

Chapter 2

Friedrich List on Local Autonomy in His Contributions to the Debate About the Constitution of Württemberg in 1816/1817

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Friedrich List: Unknown as an Early Advocate of Municipal Autonomy

In Germany, the revival of municipal autonomy originated from Prussia. Among the reforms introduced after the crushing defeat of the Prussian army against Napoleon in 1806, the *Städteordnung* (statute for government of cities) of 1808, commonly associated with the name of Baron Karl vom Stein, was one of the measures enacted by the king to ensure political support and loyalty for the state.

The new statute re-established self-government of urban communities which they had enjoyed during the middle ages, but which had been gradually taken away from them when absolutist regimes imposed direct controls over finances and administration of cities during the seventeenth and eighteenth centuries. But at the time when municipal autonomy was re-introduced, the political context had changed fundamentally. After the French Revolution, the ideas of democratic representation and constitutional government had spilled over into Germany where they had taken firm roots among parts of the urban middle class, especially among intellectual circles. Even though traditional aristocratic–monarchic regimes had re-asserted themselves after Napoleon’s defeat through the new political order of Europe established at the Congress of Vienna in 1815, the debate about constitutional government continued in many states of the German Federation, e.g. in the kingdom of Württemberg.

In the context of the debate about a new constitution for Württemberg, Friedrich List published three extensive essays in the *Württembergisches Archiv*, a journal he had founded himself, to which he was the most important contributor. The first

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essay¹ addresses issues of legislation and administration of the state as a whole, including a long section on municipal corporations. In the second² and the third³ essay, municipal autonomy is the main subject. In his introduction to a volume of smaller writings by Friedrich List (1926), Friedrich Lenz refers to these essays as lost and forgotten (p. XII). It appears that, in this respect, not much has changed since then. In the voluminous history of self-government in Germany in the nineteenth century by Heinrich Heffter (1950), List is mentioned as one of the early advocates of municipal autonomy. But Heffter does not refer to the three essays which are Lists's main contributions to the theoretical side of the subject, but only to his Reutlingen memorandum of 1820. It is only in the monograph of Friedrich Lenz (1936/1970) where due respect is paid to this part of List's work,⁴ which was, of course, overshadowed later by his magnum opus "The national system of political economy" (1840) and by his political efforts for economic unity of Germany.

The historical background of the debate about a new constitution for Württemberg can be briefly described as follows.⁵ In 1815, right after having returned home from the Congress of Vienna, king Friedrich I., who had been elevated to the rank of king by Napoleon in 1806, put a draft proposal for a new constitution before the assembly of estates. When the estates vehemently opposed the king's proposal, List strongly approved of the assembly's rejection of the king's draft. When Friedrich I. was succeeded by Wilhelm I. in 1816, List was invited by minister von Wangenheim to participate in the preparation of the reform of the state's administration. In 1817, the estates put forward their own draft for a new constitution. In this case, however, List took sides with the king by criticizing the estates' draft whose main goal was to preserve the traditional rights they had enjoyed in the pre-Napoleonic era. Upon Wangenheim's request, List wrote an expert opinion on the foundation of a faculty for the sciences of state economy at the university.⁶ Thereafter, he was appointed to professor of administrative science at the university of Tübingen, from which he resigned only some 20 months later in May 1819. In July of that year, List was elected to the Württembergian Chamber of Estates as a representative of Reutlingen,

¹*Gedanken über die Württembergische Staats-Regierung* ("Thoughts on government of the Württembergian state", 1816), in: List (1926), pp. 1–66.

²*System einer Gemeindewirtschaft. Ein Versuch* ("System of municipal economy. An experiment", 1817), in: List (1926), pp. 77–121.

³*Kritik des Verfassungsentwurfs der Württembergischen Ständeversammlung, mit besonderer Rücksicht auf die Herstellung der bürgerlichen Freiheit in den Gemeinden und Oberämtern* ("Critique of the draft proposal of the Württembergian estates, with special reference to the introduction of freedom of the citizens in municipalities and districts"), in: List (1926), pp. 123–263.

⁴More recently, the entry on List in the *New Palgrave* (1987) mentions that "he became involved in the publication of a reformist journal, contributing articles on the reform of local administration" (Vol. 3, p. 217).

⁵See Bülow (1959), p. 11ff.

⁶*Gutachten über die Errichtung einer staatswirtschaftlichen Fakultät* (1817), in: List (1926), pp. 265–284.

his native city. In 1821, he was expelled from the Chamber when his authorship of the Reutlingen memorandum had been disclosed. After having received a sentence of 10 months' imprisonment, List left Germany for the United States in 1825.

List's Concept of Municipal Autonomy

List first dealt with the subject in the third chapter of his essay *Gedanken über die Württembergische Staats-Regierung* ("Thoughts about the government of the Württembergian state") published in 1816. The title of the chapter is "On municipal corporations" (*Über Gemeindekorporationen*). In the process of evolution of structures of government, the *Gemeinde*, which was formed by men who "felt the need to unite for common goals" (List 1816/1926, p. 24), has temporal priority over the state. If the corporations formed at the local level later joined together in more encompassing associations (provinces, state), the contract by which this was achieved provided that the local corporation continued to exist as an organizational entity. According to List, the structure of political institutions should be based on a general principle of subsidiarity. If welfare of the individual in itself is the public purpose, the state's concern with individual welfare should start only where the individual's powers are insufficient to achieve that purpose. Subsequently, to the extent that a more limited association is more effective in joining individual forces than the state, the task should be left to this type of association. Hence, "the state not only has to permit these corporations, but rather it has to establish them" (ibidem, p. 24f).

List also attributes a pedagogical function to the municipal corporation. If the majority of the population has a rather low level of education, and is therefore unable to recognize the general interest, its involvement in political affairs at the level of the local corporation can lead to a better understanding of the interest of the state (p. 25).

The whole country should without exception be organized in municipal corporations, towns and cities as well as the countryside. Neither the estates of the nobility nor property of the king should be exempted (p. 28).

Municipal corporations should be autonomous in their decision making. Co-operation of citizens in the municipal corporation should be allowed to promote individual welfare "without intervention from above, wherever this is possible" (p. 28). The state should not be given the power to dispose of the municipal corporation's property, and it can only intervene in case of abuse. The state's task consists in, on the one hand, supervision against abuse, and on the other hand, in "guiding the municipal corporations according to the state's general purpose" (p. 28). In the latter respect, the state has to treat all municipal corporations on an equal basis.

List admits that "provinces" with autonomous political rights can be a source of weakness for the state as a whole. But he emphasizes that, to the contrary, there is no such risk in the case of Württemberg, where autonomous municipal corporations would promote the overall power of the state (p. 26).

As a legal person, the municipal corporation is represented by the *Magistrat*, i.e. the municipal administration. In this context, List most explicitly argues for democratic election of political officers at the municipal level. Wherever municipal administrators themselves are empowered to appoint their own successors, “death of free municipal government is the consequence”. What is required is true representation of the citizens. The magistrates of the corporation must be appointed by the population’s representatives who should be chosen in public elections, to be “repeated from time to time” (p. 30).

In the second issue of the *Württembergisches Archiv*, List published a detailed scheme of the municipal economy *System der Gemeindegewirtschaft*. This tract is a mixture of statute and handbook for specific matters of municipal administration. The sections which pertain to general political issues such as concept and purpose of the municipal unit and its legal relationship to the individual are brief. The more extensive sections deal with practical aspects of administration of the municipality’s property, its revenues and expenditures.

The third tract (*Kritik des Verfassungsentwurfs der Württembergischen Ständeversammlung...*) which List writes as a forceful advocate of municipal autonomy was published anonymously in 1817 in the same journal. This tract is List’s principal intervention in the debate about a new constitution for the Württembergian state. List subjects the draft for a constitution presented by the assembly of the Württembergian estates to a fundamental criticism. In the essay he elaborates the principal importance of municipal autonomy in the context of a constitution based on liberal principles of representation of the people in state government. “The state is composed of men freely born. Its power is the unified power of all individuals, its purpose is ... the legal unification of these individuals to a totality, in order to achieve the welfare of all”⁷. Steadiness of the constitution and freedom of the individual, upon which state power and welfare of the people are based, cannot be ensured by the existence of an assembly of estates (*Ständekammer*). “Only freedom of the municipal corporation (*Freiheit der Gemeinde*) ... can fulfil the idea of the constitution with real life. Hundred thousand free citizens must stand upright and exercise their intellectual powers – not 30 aristocrats” (p. 125). List considers municipal corporations as essential basic units of constitutional state government. He refers to “the new organization of aspiring Prussia, which will find this form of organization justified as it will establish a constitutional form of government in the future” (p. 132).

As in his previous essays, List proposes a model of municipal government in which municipal councillors (which he calls *Gemeindestände*) are elected by the citizens for several years. The councillors have the right to enact municipal regulations and to impose municipal taxes and charges. Magistrates (i.e. clerks) are appointed by them for life time and are accountable to them (p. 146)

⁷“Der Staat besteht aus freigeborenen Menschen. Seine Kraft ist die Gesamtkraft aller einzelnen, sein Zweck ist die Wohlfahrt aller einzelnen, und die gesetzmäßige Verbindung dieser einzelnen zu einer Gesamtkraft, um die Gesamtwohlfahrt zu erreichen, heißt: Staat”. List (1926), p. 129.

List criticizes the draft for a constitution proposed by the estates because “it violates the requirements of civil liberty” in the organization of municipal corporations which provides for a mixture of magistrates appointed from outside and elected councillors. List calls for a separation of executive, legislative and controlling powers at the municipal level, whereas the draft of the estates would subject municipal government and administration to the guardianship of state authority (p. 175f).

By means of the introduction of direct election of people’s representatives at the municipal level, List aims at establishing a system of popular representation at the state level. List envisages a system of indirect representation up to the level of state government. His model provides for several levels of government, where each level elects deputies to the next level. Direct election of representatives by the people is only provided for at the municipal level, where the elected representatives themselves elect deputies to the level of district, from there to the level of province, and finally to the state level. List emphasizes that only his model can ensure that constitutional government is exercised on the basis of representation of the citizens. In their draft for a new constitution, the estates fail to understand that without freedom to elect representatives in their municipal corporation, citizens will not be able to realize the important role of representatives nor develop a sense of responsibility for matters of their country (p. 183).

List’s own draft for a new constitution for the state of Württemberg, which he puts forward as a concrete alternative to the draft proposed by the estates, explicitly provides that the population is divided into subsets of 50 houses called “clans” (*Stämme*), each one of which would elect one councillor.

In the famous *Reutlinger Denkschrift* (“Reutlingen memorandum”) which was the cause of the warrant of arrest against List, most of the 40 specific demands to the chamber refer to the organization of the municipal corporation. Most importantly, the memorandum calls for the dismissal of all magistrates not elected by municipal councils, for re-election of one half of the municipal councillors every 3 years, for autonomous management of the municipal economy by the city council, etc. (p. 332f).

List’s Proposals in Comparison with Stein’s *Städteordnung* in Prussia

The Prussian statute for city government clearly served as a model for Friedrich List’s proposals for such a statute in Württemberg, although there are very few instances where he explicitly refers to it.

The specific provisions of the Prussian *Städteordnung* reflect an approach that is remarkably modern in many respects. Cities and municipal units are entrusted with self-government of their affairs. The institutional set-up provides for two branches of government, an assembly of deputies as legislative branch and a magistrate as executive branch which is elected by the assembly. The assembly decided on the city’s budget and exercised control over the administration. The deputies were

elected by the (male) citizens; franchise was only mildly restricted by a modest census. Votes were cast in districts, not in guilds and similar corporations as was the case in the mediaeval city (Heffter 1950, p. 94).

There is a significant difference in the arguments with which Stein, and on the other hand, List support their moves for municipal autonomy. Stein mainly argues with the need for reviving the engagement of the population in matters of local administration. Cities have declined economically in the eighteenth century, because they were deprived of their self-governing capacity by the absolutist state. “Especially the last period of disastrous events for the state has brought to the fore the detrimental consequences of the existing statute ... There was no alternative but to transfer the local community with all its affairs into the hands of the citizens, in order to ensure their greater involvement” (Stein 1929, p. 107).

From a political point of view, List goes far beyond Stein with his intentions that underlie his thrust for municipal autonomy. In Stein’s understanding, municipal autonomy is introduced for pragmatic reasons, i.e. to enhance the efficiency of municipal administration and to re-invigorate the economy. This aspect is quite important for List, too, especially in respect of his idea of “national productivity”⁸ (ensemble of productive forces) which already appears occasionally in his essays on municipal autonomy. But in addition, perhaps more importantly, municipal autonomy is a vehicle to introduce representation of the people in the government of the state as a whole. For List, municipal autonomy is an important first step towards constitutional government, and beyond that, towards some form of parliamentary political system.

Stein approved of the transition to constitutional forms of government in Württemberg and Baden, and he rejected the Karlsbad decrees of 1819 (Drechsler 2008) by which the member states of the German Federation were requested to intervene against democratic currents. But, unlike List, Stein always kept his conservative views on the legitimacy of prerogatives of traditional estates, and he did not support concepts of democratic representation in state parliaments.

List’s Intervention in Comparison with Hegel’s Intervention into the Constitutional Debate in Württemberg: Parallels and Differences

G.W.F. Hegel’s intervention into the debate about a new constitution for Württemberg⁹ is much more widely known than List’s contribution. It is hardly ever mentioned that it was List who encouraged Hegel to relaunch his essay which first appeared in the *Heidelberger Jahrbücher* as separate publication (Lenz 1936, p. 23). In his detailed,

⁸See List’s “National System of Political Economy”, Chapters 12 and 13 (List 1841/1922, pp. 220ff).

⁹*Verhandlungen in der Versammlung der Landstände des Königreichs Württemberg im Jahre 1815 und 1816*, published 1817, reprinted in: Hegel (1966), pp. 148–276.

somewhat circumstantial discussion of the debate about king Friedrich's draft proposal, Hegel sharply criticized the estates' insistence on their traditional rights. In this controversy, List approved of the estates' rejection of the king's proposal, thus taking his position on the side opposite to Hegel's. List's interventions refer to the draft proposal of the estates which they had put forward after king Wilhelm's accession to the throne in 1816. Now, List was in equally critical of the estates' position in many respects. On several issues which are central to the debate and also from a general political aspect, List's and Hegel's positions are remarkably similar.

Notwithstanding the political concessions to the political system of the Prussian monarchy which he made in his *Philosophy of Right*, Hegel always remained an advocate of constitutional government (as opposed to government *gratia dei*). Therefore, in its essence, Hegel's initial support of the king's proposal for Württemberg was a plea for constitutionalism based on central ideas of "natural law". As a consequence, Hegel's arguments were directed against the estates' pretensions that insisted on their traditional prerogatives originating from mediaeval times. It was time, Hegel wrote, to re-introduce order into the lower levels of government and administration by "purifying them of privileges and injustices" and by organizing them in the same way as the higher levels of government (Hegel 1817/1966, p. 161). In this respect, List argued along similar lines in his critique of the estates' proposal for a constitution for Württemberg.

More to the central subject of this contribution, there are also strong similarities between List's and Hegel's models of the structure of constitutional government. The possibility to introduce representative government at the local level was an important motive for List's enthusiastic support of autonomy for municipal corporations. As is well known, Hegel did not share List's leanings towards democratic liberalism. Equally important for List in this respect was his concept of multi-level government that assigned intermediate institutions an appropriate place in the execution of state power. List was firmly convinced that representative government could not be effectively introduced at the level of the central state only, but that intermediate levels such as municipal corporations, districts, and provinces are needed to mediate between the (private) sphere of the family and the top of the state.

"I am convinced", List wrote in his critique of the estates' proposal, "that the great tyrant (i.e. Napoleon) could have pursued his gigantic projections with more success if he had not melted down everything (i.e. the whole population, G. Ch.) into a vast and immense mass", and that France in her advanced stage of enlightenment "could not exist as a (unstructured) mass, and that she will only find peace if she returns to her natural, i.e. progressively ascending social organization, which means that provinces are established in the same way as departments" (p. 131f). In List's concept, multi-level government is an essential element of modern representative-constitutional government (Lenz 1967, p. 59f). The resemblance to romantic-conservative concepts of Adam Müller and, later, of Wilhelm Heinrich Riehl, is only superficial, since List explicitly rejected the traditional, conservative-popular ideas of the latter (Lenz 1936, p. 24).

In Hegel's concept of constitutional government, as it appears in his essay of 1817, intermediate institutions were assigned an essential place, similar to List.

Citizens can acquire a positive and practical understanding of the requirements “of governing and obeying” if they can take an active part in the administration of affairs of municipalities and corporations, whereas a legal framework that conceives of the people as an (amorphous) mass instead of a state-nation does not deserve the name of constitution (Hegel 1966, p. 163).¹⁰ In his *Philosophy of Right*,¹¹ Hegel devotes several paragraphs to the role of “corporations” in state and society. He uses the term both for municipal corporations and for guilds. The corporation is the form of co-operation in which individuals jointly pursue their private, particular purposes they happen to have in common. In comparison, Hegel puts less emphasis on autonomy: “The corporation is entitled ... to take care of its own interests under the supervision of the public power” (§ 252). Hegel also belittles local policy making which he sees as a playground for “the little passions”. If administrative practices in corporations appear “clumsy”, he thinks this does not matter much, the less is the significance of the subject that can be corrupted for the general purpose of the state.¹²

List, it has to be emphasized, does not follow Hegel when the latter considers the state as “realization of the moral idea” (*die Wirklichkeit der sittlichen Idee*), and therefore, as an entity of higher dignity than the system of human wants and needs (Lenz 1936, p. 298). List rather follows utilitarian lines of thinking by subordinating the state and its positive role in the economy to the goal of maximization of welfare.

Both List (1817/1926, pp. 200ff) and Hegel (1817/1966, pp. 236ff) devote long sections on the “abuse of scribes” (*Schreiberunfug*). Formally executive magistrates, scribes were appointed for lifetime and thus in a position to often shamelessly abuse their function that consisted in formally certifying or confirming decisions of municipal bodies to their own financial advantage. As it became evident soon, it was bureaucracy from which the counterrevolution against municipal autonomy had its origin. For List himself, his heavy attack on the bureaucracy in the Reutlingen Memorandum¹³ turned out to be fatal for his political career. He was indicted for

¹⁰“Bestimmungen jener Art, welche das Volk statt als einen Staat, vielmehr als einen Haufen voraussetzen, und diesen nun nach Anzahl in besondere Haufen, und nach Alter und einer einzelnen Vermögensbestimmung in zwei Klassen überhaupt abtheilen, können eigentlich nicht Staatseinrichtungen genannt werden.”

¹¹Hegel (1821/1955). The full title of the English translation is “Elements of the Philosophy of Right”.

¹²“Diese eigene Sphäre kann aber als dem Moment der formellen Freiheit überlassen angesehen werden, wo das eigene Erkennen, Beschließen und Ausführen, sowie die kleinen Leidenschaften und Einbildungen einen Tummelplatz haben, sich zu ergehen, – und dies um so mehr, je weniger der Gehalt der Angelegenheit, die dadurch verdorben, weniger gut, mühseliger u.s.f. besorgt wird, für das Allgemeine des Staates von Wichtigkeit ist ...” (§ 289).

¹³“Eine von dem Volke ausgeschiedene ... Beamtenwelt ... behauptet das Monopol der öffentlichen Verwaltung, jeder Einwirkung des Bürgers, gleich als wäre sie staatsgefährlich, entgegenkämpfend... Wo man hinsieht, nichts als Räte, Beamte, Kanzleien, Amtsgehilfen, Schreiber, Registraturen, Aktenkapseln, Amtsuniformen, Wohlleben und Luxus der Angestellten bis zum Diener herab. Auf der anderen Seite Unwert der Früchte, Stockung der Gewerbe, Fallen der Güterpreise, Klagen über Geldmangel und Abgaben, Steuererpresser, ... nirgends Ehre, nirgends Einkommen, nirgends Fröhlichkeit, denn allein in dem Dienstrock ...” (List 1820/1926, p. 329f).

insulting the civil service and expelled from the Württembergian diet (Lenz 1936/1970, p. 245ff; Heffter 1950, p. 171), thereafter sentenced to imprisonment.

Further Development of Municipal Autonomy in Germany During the Nineteenth Century

Ten years after the introduction of municipal autonomy in Prussia, the king issued a similar statute for the state of Württemberg (Heffter 1950, pp. 126f). It provided that municipal councillors were elected by vote of the (male) population in which citizens participated on an equal footing. At the same time, the statute re-enforced the control of bureaucracy by providing that the mayor was to be appointed for lifetime by the state upon the proposal of the council.

In Württemberg as well as in Prussia, the statute for municipal corporations provided that the right to vote in elections for municipal councils depended on “citizenship” in the municipality (*Gemeindebürger*). Traditionally, only owners of houses or members of professional trades (gilds) in the city were citizens. As a consequence, all other residents were excluded from municipal franchise. With respect to democratic representation, it was unsatisfactory if, e.g. in Königsberg, only 4.100 out of 50.000 inhabitants were allowed to vote (Conze, p. 60).

List was aware of this problem. According to the detailed draft proposal which he put forward as an alternative to that of the estates, he maintained the distinction between full “citizens” (*Bürger*) and mere residents (*Beisitzer*). The only privilege of municipal citizens is the right to subsistence in case of need (§ 45, p. 231). In all other respects, citizens and residents have equal rights. Every person with citizenship in the Württembergian state is free to take residence in any municipal community. Only “infamous persons” or members of religious creeds which are “incompatible with the social purpose of the municipality, e.g. separatists or jews” can be denied the right of residence (§ 49, p. 232).

Thus, List resolved the conflict between *Bürgergemeinde* (municipality of citizens) and *Einwohnergemeinde* (municipality of residents) in favour of the latter. In this respect, he anticipated an important element of reform which was part of the revisions of municipal statutes in Prussia in 1831 (Heffter 1950, p. 217f) and in other member states of the German Federation (ibidem, p.183ff).

However, in other respects, democratic elements in statutes for municipal corporations were driven back by the revisions enacted during the 1830s and 1840s. While in the United Kingdom municipal autonomy was given its definite shape by the Municipal Corporation Acts in 1835 (Waller 1983, p. 242ff), it was curtailed step by step in Württemberg as well as in Prussia by a series of decrees that subordinated municipalities to decisions by the state bureaucracy. As a consequence of the “Karlsbad decrees” of 1819, municipal autonomy came under suspicion of introducing democracy through the back door. In Prussia, the revision of the municipal statute of 1831 strengthened the position of appointed magistrates vis à vis the elected council. It also provided that the king could disband a municipal

assembly and even suspend self-government (Heffter 1950, pp. 212ff). The revival of municipal autonomy came only in the 1860s, with Württemberg as one of the centres of the popular movement (ibidem, p. 423f).

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