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*Political Writings*

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## The Magistrates should be Elected by the People<sup>1</sup>

[On the recent internal affairs of Württemberg, in particular the inadequacies of the municipal constitution]<sup>2</sup>

(1798)

To the people of Württemberg

It is time that the people of Württemberg ceased to vacillate between hope and fear, to alternate between expectancy and frustrated expectations.<sup>3</sup> I will not say that it is also time for everyone who, in the midst of change or in preserving the old, seeks only his own limited advantage or the advantage of his class [*seines Standes*] and consults only his own vanity, to renounce these paltry desires, to cast aside these petty concerns, and to fill his soul with concern for the general [good]. For men of nobler aspirations and purer zeal, it is time above all to focus their undirected [*unbestimmten*] will on those parts of the constitution which are founded on injustice, and to apply their efforts to the necessary change which such parts require.

Peaceful satisfaction with the present [*dem Wirklichen*], hopelessness, and patient acceptance of an all-too-vast and omnipotent fate have given way to hope, expectation, and courage to face the new. A vision of better, juster times has come to life in the souls of men, and a longing and yearning for a purer and freer destiny has moved all hearts and alienated them from the present reality [*der Wirklichkeit*].<sup>4</sup> The urge to break down paltry barriers has fixed its hopes on every event, every glimmering [of change] – even on

criminal actions. From what quarter could the people of Württemberg expect more just help than from the Assembly of their Estates? Time and deferment of the satisfaction of their hopes can only refine their longing and separate the pure from the impure; yet it can only intensify the urge to remedy a genuine need, and any delay will make the longing eat more deeply into men's hearts, for it is not just a fortuitous attack of light-headedness which will soon pass away. You may call it a paroxysm of fever, but it can end only with death, or when the diseased matter has been sweated out. It is the effort of a still robust constitution to expel the illness.<sup>5</sup>

The feeling that the political edifice as it still exists today cannot be sustained is universal and profound. The anxiety that it may collapse and injure everyone in its fall is also universal. – With this conviction in our hearts, is this fear to become so powerful that it will be left to chance to decide what shall be overthrown and what shall be preserved, what shall stand and what shall fall? Ought we not ourselves to try to abandon what cannot be sustained, and to examine with a dispassionate eye what makes it unsustainable? Justice is the only yardstick for such a judgement, and the courage to do justice is the only power which can honourably and peacefully remove the unstable edifice and produce secure conditions in its place.

How blind are those who like to believe that institutions, constitutions, and laws which no longer accord with men's customs, needs, and opinions, and from which the spirit has departed, can continue to exist, or that forms in which feeling and understanding no longer have an interest are powerful enough to furnish a lasting bond for a nation [*eines Volkes*]<sup>6</sup>

All the attempts of pompous bungling to restore confidence in constitutional elements and arrangements in which no one any longer has faith, and to conceal the gravediggers behind a screen of fine words, not only cover their ingenious instigators with shame, but also prepare the way for a much more terrible outburst in which vengeance will ally itself to the need for reform and the ever-deceived, ever-oppressed mass will mete out punishment to dishonesty.<sup>7</sup> To do nothing when the ground shakes beneath our feet but wait blindly and cheerfully for the collapse of the old building which is full of cracks and rotten to its foundations, and to let oneself be crushed by the falling timbers, is as contrary to prudence as it is to honour.<sup>8</sup>

If a change has to happen, then something has to be changed. So banal a truth needs to be stated, given the difference between fear which must and courage which will; for whereas those who are driven by fear may well feel and admit that change is necessary, they nevertheless display the weakness, as soon as a start has to be made, of trying to hold on to everything they possess. They are like a spendthrift who is obliged to cut his expenditure but cannot dispense with any article he has hitherto required and has now been advised to do without, and who refuses to give up anything – until he is finally deprived of dispensable and indispensable alike. No nation [*Volk*], including the Germans, can afford to display such weakness. In the cold conviction that a change is necessary, they should not be afraid to scrutinise every detail; the victim of injustice must demand the removal of whatever injustice they discover, and the unjust possessor must freely give up what he possesses.

This strength to rise above one's own small interests for the sake of justice is presupposed in the following enquiry, as is the honesty to will this end, and not just to pretend to do so. Only too often, wishes and zeal for the common good conceal the reservation 'in so far as it coincides with our own interest'. Such willingness to consent to every reform takes fright and grows pale as soon as demands are made of those who express it.

Far from this hypocrisy, let each individual and each class [*Stand*] look first to themselves to weigh up their own rights and circumstances before they make demands on others and look outside themselves for the cause of the evil; and if they find themselves in possession of inequitable rights, let them strive to restore the balance in favour of others. Anyone who wishes may regard this demand to begin with oneself as blind and ineffectual, and the hope for this kind of injustice set aside for [. . .].<sup>9</sup>

So long as it is not in one's power to reform or reverse those reforms which have already been attempted and found to be harmful, it is as well not to go beyond those changes whose consequences can be foreseen and assessed throughout their entire extent, and to be content with eliminating the sources of abuse.

Both in earlier and more recent times, the primary cause of all the troubles of the provincial assembly [*Landschaft*] was the presumptuousness of the senior officials.<sup>10</sup> The Council [*Ausschuß*], of course, found it very convenient to employ men to speak and write on its behalf (or even, at a pinch, to think for it). Meanwhile, a

large proportion of the Council's members spent their income in comfortable ease, and no doubt looked after their own spiritual welfare on the side, leaving the country's affairs to run their course as providence and its leaders wished. To be sure, the common herd fared badly if one of its herdsmen proposed to lead it east, and another west. The majority naturally followed the one who had the key to the hayloft, who could tempt them with fairer words and more ably conceal his wolfish nature beneath his sheep's clothing. In this way, the Council – and with it the country – was led by the nose by the Council's officials.<sup>11</sup>

The Council itself was never presumptuous. But its consultants and lawyers were. It was merely indolent, and it unthinkingly put its name to all the high-handed actions of these officials. It was they who seduced the Council into a [degree of] generosity towards the Court which was equalled only by the frivolity of the reasons which were adduced in order to justify such expressions of devotion. It was they whom the Court sought to enlist, because it was sure of attaining its end once it had managed to harness the lawyers and consultants to its interests. It was they who determined whether the complaints and wishes of individual classes [*Stände*] were to be heeded. It was they who took charge of the incoming documents and kept their existence secret from the Council until such time as they chose to bring the relevant matter up for discussion. And in fact, no priest has ever exercised greater control over the consciences of his penitents than these political confessors did over the official consciences of the Councillors to whom they were answerable.<sup>12</sup>

The consultants in the narrower sense had, incidentally, nothing to do with financial matters. They were not privy to the operations of the secret account. The self-interest of the members of the Council could therefore expect no favours from them. They were not consulted over the making of appointments, and they played no direct part in any election. This ensured that the lawyers were at a marked advantage, even if they were without talents or knowledge. But even in the elections, the indirect influence of the consultants was unmistakable. A candidate for office had every hope of outdoing the favourite of a lawyer if the most influential consultant was his friend and advocate.

Fortunately, the Council has also at times had right-minded and

well-disposed men as consultants;<sup>13</sup> and although they did keep the Council on leading-strings – because it had not learned to walk unaided – they never (or at least not knowingly and deliberately) led it into the mire.

As far as the Diet is concerned, the dangerous influence of this monstrous officialdom has increased rather than diminished. We have grown accustomed to regarding the consultants as essential elements of the provincial assembly's constitution [*der land-schaftlichen Verfassung*]. Their official sphere of influence has been enlarged. They have reaped benefits from the rivalry of the deputies. They have contrived to make themselves independent of the Council, their employer and judge in official matters. Until the Diet [was set up], the Council could dismiss an incompetent consultant without argument, and it did so on more than one occasion. Now, perhaps, the consultant might demand that the ruler, to whom he betrays the interests of the provincial assembly [*Landschaft*], should be his judge [. . .]

[. . .] as long as everything else remains as it was, as long as the people do not know their rights, as long as there is no collective spirit [*Gemeingeist*], and as long as the power of the officials remains unchecked, popular elections would serve only to bring about the complete overthrow of the constitution.<sup>14</sup> The chief priority is to place the right of election in the hands of a body of enlightened and upright men who are not dependent on the Court.<sup>15</sup> But I fail to see what kind of election might give us any expectation of an assembly of this kind, however carefully one defined active and passive [kinds of] eligibility [. . .]