citation p. 254f.
18. See Gangl (1975, p. 53). On general criticism of the German 'Sonderwegsthese' see, for example, Blackbourn and Eley (1984).
19. See, for example, Wienfort (1993, p. 210), emphasising missing 'gesellschaftliche Integrationsfunktion'.
20. In point of fact, constitutional reality proved that in monarchical-constitutional systems, too, political, social and economical reforms could be effectively tackled.
21. On legitimisation and indeed 'survival' strategies of the 'European monarchy' in the nineteenth century, see recently Sellin (2011).
22. A collection of interesting articles on the interplay of 'constitution' and 'conflict' in a long-term European perspective in Müßig (2006).
23. On the socio-historical interpretation of the 'Great Revolutions' within the context of modern civilisation, see Eisenstadt (1992, 2006).
24. Prutsch (2007, p. 22). See also Prutsch (2008 [2007]), especially pp. 73–86). For the interpretation of the Western 'modern age' rather as 'gnosticism' than 'secularism', see the works of Eric Voegelin (1952a, 1952b, 1959, 1960, 1994, 1999). 'Die geistige Kraft der Seele' was redirected towards 'die verlockendere, greifbarere und vor allem weitaus leichtere Schaffung eines irdischen Paradieses' (Voegelin 2004 [1959], p. 140).
25. On the functional character of the monarchy, particularly in the nineteenth century, see, for example, Böckenförde (1981 [1972], p. 159f.), Hoffmann (1977, p. 91f.), Dollinger (1985, p. 331f.), Kirsch (1999b, p. 389f.; 2007). A recent attempt at studying monarchy in long-term perspective is Jussen (2005).
26. Andrian-Werburg (1843 [1841], p. 178). Ludwig Börne remarked in 1818: 'Weder Liebe noch Furcht ist ein sicheres Band zwischen Volk und Herrscher, sondern Achtung allein; denn die Völker sind Männer geworden, aber nur das Kind fürchtet, der Jüngling liebt, der Mann achtet' (cited in Gathy 1831, p. 67).
27. *Political State of Prussia*, in [Edinburgh Review] 1802–1929, Vol. 83, No. 167, January 1846, pp. 224–39, citation p. 229.
28. On the charismatic character of Bismarck's system of government and the corresponding problems, see Hoffmann (1977), Wehler (1988).
29. See Weber (1980 [1922], p. 140).
30. On Bonapartism as a historical phenomenon, see Hammer and Hartmann (1977), Wehler (1988). More general on 'Centers, Kings, and Charisma': Geertz (1977).

31. 'Herrschaftsfremde Umdeutung des Charisma' (Weber 1980 [1922], p. 155–8, citation p. 155).
32. See also Walter Bagehot's, in parts cynical, judgement of the British monarch's limited political role in the second half of the nineteenth century: Bagehot (1867, especially pp. 57–117). For Bagehot, the monarch was only at the head of the 'dignified part of the constitution', while the prime minister was at the head of the 'efficient' (ibid., p. 13).

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Notes

1. Square brackets refer to newspapers and magazines, anonymous works or parliamentary material. These sources, in alphabetic order, appear at the beginning of the alphabetical list. In the event that two dates are mentioned, square brackets signal the year of the first edition or the actual year dealt with in the text (e.g. parliamentary protocols).
2. Years in square brackets refer to the date of the first edition. Otherwise, square brackets signal additional information.

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