

## **Bulletin of the GHI Washington**

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## **II. Accounts of the Conferences Sponsored and Co-Sponsored by the German Historical Institute**

In view of its charge to promote and support the exchange of ideas between American and German historians and political scientists, the German Historical Institute in Washington has committed itself to the sponsorship of conferences which will bring together German and American scholars to discuss topics and issues within the Institute's mission. Beginning in Issue No. 4 of the BULLETIN, Spring 1989, brief reports have made the most important results of those conferences available to a wider audience. With Issue No. 5, the Institute hopes to establish a pattern of presenting brief conference reports on the year's conferences in each fall issue.

The following accounts are summaries of the main points raised during the various conferences of the year. Not every speaker could be included in these accounts, and remarks attributed to speakers are not direct quotations, unless they appear in quotation marks. Because the Institute will publish the formal conference papers of some of the conferences, the various presentations have been described only in summary fashion. The editor apologizes for any simplifications, omissions, or misunderstandings.

### **A. A Framework for Democracy: Forty Years of Experience with the Grundgesetz of the Federal Republic of Germany**

Philadelphia, April 6–9, 1989

This conference, marking the fortieth anniversary of the drafting of the Federal Republic's Basic Law, convened under the joint sponsorship of the German Historical Institute, Washington, D.C., the Center for West European Studies at the University of Pennsylvania, the Goethe House New York, and the German Marshall Fund. The conveners were Thomas Childers (University of Pennsylvania) and Peter Krüger (University of Marburg). More than fifty historians, political scientists, legal scholars, and jurists from the United States, Great Britain, Canada, and Germany devoted three days to a thorough examination of the origins, context, content, and evolution of the *Grundgesetz*. The keynote address, held at Independence Hall in the room where—200 years ago—the first

United States Congress convened, was delivered by Ralf Dahrendorf (St. Antony's College, Oxford) who emphasized the flexibility of the *Grundgesetz* which, by facilitating evolutionary change, has permitted the development of a genuinely pluralistic political system in the Federal Republic. The opening ceremony ended with a reception at Old City Hall, given by the German Consul General in New York.

The working sessions of the conference took place at the University of Pennsylvania, where the Center for West European Studies generously provided all the necessary support. The first session, chaired by Thomas Childers (University of Pennsylvania), dealt with the historical context in which the *Grundgesetz* was drafted. Charles Maier (Harvard University) examined the international setting and the discussions between the occupying Western powers and the German zonal authorities, leading to what he described as "the constitution before the constitution" or "the presuppositions of the *Grundgesetz*." Wolfgang Benz (Institut für Zeitgeschichte, Munich) evaluated the impact of the German constitutional tradition (1848, 1871, 1918) as well as of the Weimar experience on the drafters of the *Grundgesetz*, while Erich Hahn (University of Western Ontario) stressed the influence of western models and, more directly, of the occupying powers on the political and constitutional reconstruction of West Germany. Finally, Volker Berghahn (Brown University) analyzed the economic conditions of the postwar era in terms of an "Economic Basic Law" which to a great extent guided and structured the deliberations in 1948–49. The discussion centered upon the question to what extent these various presuppositions limited the options of the founders and narrowed their room for maneuver.

The second session, chaired by Ellen Kennedy (University of Pennsylvania), took up major issues and controversies in the constitutional development of the Federal Republic. Donald Kommers (University of Notre Dame) compared civil liberties and constitutional jurisdiction in the United States and the Federal Republic and summarized the paper of Ernst-Wolfgang Böckenförde (*Bundesverfassungsgericht*, Karlsruhe), who was unable to attend the conference because of pressing court business in Germany. Kommers agreed with Böckenförde's conclusion that the solid legal protection of fundamental rights provided by the Federal Constitutional Court—which not only interprets the *Grundgesetz* but also creatively adapts its rules and principles to the changing needs of the society—represents one of the greatest achievements in the early history of the Federal Republic. Gebhard Ziller (Federal Ministry of Research and Technology) traced the constitutional background and subsequent development of federalism in the Bundesrepublik. Hotly debated at the

time of the adoption of the *Grundgesetz*, the federal principle is today firmly embodied in the constitutional system, guaranteeing at the same time cultural diversity and social stability.

While these papers dealt primarily with textual and structural aspects of the Basic Law, James Diehl (Indiana University) and Michael Stolleis (University of Frankfurt) addressed the implementation of its provisions. According to Stolleis, the proclamation of a "social state" or "welfare state" in Art. 20 of the Basic Law was just another step in a historical process that began with Bismarck's "*Sozialpolitik*" in the 1870s. He also demonstrated the opportunities and dangers that arise from the formulation of this relatively vague constitutional aim in a democratic system with a traditionally high participation of political parties and lobbies. Diehl considered in detail the social legislation passed in the first legislative period of the Bundestag (1949-1953) including such important acts as the Bundesversorgungsgesetz, the Heimkehrergesetz, and the Lastenausgleichsgesetz. These measures not only alleviated the sufferings of millions of people in the post-war crisis, but also did much to legitimate the new order and to immunize it against extremist solutions from both the right and the left.

A discussion of the *Grundgesetz* in the political life of the Federal Republic followed in the conference's third session, chaired by Peter Krüger (University of Marburg). Helmut Steinberger (University of Heidelberg) treated the foreign relations powers of the Basic Law as they have developed since 1949, and Marc Cioc (University of Massachusetts, now University of California, Santa Cruz) analyzed the controversial political and constitutional battle over the European Defense Community. In her paper "From Constitutional Legitimation to Party Crisis: Developments in the Post-1945 Party System", Michaela Richter (University of Pennsylvania) examined the importance of the West German party system for the Federal Republic's stability. Most of the participants accepted her thesis that this stability is threatened by recent changes in voting behavior and party identification.

The conference's fourth working session, chaired by Jane Caplan (Bryn Mawr College), turned to civil rights and social issues. David Large (Montana State University) gave a succinct overview of the considerable debate on the right of resistance from its origins in the immediate postwar period to the enshrinement of a resistance law in the *Grundgesetz* in 1968. He warned against seeing resistance, like the *Rechtsstaat*, in monumental and static terms, rather than recognizing the democratic order as something

that is never completed, but always in the process of becoming. Wilfried von Bredow (University of Marburg) dealt with new challenges to the stability and flexibility of the constitutional order of the Federal Republic since 1969, examining in particular new social movements and greater grass roots political participation. Finally, Robert Moeller (University of California, Irvine) took up the question of "Gender and *Grundgesetz*" by analyzing the constitutional debate concerning the legal rights of women and the central place of the family in society.

For its final session, chaired by Jürgen Heideking (German Historical Institute), the conference returned to the historic site of Old City Hall. John Kaminski (University of Wisconsin, Madison) reported on the ongoing projects to edit documentary materials relating to the drafting of the United States Constitution as an important effort to keep the American constitutional tradition alive in the minds of the people. Michael Stolleis informed the audience that a similar project concerning the sources of the *Grundgesetz*, led by Professor Hans-Peter Schneider, is currently under way in the legal faculty at the University of Hannover. Exemplifying the advantages of a comparative approach, Peter Krüger (University of Marburg) evaluated the influence of the United States Constitution on German constitutional development from the 1848 revolution to the drafting and consolidation of the Basic Law. For the future, he proposed to intensify not only contacts between American and German specialists but also common work on comparable problems. In this way both nations could profit from the unprecedented wealth of constitutional experience and knowledge accumulated over the past 200 years.

A concluding address to the conference was given by Hans Maier (University of Munich). He attributed the remarkable success of the Basic Law to its melting together of the elements of freedom, authority, and community into a binding order. This order rests on a broad consensus of the German people, and it is vigorously protected by the Constitutional Court, which symbolizes the sovereignty of law over politics in the Federal Republic. Maier's final observations concerned the complicated interplay between constitutional development and cultural change. He expressed the hope that the German people—having necessarily been turned away from authoritarian traditions by the Basic Law—may guard against the dangers of an excessive individualism, and that they continue to cherish the Basic Law as a "living constitution".

Thomas Childers/Jürgen Heideking