



Volume 3. From Vormärz to Prussian Dominance, 1815-1866 Austrian Memorandum (1863)

In July 1863, to gain the support of individual German states in order to prevent the formation of a "small German"-Prussian nation-state, the Austrian government offered a proposal for the reform of the German Confederation. The proposal was to be discussed at a meeting of German rulers in Frankfurt. On Bismarck's advice, the King of Prussia boycotted the meeting, thus thwarting the initiative.

I. The more uncertain the situation in Europe becomes, the more incontrovertibly are the German princes confronted with the task of assuring themselves a tenable position in light of domestic and foreign perils. Obviously, under the circumstances that have developed over the last several years, such a position cannot be based simply on the existing confederal constitution. For a long time, the confederal agreements of 1815 and 1820 have rested on shaky foundations. Gradually, a series of factors acting in combination has undermined the structure of these agreements ever more deeply. The entire course of Germany's domestic development over the last decade has had the most unfavorable effect possible on the institution of the Confederation in its form until now. In part, the fruitlessness of all efforts to promote common German interests through the Confederation devalued the Confederation in the general opinion; in part, the conditions under which the confederal agreements were concluded underwent momentous changes owing to modern political events. In Austria as in Prussia, new institutions of state were created, institutions that must exercise a powerful influence on the relationship of both monarchies to the Confederation, but which until now have been bereft of any mediation and any regular connection with the organism of the Confederation. All other German governments have repeatedly and solemnly recognized the need for a fundamental reform of the German Confederation. Thus, in Germany there has been an unstoppable and progressive process of turning away from the existing Confederation; but until now a new Confederation has not been concluded, and thus the most recent period in German history is nothing but a condition of complete fracture and general disintegration. One does not, in fact, think too unfavorably about this condition when one admits that German governments now are basically no longer standing together in a solid, mutual contractual relationship, but rather are just lingering on alongside each other, foreboding impending catastrophe. But the German revolution, quietly stoking, awaits its hour.

These truths, as lamentable as they are, would be twice as dangerous if one were to close one's eyes to them or subject oneself to them like an irrevocable fate without undertaking a

resolute attempt at remedying them. Wise governments will certainly not voluntarily choose a moment of danger and crisis to rattle the remnants of a legal order that, while having become wobbly, has not yet been replaced by new and more perfect creations. But it must almost sound like irony if one should want to apply this intrinsically correct sentence to the status quo of German confederal relations. The ground of the confederal agreements is tottering underneath the feet of those who have placed themselves on it, the structure of the constitutional order reveals fissures and crevices everywhere, and merely wishing that the rotten walls might withstand the next storm can never give them back the necessary solidity. Neither Austria, nor Prussia, nor the other German states can rely with any degree of confidence on the Confederation in its current condition. The more clearly they recognize this, the less they may have any doubt about the complete legitimacy of the longing for a reform through which the confederal principle would be filled with vitality. Just take an impartial look at the voices that are raising this call nowadays! They no longer ring out only from the camp of the destructive parties; there, to the contrary, every hope for a legal reform of the German confederal constitution is scorned and ridiculed; for radicalism knows its harvest ripens in a field in which no healthy crop has been planted. Today it is the German governments themselves that see their salvation in the reorganization of the Confederation. In the [parliamentary] chambers it is the moderate parties that are impatiently pushing toward this goal because they feel that the longer reform is delayed, the greater the chance that even more far-reaching demands will be ventured and find support in the spirit of the people. It is the drive toward self-preservation that is showing the governments and the chambers the way. – But Austria and Prussia should comply with such a just desire not only for the sake of their German allies; rather, it is in their own interest to remember that they owe it to themselves and the world not to shy away from the greatest effort and sacrifice in order to maintain the Confederation, which forms Europe's center, in viable condition.

As far as Austria is concerned, it has completely made up its mind on this point. With firm resolve, even with that extreme caution that corresponds with its principles and traditions, the imperial [Habsburg] government has approached the question of the development of the confederal constitution and especially the difficult task of organizing the legislative power of the Confederation. It has proposed taking the momentous step of appealing to the representative bodies of the individual states to participate in confederal affairs, initially just in the form of a provisional measure, an experiment that will have to stand the test of experience. Only the rejection of its motion at an ad hoc assembly of delegates compelled it to promise that it would participate even more decisively in an organic reform. Since then, Austria's word has been pledged on behalf of a serious effort toward this goal, and the Emperor feels pressured to fulfill this promise. The Emperor has bestowed modern institutions on his own empire. He recognizes fully that the German nation as a whole also justly expects a reform of its political constitution, and He regards it as His duty as a prince of the Confederation to explain openly to His fellow princes what He regards as possible in this respect and what He is prepared to grant of His own accord.

II. *Austria's reorganization proposals* can only rest on a federative principle held with complete clarity and determination.

Much has changed in Europe since 1815, but now as then the provision that the German states will be independent and united through a federative tie – a provision made into a necessity by the dissolution of the German Reich and sanctioned by European treaties – represents the only possible foundation for Germany's political constitution. One cannot oppose this truth, either directly or indirectly, without leaving the firm ground of reality. One cannot exclude the measure of reform from ideal demands or from doctrines that are artificially adjusted to a specific interest without sacrificing the present to an uncertain future surrounded by the most obvious perils. A course contrary to the confederal principle cannot be taken for Germany's common concerns without confronting warning signs at every step and, at the end of the road, arriving at a precipice. Monarchical states, among them two great powers, constitute the German union of states. Institutions such as a unified head [of government] or a parliament emerging from direct popular elections are not appropriate for this union; they go against its nature, and whoever demands them only wants a confederation in name or something that has been called a confederal state; in reality, he wants the gradual extinguishment of the individual states' vitality; he wants a condition of transition toward future unification; he wants the division of Germany, without which this transition cannot take place. Austria will not propose such institutions. But it seems the moment has arrived when concern for Germany's welfare requires that the principles upon which the Confederation was founded be strengthened, and the federative principle be given greater power over the sovereignty of the individual states, which was already limited by the very concept of a federation. The German Confederation was concluded as a confederation of princes; but it is also expressly recognized as the national union of Germans that has taken the place of the former Reich [Holy Roman Empire], and in the future – in order to meet the requirements of our era, and even by virtue of the character of its constitutional forms – it will necessarily have to present itself before the world as a union of German states as such, of princes as well as of peoples. The Kaiser therefore sees in the fortification of the executive power, and in the appeal to the constitutional [parliamentary] bodies of the individual states to participate in confederal legislation, two equally irrefutable and, at the same time, mutually dependent tasks. The government of the Kaiser has already given expression to this conviction with the note to Count v. Bernstoff from February 2, 1862, and then again with the above-mentioned declaration in the Confederal Diet meeting of January 22 of the current year.

The *outlines for its reform plan* are thus already drawn. They will propose the establishment of a Confederal Board of Directors and the periodic convocation of an assembly of delegates of the representative bodies of the individual states. Without underestimating the fact, that with respect to the latter institution, strong counterbalancing forces are needed to secure the monarchical principle and the legitimate independence of the individual states against possible attacks, they are simultaneously inclined toward the idea that the best guarantee of this kind, and a valuable means to preserve princely rights and the dignity of the German dynasties, might be found in periodic personal meetings of Germany's sovereigns. Finally, they will also take up the proposal for establishing a federal court with appropriate modifications. These are, in essential outline,

the intentions of the Kaiser regarding the foundations of a healthy solution to this serious question.

But with respect to the ways and means for bringing about an agreement among German governments on the question of a confederal constitution, more than one experience justifies the apprehension that the task of solving the numerous difficulties of this enterprise will be granted to neither the written negotiations of cabinets nor to conferences of ministers. The question of reform affects such a variety of interests, it opens up the field of discussion to so diverse [a set of] incompatible wishes and opinions, that the sum of inhibiting and disturbing moments, of anxious doubts, [and] of insoluble contradictions would easily increase ad infinitum and outgrow any hope of success if one were to expect that mere negotiators, who might not even bring any free right of disposition of their own into the consultation, might triumph over all those obstacles and succeed at an agreement. But the German princes themselves – the bearers of the rights at stake, the highest-ranking parties interested in Germany's security and welfare, all of them animated by German consciousness – will, through a direct exchange of ideas, reach an agreement on this task more easily and effectively than via intermediaries. Therefore, in the mind of the Kaiser, there has ripened a resolve to invite the princes of Germany and the magistrates of the free cities to a meeting for the purpose of agreeing on a reorganization of the German Confederation, and the Kaiser discloses this intention, before all Others, to the most powerful of His German confederal allies, the King of Prussia.

III. Without Prussia's pro-confederal cooperation, there cannot be a definitive completion of the reorganization of the Confederation. Prussia's confederal lands comprise a third of the German population, they extend from the eastern to the western borders of Germany, and the Confederal Treaties give Prussia a right to oppose any far-reaching reforms. *Prussia can therefore prevent the reform of Germany's overall constitution de facto and de jure.* Standing its ground in complete opposition to reform in Germany does not require the greatness and influential position of the Prussian monarch; even less powerful states are capable, merely by abstaining, of foiling the most ardent wishes, the most honest endeavors of their confederal allies. Prussia's veto, at any rate, has this negative power. If it is lodged, then the Confederation as a whole cannot rise up out of its current and profound state of dilapidation. But things in Germany have reached the point where an absolute standstill of the reform movement is no longer possible, and the governments that recognize this will see themselves compelled to attempt a makeshift work by deciding on the partial execution of the intended confederal reform within the confines of their own states, and to this end, while maintaining the confederal relationship, they will give their free confederal right the most extensive application possible.

Can Prussia look forward to such an eventuality, which would involve so total an alienation from its German confederal allies? It is true that Prussia's views on the vocation and purpose of the German Confederation over the last several years have differed only too greatly from those explained above. We are looking back to a time in which the leading idea of Prussia's German policy was to reduce the confederal principle to a mere – intrinsically imperfect – alliance, rather than to strengthen and invigorate it. Only, events have moved forward since then, and perhaps

[this] course [of events] includes more than one serious reason to turn away decisively from directions that have not led to happy destinations. Germany's future is shrouded in a dangerous darkness; having reflected on the past, the Kaiser did not want to prevent himself from trustingly informing His illustrious Prussian Ally about His thoughts on the means for illuminating the view into the future. He counts on the wisdom and magnanimity of conviction of the King, whom it cannot possibly have escaped how completely different would be the respect and security accorded to Germany among the nations, [and] in what greater measure its influence and position of power would increase, should the constitution of the Confederation emerge, in a renewed shape and corresponding to the requirements of the time, from a mutual and unanimous resolution of all the German princes. Whatever experiences the future may hold in store for us, the Kaiser's conscience will always be eased by his declaration to the Kings that it depends on Prussia's resolutions today [if] the German confederation is to be elevated again to the height of its destiny, so infinitely important for the nation and its princes as well as for Europe's peace.

Source: H. Schultheß, *Europäischer Geschichtskalender* [*Almanac of European History*], vol. 3, 1862, p. 89f.

Original German text reprinted in Ernst Rudolf Huber, ed., *Deutsche Verfassungsdokumente 1851-1900* [*German Constitutional Documents 1851-1900*], vol. 2, *Dokumente zur deutschen Verfassungsgeschichte* [*Documents on German Constitutional History*], 3rd ed., rev. and enl. Stuttgart: W. Kohlhammer, 1986, pp. 135-39.

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