The Public Debate about the Formulation of the Basic Law of the Federal Republic of Germany, 1948-1949.

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University College, Oxford
Degree of Doctor of Philosophy (Modern History)
Trinity 2004

Abstract I

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Four years after the end of the National Socialist dictatorship and a disastrous major war, basic rights and democratic government were enshrined in the Basic Law for the Federal Republic of Germany in May 1949. Thus parliamentary democracy was formally and institutionally reintroduced to Western Germany at the *Bund* level. Successful implantation of democracy, however, requires not only constitutional arrangements but also, and perhaps more importantly, participation on the part of the people in the democratic process. Through analysis of the public involvement in the Basic Law's formulation and the impact of the public debate on the deliberations of the Parliamentary Council between September 1948 and May 1949, the degree of participation of Germans in the three Western zones of occupation, upon which the new West German state could subsequently build, is explored. Initial answers are suggested in chapter II and then developed in subsequent chapters as various contentious topics debated by the Parliamentary Council are examined. Anti-parliamentarianism, the search for a new symbol, newspaper perceptions as a reflection of the reality of interaction between occupier and occupied in the constitution's formulation, and the public debate about the nature and status of the second chamber, about the relationship between God and the Basic Law, and about full equality for women are analysed.

The nature and extent of the public debate 1948-1949 make clear that the German population of the Western zones had already begun to think and function in a democratic fashion on the *Bund* level. This thesis suggests that the creation of an institutional framework, such as the Basic Law, should not be overemphasized at the expense of the developing democratic culture in post-war Western Germany. Without the gradual democratization of the population already well underway when the provisional constitution came into force on 23 May 1949, it is unlikely that the Federal Republic of Germany could have established itself so successfully so quickly.

Abstract II

The Public Debate about the Formulation of the Basic Law of the Federal Republic of Germany, 1948-1949.

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Four years after the fall of an exceptionally brutal dictatorship and the end of a disastrous major war, basic rights and democratic government were enshrined in the Basic Law or provisional constitution for the Federal Republic of Germany in May 1949. Parliamentary democracy was formally and institutionally reintroduced to Germany at the *Bund* level. Successful implantation, however, required not only constitutional arrangements but also, and perhaps more importantly, popular participation in the democratic process. Yet, what was the nature and extent of the participation of the German people in the three Western zones of occupation upon which the new West German state could build? One important gauge is the public debate about the formulation of the constitution itself, which took place whilst the Parliamentary Council, the body responsible for drafting the Basic Law, sat from September 1948 to May 1949. Several thousand letters of submission reached the assembly in Bonn and its deliberations received extensive newspaper coverage. The forms this debate took and the reasons why certain topics aroused more popular attention than others will be investigated. What does the public debate reveal about the democratic consciousness of the West Germans and the process of democratization? What can be learned about the development of the press? Did it fulfil its essential role as critic and arbiter in the democratic process? How did the public debate impact on the deliberations in Bonn and the formulation of the Basic Law? Did public opinion help shape the debates? How willing was the Parliamentary Council to engage with the public and accede to public demands? What does this reveal about politicians' attitudes to their electorate? This thesis seeks to map this process by drawing on hitherto unexplored material, and to suggest answers to these questions.

The pattern of the Parliamentary Council's deliberations will be considered only as far as this is necessary to understand the development of public opinion. The aim is to examine the forms public debate took on various topics, and hence to learn more about the process of democratization in post-war Western Germany. The argument is developed in five thematic chapters, tackling the themes by following chronologically the deliberations in the Bonn assembly. Public debate is inherently selective in its choice of foci and, by adopting a 'bottom-up' approach, this thesis focuses on those topics which engaged people most in the formulation of the Basic Law.

The Introduction sets the scene for an exploration of the public debate about the formulation of the Basic Law in 1948/9. The degree of public involvement in the Basic Law's formulation is initially assessed in chapter II, as is the impact of the public debate on the Council's deliberations. The findings are developed in succeeding chapters as the various contentious topics debated by the Parliamentary Council are scrutinized. Contrary to the contemporary *perception* of a lack of public engagement held by many in positions of influence, study of the public debate makes clear that the West German population was interested in the constitutional deliberations and sought to make its voice heard in Bonn. In subsequent chapters it is argued that not only did considerable public debate take place both in the mass media and in the letters sent to the Bonn assembly, but also that public opinion influenced the course of the Council's deliberations. In chapter II, however, the general characteristics of the public debate are explored. Expressions of anti-parliamentarianism during the public debate about the Basic Law (specifically evident in the obsession with *Sachlichkeit*, the aversion to party-political debate and ideologies, and the desire for *Persönlichkeiten* in politics), and the search for a new symbol and name for the new West German state are examined. Anti-parliamentarianism, the desire to mark a new beginning, and the wish to set West Germany apart from its Communist East German neighbour are identified as recurrent themes, shaping not only the expectations held at the beginning of the Parliamentary Council's deliberations and influencing the discussion on the choice of symbol, but also in evidence in the debates which will be explored in greater depth in subsequent chapters.

Chapter III discusses the Basic Law and the Western Allies, specifically press perceptions as a reflection of the reality of interaction between occupier and occupied in the formulation of the constitution. In contrast to 1919, the German press coverage of the constitutional debates 1948/9 took place within a framework and timetable largely but not entirely determined by the Western Allies. Analysis of the press is the principal means for establishing the extent to which the perception of the Allied role in the constitutional debate corresponded with reality. It is argued that the Allies were seen to be influencing the process of drafting the constitution more than its content. However, this perception was not held throughout the deliberations, although it eventually prevailed. The nature of the Allied role was vigorously questioned upon the handing over of the Allied memoranda in November 1948 and March 1949 and upon presentation of the first communiqué from the Foreign Ministers in April. This changing view of the Allied role indicates the extent to which the Germans were aware of the current constellations of power and suggests that lessons were learned and were seen to have been learned from the past. Discussion of how a constitution should be formulated under occupation contributed to the democratization process already underway and coincided with the efforts of the Allies and German politicians to persuade West Germans that the Basic Law was German in content.

The form that the "governmental structure of federal type" stipulated by the Allies was to take was the most contentious question faced by the Parliamentary Council's delegates and the West Germans as they debated their future constitution and is the focus of Chapter IV. It did not stir opinions in the same fashion as *Elternrecht* or full equality for women. Nevertheless, the question forced the press and the public to address themselves to Germany's past and is therefore closely investigated. It was vitally important for German politicians and Western Allies alike that the provisional constitution was and was seen to be German. Consequently the Germans had to arrive at a federal structure which not only corresponded to the traditional German understanding of federalism, provided for an appropriate division of power between the *Bund* and the *Länder*, and met post-war West German needs, but also satisfied the exigencies of the victors, in particular the United States and France. This was eventually achieved in a

series of compromises on the nature and status of the second chamber and the financial organization. Whilst the press did call for these compromises to be made, exhorting the various political parties and *Länder* to think not only of themselves but of all Germany, there is little evidence that the press moulded the debate or tangibly influenced the course of the debate on the federal structure. The press acted more as a medium for informing the population about the Council's deliberations. It provided its readership with a broader context within which to understand the debate, through its commentary on the deliberations and its publication of articles by political scientists or lawyers. Even if limited to the press and not as copious as on other topics, the wider discussion on the federal structure is noteworthy. The frequent conjunction in the press of anti-party sentiment with a preference for a Senate is striking. The extent to which the debate was framed with reference to the past reveals the climate in which the constitution was formulated: the majority sought to correct what they identified as the mistakes of the past, in particular of the Weimar constitution. Hardly anyone looked to the future and the surmounting of new challenges. The debate on the federal structure also provided yet another opportunity to disparage developments in the Soviet zone of occupation.

Chapter V addresses the relationship between God and the Basic Law, the nature of which, if any, was hotly debated by and in the press and in the letters of submission sent to the Parliamentary Council. Opinion varied on the extent to which the constitution should explicitly refer to Christian beliefs. For many, an important contributing element in the rise to power of the NSDAP had been Germany's abandonment of Christian values and, concomitantly, the increasing secularization of society. They believed that a reaffirmation of Christian values in the constitution for the new West German state would distinguish the post-war order from its Nazi predecessor and prevent something like the Third Reich from recurring. Although after the war, over 95% of the West German population belonged, at least nominally, to the Catholic or Protestant churches, many objected to an explicit religious imprint on the constitution. Those of a liberal persuasion did not believe politics and religion should be mixed at all. This therefore led to considerable discussion during the formulation of the Basic Law in the press and in many letters of submission on the nature of the *invocatio dei*, if any, and on the question of the

guarantee of *Elternrecht* (the right of parents to determine the nature of their children's schools) in the constitution, and, more broadly, on the character of the constitution as a whole with reference to the past and as a bastion against atheist Communism. The press coverage and letters of submission clearly influenced the positions taken in the debates on an *invocatio dei* and *Elternrecht*. On *Elternrecht*, in particular, the number of letters of submission in favour persuaded the CDU/CSU faction to press for the guarantee of *Elternrecht* in the constitution. Nevertheless, it will be argued that the letters and press coverage confirmed the opponents in their rejection of the Churches' demands. Despite a mass mobilization of the faithful, the Churches failed to secure their interests fully because they were not supported by a majority in the Bonn assembly.

Chapter VI examines the public debate about full equality for women, that is the guarantee of both legal (*staatsrechtlich*) and civil (*staatsbürgerlich*) equality in the Basic Law. Dr. Elisabeth Selbert's demand for full equality aroused strong feelings, which were expressed in the letters of submission sent to the Parliamentary Council, both by individuals and groups, and in the press debate. The debate in the press mirrored the political debate. Those on the left of the political spectrum favoured full equality for women whilst those on the right opposed it. For Conservatives and those with close the ties to the church, especially the Catholic Church, full equality threatened the framework of marriage and hence the family. This pattern is also identified in the letters sent to the Bonn assembly. Yet, unlike on the question of *Elternrecht*, for example, the opponents of the proposal did not write to the Parliamentary Council, perhaps because they realized that there was little to gain, and much to lose, from voicing such opposition openly. The characterization of the CDU/CSU as reactionary, even if only by implication, by the left-leaning press clearly piqued the CDU/CSU faction and its supporters in the press. Selbert's reminder that women were in the majority in the population and her warning that they could easily reject any Basic Law which did not meet their wishes resounded and led the CDU/CSU to reconsider its position. By taking up and publicizing Selbert's warning, the press exerted a decisive influence on the constitutional deliberations on the question of full equality.

The various threads are brought together to give a picture of the public debate as a whole in the Conclusion. It is clear that the public debate carried out in the mass media and in the thousands of letters of submission sent to Bonn influenced the debate on many of the most contentious topics in the Parliamentary Council and, in some cases, this influence was decisive for the course of the deliberations. By providing accurate information and relevant commentary, newspapers furnished their readers with the necessary background to engage in the public debate, as well as suggesting yardsticks by which the efforts of the Parliamentary Council might be measured. Party political orientation, if any, and place of publication did matter, but the press provided more or less independent analysis of events for the population, growing into its role as a critic and arbiter in the democratic process. The press not only reported upon but shaped the political debate. The press was both mirror and maker of public opinion, a first sign of the changing and increasing role the media were to play in the decades to come.

Breadth of opinion, it is argued, characterized the debate carried out in the media and in the thousands of letters of submission sent to Bonn, and suggests the extent of the debate in the difficult conditions which still prevailed in 1948-1949. Democracy was rarely defined *expressis verbis* in the media or in letters of submission. Yet the public expression of opinions during the formulation of the provisional constitution necessarily meant, implicitly or explicitly, and even if only partially, adopting some sort of definition of democracy. Expectations about the constitution's content and the style in which it ought to be formulated put a high premium on *Sachlichkeit* in the press and the letters of submission. Such expressions of anti-parliamentarianism suggest that West Germans' democratic consciousness was not yet fully developed. Its limited development can be discerned throughout the public debate, from the discussion on the nature of the second chamber to the discussion about the design of the flag, in which black-red-gold were opposed by some for being too closely linked to the party-political strife of the Weimar Republic. The public debate on the Basic Law was relatively harmonious and irenic, however, with no extreme polarization of opinion nor vilification of opponents. Rather than suggesting indifference towards the constitution, all the evidence on the public debate indicates that the majority of West Germans was willing to accept differences in

opinion, and respect the necessary balance between the rights of the minority as well as the majority, crucial to the democratic process. The public debate 1948/9 makes clear that the process of democratization was already well under way when the Federal Republic came into being on 23 May 1949. Facile periodization of post-war German history into pre- and post-1949 should be treated with even greater scepticism than heretofore. Most importantly, it is argued, the creation of an institutional framework, such as the Basic Law, must not be overemphasized at the expense of the developing democratic culture in post-war western Germany as it manifested itself in the public debate in 1948/9.

The Public Debate about the Formulation of the Basic Law of the Federal Republic of Germany, 1948-1949.

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Preface

German spelling has been adhered to for place names with the exceptions of Cologne, Hanover, Munich and the names of the German states or *Länder*. American spelling has been kept where appropriate. When quoting newspaper headlines, the initial capital letter has been kept. Detailed information on the newspapers cited, including the political orientation of a newspaper and its place of publication, is to be found in the appendix. (See pp. 300-310.) Few newspaper articles name their author. In this thesis, 'federal' is employed in the German (rather than the American) sense to mean a type of organization in which the *Länder* retain more power than is given to the *Bund*. (See chapter IV, p. 155.) Federal with a capital 'F' refers to organs of the *Bund*.

Abbreviations

AdsD	Archiv der sozialen Demokratie, Bonn
AMZON	American Zone of Occupation (term used by OMGUS to refer to Bavaria, Hesse, and Württemberg-Baden.)
BA	Bundesarchiv, Koblenz
BGB	*Bürgerliches Gesetzbuch/ Civil Code*
CAD	Civil Administration Division, OMGUS
CDU	Christlich Demokratische Union/ Christian Democratic Union
CSU	Christlich-Soziale Union/ Christian Social Union
DENA	Deutsche Nachrichtenagentur
DM	Deutsche Mark
DP	Deutsche Partei/ German Party
dpd	Deutscher Pressedienst
DVP	Deutsche Volkspartei
EN	Eingabennummer/ Number of letter of submission in Parliamentary Council Secretariat's register of letters of submission
FDP	Freie Demokratische Partei/ Free Democratic Party
GDR	German Democratic Republic
HHStA	Staatsarchiv der Freien und Hansestadt Hamburg, Hamburg
ISD	Information Services Division, OMGUS
KPD	Kommunistische Partei Deutschlands/ German Communist Party
LDP	Liberal-Demokratische Partei/ Liberal Democratic Party
MdPR	Mitglied des Parlamentarischen Rates/ Member of the Parliamentary Council
NDR	Norddeutscher Rundfunk/ North German Radio
NL	Nachlaß/ private papers
NRW	Nordrhein Westfalen/ North Rhine Westphalia
NWDR	Nordwestdeutscher Rundfunk/ Northwest German Radio
ODI	Office of Director of Intelligence, OMGUS

OMGUS	Office of the Military Government for Germany (United States)
PA	Parlamentsarchiv des Deutschen Bundestages, Bonn
Pf.	Pfennig
POLAD	Office of the Political Adviser, OMGUS
PR	Parlamentarischer Rat/ Parliamentary Council
PR. A&P	*Der Parlamentarische Rat 1948-1949. Akten und Protokolle*, edited by the Bundestag and Bundesarchiv, 13 volumes (Boppard am Rhein and later Munich, 1975-2002).
PRO	Public Record Office, London
SBZ	Sowjetische Besatzungszone/ Soviet zone of occupied Germany
SED	Sozialistische Einheitspartei Deutschlands/ Socialist Unity Party
SPD	Sozialdemokratische Partei Deutschlands/ German Social Democratic Party
VfZ	*Vierteljahrshefte für Zeitgeschichte*
Z	Zentrum/ Centre Party

Glossary

Bund	Federation
Bundesfinanzen	Federal Government finances
Bundesfinanzverwaltung	Federal fiscal administration
Bundesstaat	federal state
Bundesversammlung	Federal Assembly
Einheitsstaat	unitary or centralized state
Finanzausgleich	financial equalization [grants]
Finanzhoheit	fiscal sovereignty
Staatenbund	confederation of states
Steuerhoheit	fiscal sovereignty
Unitarismus	unitarism (principle of union of several states into one confederation under a single government).

N.B. Federal with a capital 'F' refers to organs of the *Bund*.

Chapter I - Introduction

Setting the scene

> "The greatest challenge for historians of twentieth-century democracy is not so much to explain why democracy 'failed' in the interwar years, or why transitions to democracy succeeded after 1975, but rather why a very particular parliamentary model of democracy was so successfully implanted (with a few notable exceptions) in Western Europe after 1945."[1]

In the case of Western Germany, this question still requires a satisfactory answer. Four years after the end of one of the most brutal dictatorships ever, basic rights and democratic government were enshrined in the Basic Law or provisional constitution for the Federal Republic of Germany on 23 May 1949. Having been reintroduced at local and state levels, parliamentary democracy was now formally and institutionally reintroduced to Germany at the *Bund* level. Successful implantation, however, requires not only constitutional arrangements but also, and perhaps more importantly, popular participation in the democratic process. Yet, what was the nature and extent of the democratization of the Germans in the three Western zones of occupation upon which the new West German state could build? What was

> "the weight of the endogenous engagement for democracy in Western post-war Germany in relation to the exogenous impulses"?[2]

One important gauge is the public debate about the formulation of the constitution itself, which took place whilst the Parliamentary Council, the body responsible for drafting the Basic Law, was in session from September 1948 to May 1949. By the time the Parliamentary Council began its work in Bonn, Prussia had been abolished. The Allies had created German *Länder* more equal in size. All the *Länder* of the American, French and Soviet zones already had constitutions, whilst those in the British zone had provisional constitutions. Reform of the West German currency had already taken place under Allied auspices in June 1948 and the Economic Council was working successfully in Frankfurt. Allied responsibility for these major changes meant that the Basic Law -

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[1] T. Buchanan and M. Conway, 'The Politics of Democracy in Twentieth-Century Europe: Introduction', in *European History Quarterly* 32/1 (2002), pp. 7-12 (p. 10). Cf. A. Doering-Manteuffel, 'Deutsche Zeitgeschichte nach 1945. Entwicklung und Problemlagen der historischen Forschung zur Nachkriegszeit', in *VfZ* 41/1 (1993), pp. 1-29 (pp. 28-29).

[2] A. Sywottek, 'Wege in die 50er Jahre', in A. Schildt and A. Sywottek, *Modernisierung im Wiederaufbau: Die westdeutsche Gesellschaft der 50er Jahre* (Bonn, 1998), pp. 13-39 (p. 16).

unlike the German constitutions of 1848/9 and 1919, which were to exert such a strong influence on the Bonn assembly - was not the product of a German revolution.[3] Instead the Germans had after 1945, once again, to prove themselves as democrats. As the eminent historian, Friedrich Meinecke, put it in an article written to mark the centenary of the 1848/9 revolution,

> "today it is the historical call of the hour to overcome fear, to bring about trust between nations and thus to wipe out the root of wars. In this still unending and indescribably difficult task can be seen the lasting legacy of the year 1848. Our contribution to the solving of this task consists of bringing the German revolution of that year to a conclusion. ... May we finally succeed as one who has grown mature through ill fortune in reaching the goal of their pure and noble yearning: national unity in a democratic social state."[4]

After three years of substantial change, the West German population could look forward in 1948 to the prospect of West German self-government on a federal level, even if still under occupation and technically still at war.[5] It was the recognition that the formulation of a constitution for a West German state represented a fundamental step on the road to the re-attainment of sovereignty, which distinguished the formulation of the Basic Law from earlier changes. For this reason, its formulation demanded and was accorded greater public attention. Yet, as this thesis will make clear, the public debate about the formulation of the constitution in 1948/9 was more than merely the result of a recognition of a change in status; it was part of a longer process of change, during which West Germans developed their democratic credentials.

The deliberations in Bonn received extensive newspaper coverage and several thousand letters of submission reached the Parliamentary Council. The forms this debate took and the reasons why certain topics aroused the people's attention more than others will be investigated. The topics which most exercised the public imagination did *not* always correspond with those which the Bonn assembly found most interesting. Whilst

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[3] The role of the Allies has been characterized as that of "proxy revolutionaries", in F.K. Fromme, *Von der Weimarer Verfassung zum Bonner Grundgesetz: Die verfassungspolitischen Folgerungen des Parlamentarischen Rates aus Weimarer Republik und nationalsozialistischer Diktatur* (Tübingen, 1960), p. 5.
[4] F. Meinecke, *1848. Eine Säkularbetrachtung* (Berlin, 1948), p. 29.
[5] The state of war was only terminated three years later. Cf. Decree of French Republic, Notification of His Majesty's Government on Termination of a State of War with Germany, and Joint Resolution of the Senate and House of Representatives of the United States of America, all dated 9 July 1951, and Proclamation of President of United States of America, 24 October 1951, in *Dokumente des geteilten Deutschland* selected and edited by I. von Münch (Stuttgart, 1976), pp. 57-60.

the reasons for this discrepancy will be explored, the primary focus of this thesis is on the public debate, not on the debate in the Council. What does the public debate reveal about the democratic consciousness of the West Germans and the process of democratization? What can be learned about the development of the press? Was it fulfilling its essential role as a critic and arbiter in the democratic process? Furthermore, what was the impact of the public debate on the deliberations in Bonn and the formulation of the Basic Law? What role did public opinion play in shaping the debates? To what extent was the Parliamentary Council willing to engage with the public and accede to its demands? What does this reveal about politicians' attitudes to their electorate? Whilst aspects of the public debate have already been explored, this thesis seeks to draw a map of the whole by drawing on hitherto unexplored material, and, in the process, to answer these questions.

Defining 'public debate'

For the purposes of definition, 'public debate' is here taken to be the exchange of information and opinion in the mass media (press and radio) and letters of submission on the subject of the Parliamentary Council's deliberations by those *not* its members, although there was, of course, interaction between those within and those outside the assembly. A more detailed discussion of the nature of the public debate follows in chapter II. (See pp. 49-58.) Such debate, whether it was intended to shape the discussions in the Parliamentary Council or not, led to the formation of various public opinions, which were represented in, sometimes constituted, and generally moulded by the media.[6] The nature of the sources on the public debate has led to a concentration on the debate on the formulation of the West German constitution conducted in and by the press 1948/9. (See discussion of sources below, pp. 24-47.) Magazines and journals, which were published far less frequently than newspapers, have also been consulted when relevant. Published opinion is not synonymous with public opinion, as consultation of other sources, including letters of submission sent to the Parliamentary Council, some radio sources, journals and magazines, opinion polls, and Allied reports upon the morale of the

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[6] J. Habermas, *Strukturwandel der Öffentlichkeit*, fifth edition (Frankfurt, 1996). Cf. for questions that still need to be addressed on this subject, K.C. Führer, K. Hickethier and A. Schildt, 'Öffentlichkeit – Medien – Geschichte. Konzepte der modernen Öffentlichkeit und Zugänge zu ihrer Erforschung', in *Archiv für Sozialgeschichte* 41 (2001), pp. 1-38.

German population, confirmed. Nevertheless, the debate in the press gives a valuable insight into the debate at large. The impact of the public debate on the formulation of the Basic Law is at the core of this thesis. (See chapter II, pp. 58-63, for synopsis of impact and subsequent chapters for exploration of its impact on key questions confronting the Parliamentary Council.)

Events leading up to and including the establishment of the Parliamentary Council, 1945-1948

There was considerable debate in Germany about the nature of the state to succeed the Third Reich and the subsequent Allied occupation. Discussion had begun during the Third Reich itself amongst oppositional and resistance groups in Germany and amongst German emigrants abroad and continued under the Allied occupation.[7] Germany's opponents also gave thought to this question during the war.[8] After 1945 the occupying Allies gradually relaxed their control over political activity, by reinstalling German self-administration and government at communal, *Kreis* and *Land* level in turn. In each zone, the occupying power followed its own timetable in allowing the Germans to resume political and democratic activity. Early theatres for political exchange on a zonal level were the *Länderrat* of the American zone and the Zonal Advisory Council of the British zone of occupation.[9] After the fusion of the American and British zones into the so-called Bizone on 1 January 1947, the Economic Council in Frankfurt was the principal forum for political exchange on an interzonal level.[10] It was responsible for

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[7] For an outline of some of the debate which drew on ideas from Weimar, see H. Mommsen, 'Der lange Schatten der untergehenden Republik. Zur Kontinuität politischer Denkhaltungen von der späten Weimarer zur frühen Bundesrepublik', in K. Bracher *et al.* (eds.), *Die Weimarer Republik 1918-1933* (Bonn, 1998), pp. 552-586; W. Benz (ed.), *"Bewegt von der Hoffnung aller Deutschen". Zur Geschichte des Grundgesetzes. Entwürfe und Diskussionen 1941-1949* (Munich, 1979).

[8] See, for example, L. Kettenacker, *Krieg zur Friedenssicherung: Die Deutschlandplanung der britischen Regierung während des Zweiten Weltkrieges* (London, 1989); A. Tyrell, *Großbritannien und die Deutschlandplanung der Alliierten 1941-1945* (Frankfurt/M., 1987).

[9] See, for example, H. Troeger, *Interregnum: Tagebuch des Generalsekretärs des Länderrats der Bizone 1947-1949* edited by W. Benz and C. Goschler (Munich, 1985); J.K. Pollock, *Besatzung und Staatsaufbau nach 1945: Occupation Diary and Private Correspondence* edited by I. Krüger-Bulcke (Munich, 1994); and G. Stüber, 'Zonales Provisorium und demokratisches Experiment: Der Zonenbeirat der britischen Besatzungszone 1946-1948', in *Geschichte im Westen* 5/1 (1990), pp. 162-187, and part II in *Geschichte im Westen* 6/1 (1991), pp. 30-61, respectively.

[10] T. Pünder, *Das bizonale Interregnum. Die Geschichte des Vereinigten Wirtschaftsgebiets 1946-1949* (Waiblingen, 1966); overview in T. Eschenburg *et al.*, *Jahre der Besatzung, 1945-1949*, vol. I, *Geschichte der Bundesrepublik Deutschland* (Stuttgart and Wiesbaden, 1983), pp. 375-420.

establishing an economic order based on the DM after the currency reform on 20 June 1948. The Economic Council continued to legislate in the spheres of finance and economics, food and agriculture, transport and post until its dissolution in August 1949. In contrast to the introduction of the currency reform, which received extensive coverage, the work of the Economic Council had little public echo.[11]

Before proceeding, it is necessary to give a brief explanation of what is meant by the term 'Allied'. Allied involvement in Germany began before 1945, yet it was only with defeat that the victors assumed full executive authority.[12] Initially the war-time allies, the United States, France, Great Britain, and the Soviet Union, sought to achieve consensus in their *Deutschlandpolitik*, their policy for the future shape of Germany; yet, as time wore on, the policies implemented on the ground showed significant differences in approach. When in December 1947, the USSR walked out of the Council of Foreign Ministers, which had been set up at Potsdam, these differences came into the open and, at least for the time being, attempts to resolve them had failed. This marked a turning point in the relationship amongst the Allies and consequently in the nature of their attitudes towards the future of Germany. From then on it is legitimate to speak of two opposing camps in Germany, though the Western camp (France, Great Britain, and the United States) was far from united in its objectives. Throughout this work therefore, the term 'Allied' will be taken to include the Soviet Union until the end of 1947 and mean the three Western Allies (the USA, France, and Britain) from the beginning of 1948 onwards. The Soviet Union continued to exert a shaping influence on the Western zones, however, albeit indirectly and not always with the desired outcome. For example, instead of provoking the abandonment of the Western sectors of Berlin by the Western Allies, the Berlin Blockade actually brought the French, Americans, and British closer to the Germans and gave an added sense of urgency to the proceedings of the Parliamentary Council. As Konrad Mommsen observed in the US-zone *Süddeutsche Zeitung* in

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[11] Ibid., p. 420.
[12] Cf. Kettenacker, pp. 512-516.

February 1949, "the knout of Soviet politics" was shaping the conditions in which the Basic Law was being formulated for Western Allies and Germans alike.[13]

Britain, France and the United States took different approaches to permitting the activity of political parties again.[14] In keeping with the Allied aim of re-introducing democracy from the bottom-up, elections to political bodies were held first at local, then *Land* level within each zone, albeit at different dates. Broadly speaking, parties were licensed and only gradually allowed to extend their sphere of influence from the local to the national levels. During the Parliamentary Council's activity, the SPD was already re-organized on a national level, whilst the other parties still had a more regional organization. The increasing centralization of the party structures led, on the whole, to a greater homogeneity of political goals within the parties and amongst their supporters. There were nevertheless still considerable differences within the CDU/CSU faction in the Parliamentary Council over the degree of federalism to be advocated, for example, with the delegates from the northern CDU arguing for greater central authority than delegates from the southern CDU and CSU. (See chapter IV, pp. 155-202.) Although the parties became the primary means for the articulation of political views, parliamentarianism was not always welcomed unreservedly and "anti-party" sentiments were still expressed by politicians and members of the public. (See chapter II, pp. 63-75.)

Formulation of the *Länder* constitutions

The Allies' unilateral decision to reorganize German territory, including Prussia's former provinces, into new *Länder* after Germany's defeat led to Prussia's *de facto* dissolution in May 1945.[15] On 25 February 1947 it was finally and formally abolished by Allied decree.[16] Prussia's dissolution and the Allied re-drawing of the *Länder* boundaries in 1945/6 resulted, with the exception of the state of Bremen (and the anomaly of Berlin, which remained under four-power control), in states more equal in size and thus

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[13] 26 February 1949.

[14] D.E. Rogers, *Politics after Hitler: The Western Allies and the German Party System* (London, 1995). However, see P. Merkl, review of D.E. Rogers, *Politics after Hitler: The Western Allies and the German Party System* (New York, 1995), in *Central European History* 29/4 (1996), pp. 602-604, for a refutation of Rogers' thesis.

[15] Cf. British discussions about possibility of abolishing Prussia in 1944/5, in Kettenacker, pp. 486-494.

[16] Control Council Law No. 46: Abolition of the State of Prussia, in *Documents on Germany under Occupation*, pp. 210-211.

distributed power more evenly throughout Germany. Taken together, these developments removed the greatest threat to the effective functioning of a future German federation, namely the hegemony of one state over other member states due to its size alone. A further important decision on the part of the Western powers was to allow political activity to resume at local and *Länder* levels before it could do so on a national level. This bottom-up approach allowed the Western Allies to test the Germans' readiness for the re-introduction of democratic government. Moreover, it meant that the governments of the *Länder* were effective and firmly established by the time thoughts turned to setting up a West German central government in 1948 and as a consequence less prepared to cede power to a central authority.

All the major political parties, except for the KPD, advocated the (re-)introduction of parliamentary democracy in Germany after the war. Debates on the form of this parliamentary democracy took place during the formulation of the *Länder* constitutions 1946/7 and it was then that first efforts were made to digest earlier experiences of parliamentary government at Reich or *Länder* level. Parliamentary government was introduced by the National Assembly in 1919. The power of the *Reichstag* or parliament was checked by the power given to the president, who was also directly elected by the people. This was intended to prevent the "parliamentary absolutism", which so many contemporaries, especially on the right of the political spectrum, feared.[17] Problems arose when the parties in the *Reichstag* could no longer agree and the President appointed governments which no longer had the support of parliament. The government became dependent upon the support of the President, leading to a presidential democracy. Most of the politicians involved in the drafting of the *Länder* constitutions in 1946/7 had not only lived through the demise of the Weimar Republic but themselves been in leading offices at Reich or *Länder* level then. Dr. Hermann Höpker-Aschoff (FDP), to name but one example, had been Prussian Minister of Finance, 1925-1931, whilst 11 members of the Parliamentary Council (henceforth MdPR) had belonged to the *Reichstag*.[18] They had

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[17] E.R. Huber, *Deutsche Verfassungsgeschichte seit 1789*, vol. VII, *Ausbau, Schutz und Untergang der Weimarer Republik* (Stuttgart, 1984), pp. 43-46. Cf. H. Boldt, 'Die Weimarer Reichsverfassung', in K. Bracher *et al.* (eds.), *Die Weimarer Republik 1918-1933* (Bonn, 1998), pp. 44-62 (p. 53-59).
[18] *PR. A&P*, IX, p. vii.

firm ideas about how the defects of the Weimar democracy might be remedied in any future constitutions. However, the Reich government of the Weimar Republic was not the only German model of parliamentary government on which they could draw: Prussia, for example, had also introduced a parliamentary form of government in 1920.[19] In contrast to the Reich constitution, however, no provision was there made for a President, and the Minister President had to be elected by the Parliament. This made for a much more stable parliamentary government. Whilst fears were still voiced, primarily on the right of the political spectrum, after 1945 about "parliamentary absolutism", by which was understood party hegemony (see chapter II, pp. 63-75), all agreed that the executive had to be responsible to parliament. As will be shown in more detail in subsequent chapters, earlier German constitutions and traditions, and occasionally foreign ones, significantly influenced the debate in 1948/9, both within and outside the Bonn assembly.

After the reintroduction of German self-administration at the local level, the United States was the first Western power to ask the German politicians to draft constitutions in the *Länder* of its zone, Bavaria, Bremen, Hessen and Württemberg-Baden, in 1946. The USSR had already authorized the formulation of constitutions for the five *Länder* of its zone earlier that year. The French followed suit in 1947 in Baden, Rhineland Palatinate and Württemberg-Hohenzollern. In the American and French zones, constitutional assemblies were popularly and directly elected to formulate the state constitutions, much as the National Assembly had been in 1919. Whilst provisional constitutions were drawn up in the *Länder* of the British zone in 1946, Hamburg, Lower Saxony, North Rhine Westphalia, and Schleswig-Holstein only adopted final constitutions after the passing of the Basic Law between 1949 and 1952. The 1946 constitutions were provisional in nature not in function, and were based on the state constitutions of the interwar period, cleansed of any National Socialist ideology. Each power had its own reasons for following the timetable it did. General Lucius D. Clay, the American Military Governor, for example, was concerned about how long an American

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[19] H. Möller, *Parlamentarismus in Preußen 1919-1932* (Düsseldorf, 1985), pp. 114-132; cf. H. Möller, 'Zwei Wege des deutschen Parlamentarismus: Preußen und Reich in der Weimarer Republik', in A. Birke, and K. Kluxen (eds.), *Deutscher und Britischer Parlamentarismus. British and German Parliamentarism* (Munich, London, 1985), pp. 135-148.

occupation force would remain in Germany and hence wanted to begin the democratization process as soon as possible.[20] The French, on the other hand, saw the establishment of constitutions in the *Länder* of their zone as a means of ensuring the continued existence of these newly created *Länder* in their sphere of influence.[21]

The formulation of the *Länder* constitutions was, in many respects, a test run for the formulation of a constitution for the later West German Republic.[22] The same was true in the Soviet zone, where the *Länder* formulated their constitutions in 1946, before the People's Congress began its work in 1948.[23] Some of the features incorporated into the state constitutions subsequently found their way into the West German constitution, such as the so-called 'constructive vote of no confidence', first introduced in Württemberg-Baden's constitution in 1946.[24] The German-Allied exchange of views on constitutional questions at *Länder* level helped prepare the way for the Allied-German exchange during the formulation of the Basic Law. (See chapter III, pp. 95-154.) The American Military Government, for example, gained valuable practice in the employment of liaison officers during the formulation of the Bavarian constitution.[25] Furthermore, the formulation of the *Länder* constitutions was covered by the media, although the wider public debate has been little studied.[26] West Germans were thus informed of

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[20] General Lucius D. Clay (1897-1978). Brief biography in *PR. A&P*, VIII, pp. ix-x. Cf. P. Grosse, 'The Boss of Occupied Germany: General Lucius D. Clay', in *Foreign Affairs* 77/4 (1998), pp. 179-185. For Clay's account of his time in Germany, see L.D. Clay, *Decision in Germany* (London, 1950); J.E. Smith, *The Papers of General Lucius D. Clay. Germany 1945-1949* (Bloomington, 1974).

[21] H. Küppers, 'Zwischen Koblenz and Bonn: Rheinland Pfalz und die Gründung der Bundesrepublik', in *Geschichte im Westen* 4 (1989), pp. 160-180 (pp. 170-171).

[22] F.R. Pfetsch, *Ursprünge der Zweiten Republik: Prozesse der Verfassungsgebung in den Westzonen und in der Bundesrepublik* (Opladen, 1990); W. Zeidler, *Auswirkungen der westdeutschen Landesverfassungen auf das Bonner Grundgesetz* (unpublished Diss. jur., University of Hamburg, 1951).

[23] The SBZ *Länder* constitutions and the subsequent GDR constitution were, however, all based on the SED proposal 'Entwurf einer Verfassung für die Deutsche Demokratische Republik', which was made public in *Neues Deutschland* (16 November 1948), in J. Laufer, 'Die Verfassung in der SBZ 1946-1949', in *Aus Politik und Zeitgeschichte* B32-33/98 (1998), pp. 29-41 (32-33).

[24] A. Birke, 'Das konstruktive Mißtrauensvotum in den Verfassungsverhandlungen der Länder und des Bundes', in *Zeitschrift für Parlamentsfragen* 8/1 (1977), pp. 77-92.

[25] B. Fait, *Demokratische Erneuerung unter dem Sternenbanner: Amerikanische Kontrolle und Verfassunggebung in Bayern 1946* (Düsseldorf, 1998), pp. 501-504.

[26] See, for example, publication of text of Bavarian constitution by *Südost-Kurier*, in N. Frei, *Amerikanische Lizenzpolitik und deutsche Pressetradition. Die Geschichte der Nachkriegszeitung Südost-Kurier* (Munich, 1986), pp. 79-80. Cf. 'Einheit, Einheit über alles. Blitzverfassungen', in *Spiegel* 1/3 (18 January 1947), p. 5, on ratification of constitutions in Soviet zone in December 1946-January 1947.

constitutional developments, which allowed them to engage in constitutional debate.[27] Such engagement prepared the people for the later debate on the Basic Law. The successful formulation of constitutions for the *Länder*, as well as their effective implementation subsequently, helped persuade the Allies that the West Germans were ready for the reintroduction of democracy on a federal level.

The Six-Powers Conference and the setting up of the Parliamentary Council

The inability of the USSR and the Western Allies to reach agreement on the future of Germany at the Moscow Foreign Ministers' Conference in December 1947, led Britain and the United States to call a conference in London in early 1948, afterwards referred to as the Six-Powers Conference, since France, the Netherlands, Belgium and Luxembourg also took part.[28] On 7 June 1948 sufficient agreement was reached for a common policy on Germany to be made public in a *communiqué*, the contents of which are referred to as the London Recommendations. The essence of these Recommendations became known as the Frankfurt Documents upon presentation to the Ministers President of the German *Länder* on 1 July 1948 by the three Military Governors, Generals Lucius D. Clay (USA), Pierre Koenig (France),[29] and Sir Brian Robertson (UK).[30] The first and most important of the three Frankfurt Documents authorized the Ministers President to set up an assembly for the formulation of the German constitution.

> "The constituent assembly will draft a democratic constitution which will establish for the participating states a governmental structure of federal type which is best adapted to the eventual re-establishment of German unity at present disrupted, and which will protect the rights of the

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[27] However, see limited number of respondents who knew that constitutional assemblies were meeting in response to OMGUS survey conducted in September 1946, Report 26 (13 November 1946), in A.J. and R.L. Merritt, *Public Opinion in Occupied Germany: The OMGUS Surveys 1945-1949* (Urbana, 1970), p. 110.

[28] S. Rothstein, *Die Vorraussetzungen der Gründung der BRD 1948/49* (Eichholz, 1969); W. D. Gruner, 'Die Londoner Sechsmächtekonferenz von 1948 und die Entstehung der Bundesrepublik Deutschland', in O. Kuhn (ed.), *Großbritannien und Deutschland. Festschrift für John Bourke* (Munich, 1974), pp. 139-165; G. Wehner, *Die Westalliierten und das Grundgesetz 1948-9: Die Londoner Sechsmächtekonferenz* (Freiburg i. Br., 1994).

[29] General Pierre Koenig (1898-1970). Brief biography in *PR. A&P*, VIII, pp. xi-xii. Cf. A. Lattard, 'Ziel-konflikte französischer Besatzungspolitik in Deutschland. Der Streit Laffon-Koenig 1945-1947', in *VfZ* 39/1 (1999), pp. 1-35.

[30] General Sir Brian Robertson (1896-1974). Brief biography in *PR. A&P*, VIII, pp. x-xi. Cf. U. Reusch, 'Sir Brian Robertson (1896-1974)', in *Geschichte im Westen* 5/1 (1990), pp. 69-80; D. Williamson, *A Most Diplomatic General: The Life of General Lord Robertson of Oakridge* (London, 1996).

> participating states, provide adequate authority, and contain guarantees of individual rights and freedoms."[31]

Of the other two documents, one required a review of the *Länder*'s size and borders. In line with earlier Allied policy, the review, it was stated, should avoid the creation of *Länder*, which, in comparison with the other *Länder*, were too big or too small. Clay had earlier made clear in a discussion with the Ministers President of the American Zone that this meant no larger than Bavaria or North Rhine Westphalia.[32] The other document dealt with the occupation statute, which was to be drawn up by the Allies whilst the Parliamentary Council was in session. It was to set out the powers, including control of Germany's foreign policy, which the Allies would retain.

At their meeting with the Military Governors in Koblenz, 8-10 July 1948, the Ministers President suggested the adoption of the requirement that 8 of the 11 state parliaments, or two thirds of the *Länder*, had to vote in favour of the Basic Law for the constitution to be ratified.[33] They preferred this to the original Allied stipulation that a majority of West Germans vote in favour in referenda in the various *Länder*. With this arrangement, the Ministers President wanted to underline the provisional character of the constitutional arrangement in light of Germany's division and the expectation of German unification. After some discussion, the Allies agreed. (See chapter IV, pp. 197-199, for consequences.) By involving the *Länder* in the ratification process, the Allies sought to underline the federal structure of the new state and ensure consideration of the *Länder*'s concerns during the formulation of the Basic Law. For Allies and Germans alike, the decision to involve the *Länder* distinguished the procedure from that adopted in 1919, when neither the *Länder* nor their representatives in the *Staatenauschuß* had had formally to ratify the constitution, in contrast with the procedures followed in 1867 and 1871.[34]

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[31] Document I, in *Documents on Germany under Occupation*, pp. 315-316; Document II, p. 316; Document III, pp. 316-318.
[32] 14 June 1948, *PR. A&P*, I, p. 18.
[33] Ibid., pp. 60-150; B. Blank, *Die westdeutschen Länder und die Entstehung der Bundesrepublik: Zur Auseinandersetzung um die Frankfurter Dokumente vom Juli 1948* (Oldenbourg, 1995); J. Gimbel, 'Die Konferenzen der Ministerpräsidenten 1945-1949', in *Aus Politik und Zeitgeschichte* B31/71 (1971), pp. 3-28.
[34] E.R. Huber, *Deutsche Verfassungsgeschichte seit 1789*, vol. V, *Weltkrieg, Revolution und Reichserneuerung 1914-1919* (Stuttgart, 1978), p. 1182 on role of *Staatenausschuß*, pp. 1204-1205 on ratification in 1919; and E.R. Huber, *Deutsche Verfassungsgeschichte seit 1789*, vol. III, *Bismarck und das Reich*, third revised edition (Stuttgart, 1988), pp. 666-667 and pp. 745-750, ratification in 1867 and 1871 respectively.

It might be argued, however, that the proposal of the Ministers President not to put the Basic Law to referenda in the *Länder* represented a missed opportunity to involve the public more in the formulation of the Basic Law. The Allies clearly had enough confidence in the Germans' democratic abilities by this stage not only to allow them to formulate a federal constitution, but also to call for this constitution to be endorsed by a popular vote upon its completion. In contrast, the Ministers President were unwilling to allow this to happen. Underlining the provisional nature of the arrangements was one consideration; limited confidence in the outcome of popular participation in the constitution-drafting process, in particular concern about the effects of Communist agitation on the West German populace, was another.[35] As already mentioned, it was a matter on which the Allies were eventually willing to compromise, in order to ensure that the Germans accepted the Frankfurt Documents.

Between 10-23 August 1948 the Ministers President assembled a group of constitutional experts at Herrenchiemsee in Bavaria to prepare a draft constitution.[36] In a similar fashion, the Reich Ministry of the Interior had drawn up a draft for discussion in the National Assembly twenty years earlier.[37] Each *Land* sent one representative to Herrenchiemsee. All of the chosen men were constitutional lawyers by training, but those from the American and French zones held political office, whilst those from the British zone were legal specialists without party-political ties. Interestingly, only three of the eleven men subsequently represented their *Land* in the Parliamentary Council. Berlin also sent an observer, who later served in the same capacity in Bonn. Each representative was accompanied by one or two assistants, all constitutional experts. The Herrenchiemsee Convent drew up an extensive document, of which part I set out the key questions facing the constitutional assembly, part II was a complete draft of the Basic Law with majority and minority positions, and III presented comments on individual articles.[38] The political

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[35] The Ministers President expressed their preference for ratification through *Landtage* in Point (9) of their Aide-Mémoire for the Military Governors, 22 July 1948, in *PR. A&P*, II, pp. 270-272 (p. 272). Individual arguments against ratification through referenda were presented verbally on the basis of an agreed text, in ibid., p. 272, footnote 6. Discussion with Governors, 26 July 1948, in ibid., pp. 273-282.

[36] Ibid., pp. xi–xxxi.

[37] Huber (1978), pp. 1178-1181.

[38] Ibid., pp. 505-630. Cf. H. Säcker, 'Verfassungskonvent 1948', in *Die Öffentliche Verwaltung* 18 (1998), pp. 784-792.

parties refused formally to accept the Herrenchiemsee draft as the basis for their deliberations in Bonn, on the grounds that it had been formulated at the instigation of the Ministers President. Dr. Kurt Schumacher and Dr. Konrad Adenauer, leaders of the SPD and CDU respectively, sought to reduce the role of the *Länder* chiefs and increase the power of the political parties. Both regarded the draft as too federal in orientation. The lack of an alternative on which all parties could agree, however, meant that the Herrenchiemsee proposal was eventually employed as basis by the Parliamentary Council, when it began its work on 1 September.

Even though some *Länder* had only provisional constitutions, the Parliamentary Council's 65 delegates were chosen by the existing *Landtage* of the eleven *Länder* of the three Western zones on the basis of the latest election results, with one seat for every 750,000 inhabitants.[39] (The same method had been used to elect members of the Economic Council a year earlier.) As a result, 27 MdPR belonged to the SPD, 19 to the CDU, 8 to the CSU, 5 to the FDP, and 2 each to the KPD, Z and DP. Thus the SPD and CDU/CSU factions balanced each other out perfectly with 27 MdPR apiece. In accordance with Allied demands, West Berlin's five representatives were given only observer status.[40] Of the Berlin representatives, three belonged to the SPD, and one each to the CDU and FDP. When they were elected to their *Landtage* in 1946/7, the members of parliament who were subsequently sent to Bonn as MdPR had, understandably, not been given a mandate to draft a constitution for a future West German state, since Germany's future configuration was still undecided. Their subsequent indirect election to the Bonn assembly meant that the Parliamentary Council was a constitutional assembly without a direct popular mandate. This made it unique in German history. It also distinguished it from the National Assemblies of 1848/9 and 1919, as well as from the *Bundesparlament* elected in 1867 to formulate the constitution for the North German

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[39] Model Law for the Parliamentary Council [27 July 1948]. Laws based on this model enacted in different *Länder*, in *PR. A&P*, II, pp. 286-290.

[40] With this demand, the Western powers wished to emphasize that Berlin's status was undecided and that the city was still technically under four-power control.

Federation alongside the state governments, and the *Reichstag* elected in 1871 to ratify the imperial constitution.[41]

When the Parliamentary Council began its work on 1 September, it set up five specialist committees to formulate first drafts of sections of the Basic Law: a Basic Questions Committee, a Competence Committee, a Finance Committee, a Constitutional Court and Administration of Justice Committee, and an Organization Committee.[42] In contrast, the Herrenchiemsee Convent had had only three committees, of which one had been responsible for questions of competence, justice and finance, whilst another addressed basic questions, and the third dealt with organization. In Bonn, three readings were held in each committee. Once these committees, which worked in parallel, had completed their work, the Basic Law was debated in the Main Committee, which was responsible for preparing a draft of the entire Basic Law for the Plenum and taking the preliminary political decisions. With the exception of its first reading in the Plenum on 20/21 October (which was held to engage the public in the assembly's work – see chapter II, pp. 53-54), the Basic Law was only debated in the Plenum once it had been fully formulated in the Main Committee. The importance of the Main Committee is underlined by the fact that it met 59 times, whilst the Plenum met only 12 times.[43] The Parliamentary Council also decided to set up two committees to debate the electoral law and occupation statute, both issues closely related but not intrinsic to the Basic Law.[44] In November, the Council's Committee of Elders set up a three-man Editing Committee, made up of Dr. Thomas Dehler (FDP), Dr. Georg Zinn (SPD) and Dr. Heinrich von Brentano (CDU), although the latter alternated with his party colleagues Prof. Hermann von Mangoldt and Dr. Walter Strauß. It functioned as a link between the various specialist committees and

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[41] E.R. Huber, *Deutsche Verfassungsgeschichte seit 1789*, vol. II, *Der Kampf um Einheit und Freiheit 1830-1850*, third revised edition (Stuttgart, 1988), p. 606; Huber (1978), pp. 779-790; and Huber, vol. III (1988), p. 464 and pp. 755-758.

[42] For diagram of Council's organization, see K. Niclauß, *Der Weg zum Grundgesetz* (Paderborn, 1998), pp. 126-127.

[43] Cf. *PR.A&P*, IX, and *Parlamentarischer Rat. Verhandlungen des Hauptausschusses. Bonn 1948-1949* (Bonn, [1950]).

[44] Occupation Committee probably set up at Schmid's instigation, in *PR. A&P*, IV, p. xi. Ministers President initially gave Parliamentary Council task of formulating electoral law at Koblenz, 8-10 July 1948, to which the Military Governors objected. The Ministers President therefore did not allocate the task to the Council explicitly subsequently, but seemed to accept assembly's competence to formulate electoral law. The Allies, however, continued to reserve judgement, in *PR. A&P*, VI, pp. viii-xiii.

the Main Committee, integrated the various constitutional drafts into a whole, and made one or two changes in the process which went beyond its strict editing remit.[45] (See chapter V, p. 214, for example.)

Throughout the Council's deliberations, interfactional discussions took place under the chairmanship of the Council's President, Adenauer (CDU), in which all factions, with the exception of the KPD, participated. Following the failure of the factions to reach agreement in the second reading in the Main Committee, an interfactional 5-Person Committee, comprising von Brentano (CDU), Theophil Kaufmann (CDU), Prof. Carlo Schmid (SPD), Dr. Walter Menzel (SPD) and Dr. Hermann Schäfer (FDP) (in alternation with his party colleagues, Dehler, Prof. Theodor Heuss, and Dr. Hermann Höpker-Aschoff), with Adenauer as President in the chair, was set up at the end of January.[46] This committee expanded to form a 7-Person Committee in February by including Dr. Hans-Christoph Seebohm (DP) and Johannes Brockmann (Z).

Adenauer (CDU) was elected President of the Assembly, with Adolf Schönfelder (SPD) First and Schäfer (FDP) Second Vice President.[47] Schmid (SPD) was, in turn, elected chair of the Main Committee.[48] SPD MdPR chaired the Committees for Standing Orders (Schönfelder), Competence (Dr. Friedrich Wagner) and Constitutional Court and Administration of Justice (Zinn), whilst CDU MdPR chaired the Committees for Basic Questions (von Mangoldt), Finance (Dr. Paul Binder) and Organization (Dr. Robert Lehr). Each SPD chair had a CDU/CSU deputy chair and vice versa. Every committee included an equal number of CDU/CSU and SPD MdPR, with varying numbers of representatives of the smaller parties. Whilst committee members could be represented by reserve committee members, who had been named as such earlier, only full committee members could vote.[49]

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[45] Committee of Elders' statement about Editing Committee's functions and its cooperation with other committees, 11 November 1948, in *PR. A&P*, X, p. 34.
[46] *PR. A&P*, XI, p. xvi.
[47] 1 September 1948, in *PR. A&P*, IX, p. 5.
[48] *PR. A&P*, XI, p. xviii, notes that no minutes kept for interfactional meeting at which Schmid given chair of Main Committee on 1 September 1948.
[49] Standing Orders, 22 September 1948, in *PR. A&P*, X, pp. 191-192.

Article 27 of the Standing Orders (22 September 1948) of the Parliamentary Council laid down that plenary sessions were to be open to the public.[50] The meetings of the specialist committees, in contrast, were conducted in private.[51] Only a month later did the Council of Elders decide that the press should also be admitted to the hearings of the Main Committee.[52] Upon publication of the Standing Orders, Schäfer wrote to the chairs of the Parliamentary Council's committees as Vice President of the assembly to inform them that press conferences were to take place on Tuesdays, Wednesdays and Thursdays at 5pm and, if in session, on Fridays at 1pm starting from 23 September. He was clearly concerned that the press be informed correctly of debates in the Parliamentary Council. Schäfer requested the chair of each committee to attend the press conferences or, if unable to attend in person, to send another member of the committee.[53] Although Adenauer considered the introduction of a daily press conference to be progress, he was sure that this would not satisfy the press and especially the radio, and expressed his concern that the SPD was always ready to answer every question.[54] Consequently he counselled his faction to enter into competition with the SPD and proposed that a CDU/CSU delegate report from each committee. This led his CDU colleague, Lambert Lensing, to suggest that the committee chair and his deputy should attend each press conference to ensure that a CDU/CSU member was always present.[55] Regular press conferences ensured that the press was informed about the Committees' work, although, as Schönfelder noted in the Organization Committee, this did not mean that the journalists were fully satisfied with the information they were given.[56] (See chapter IV, p. 164.) Much like Adenauer a fortnight earlier, Schönfelder thought more ought to be done to satisfy the journalists' quest for information; yet, whilst Adenauer had been concerned about the SPD's volubility, Schönfelder wanted to prevent the press turning to the Communists when it wanted to find something out.

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[50] Ibid., p. 195.
[51] Article 21, in ibid., p. 193.
[52] 19 October 1948, in *PR. A&P*, X, p. 14-15. No reasons are recorded.
[53] 22 September 1948, in BA, Z5/11.
[54] 22 September 1948, in *Die CDU/CSU im Parlamentarischen Rat: Sitzungsprotokolle der Unionsfraktion* introduced and edited by R. Salzmann (Stuttgart, 1981), p. 26. No comparable records for the SPD survive, in *PR. A&P*, IX, p. xli.
[55] *Die CDU/CSU im Parlamentarischen Rat*, p. 26.
[56] 8 October 1948, in *PR. A&P*, XIII/I, p. 495.

These press conferences were attended by correspondents of newspapers and radio stations and by representatives of various news agencies, which supplied information to the media. Each of the occupation zones had its own news agency: the Deutscher Pressedienst (dpd) in the British, the Deutsche Nachrichtenagentur (DENA) in the American, and the Südwestdeutsche Nachrichtenagentur (SÜDENA) in the French zone. Two operated in the Soviet zone: the Sowjetisches Nachrichtenbüro (SNB) and the Allgemeiner Deutscher Nachrichtendienst (ADN).[57] The dpd had several employees at the Parliamentary Council.[58] (Dpd employees, in turn, also compiled information on domestic and international events for the MdPR, providing the assembly with a daily news information service.[59]) The press conferences were held in the press office of the Parliamentary Council, in which the MdPR could also read the day's papers.[60] Minutes of the press conferences were not kept or have not survived.[61] Occasionally, articles commented on the nature of the press conferences. Such articles give some clues as to the nature and extent of the exchange of information between the delegates and the media. A certain reticence towards the media on Adenauer's part was suggested by the *Tagesspiegel*, published in the US sector of Berlin, for example, when it observed on one of Adenauer's most recent press conferences, "he concluded it, according to his habit, within five minutes."[62]

A further important contemporaneous source of information about the Parliamentary Council's activities was the printed matter published by the Council's Secretariat. Various documents, including agendas for and short minutes of Council sessions, invitations, material for committee work, summaries of the results of committee

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[57] J. Wilke, 'Nachrichtenagenturen', in J. Wilke (ed.), *Mediengeschichte der Bundesrepublik Deutschland* (Bonn, 1999), pp. 469-488 (pp. 469-471). See too K. Koszyk, *Geschichte der deutschen Presse*, vol. IV, *Pressepolitik für Deutsche 1945-1949* (Berlin, 1986), pp. 49-55, for news agencies in US zone; pp. 198-204, for British zone; pp. 269 and 271, for French zone. A substantial study of news agencies in the post-war period remains to be written.

[58] See correspondence between Dr. Heinrich Böx (dpd) and Secretariat, in BA, Z5/11.

[59] Ibid. Cf. *PR. A&P*, X, p. liv.

[60] O. Schumacher-Hellmold, 'Bonn – Eine Entscheidung des Herzens. Warum sie Bonn zur Hauptstadt wählten', in *Bonner Geschichtsblätter. Jahrbuch des Bonner Heimat- und Geschichtsvereins* 26 (1974), pp. 193-272 (p. 203).

[61] W. Werner (ed.), *Findbüchern zu Beständen des Bundesarchivs*, vol. 35, *Der Parlamentarische Rat. Bestand Z5*, second expanded edition (Koblenz, 1994), p. vi.

[62] 27 April 1949. Cf. FDP-leaning *Westdeutsche Rundschau*, 23 September 1948.

deliberations, and proposals for the Basic Law, were reproduced by the Secretariat as *Drucksachen* for distribution to the MdPR during the deliberations.[63] Recipients also included, amongst others, the liaison officers,[64] the Office of the Minister Presidents, the various *Länder* governments, several lawyers and judges, the Council's press office,[65] Radio Cologne and Radio Munich, and DENA.[66] Less widely circulated was a smaller series of reproductions, known as *Sekretariatsumdrucke* or *Sonder-Drucksachen*, which included the memoranda from the Military Governors, the minutes of the 5- and 7-Person Committees and articles from the press.[67] The stenographic records of the plenary sessions were reproduced in the greatest quantity of any *Drucksache*, with 1106 copies distributed in total.[68] The distribution of such material gave the Council a valuable opportunity to inform interested parties, including the media, about its work.

Historiography

In the half century since the establishment of the Federal Republic of Germany, the early history of West Germany has been examined from the foreign-political and domestic-political aspects. Germany's position at the geographical heart of Europe and its division into two camps means that it figures prominently in works on the origins of the Cold War, and, conversely, international developments must be borne in mind when studying Germany's political reconstruction.[69] Such reconstruction, within the process of transition from the three Western zones of occupation to partially sovereign state, has been charted.[70] Similarly, the nature of West Germany's orientation towards the West after the war and the extent to which this was linked to the perceived influence of the

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[63] Article 2 of the Standing Orders stipulated that MdPR receive all documents necessary for the deliberations from the Secretariat, in *PR. A&P*, X, pp. 185-186. Cf. ibid., p. liii; list of 935 *Drucksachen* in Werner, pp. 32-88.

[64] Liaison officers requested 5 copies of every *Drucksache*. 10 September 1948, in *PR. A&P*, VIII, p. 6.

[65] Its activities were not specified by the Standing Orders Committee or Council of Elders.

[66] *PR. A&P*, X, pp. lv-lvii. No information is given about the selection of recipients.

[67] Ibid., p. liii. List of 108 *Sekretariatsumdrucke* in Werner, pp. 89-97.

[68] *PR. A&P*, X, pp. lvii-lix.

[69] See, for example, A. Deighton, *The Impossible Peace: Great Britain, the Division of Germany, and the Origins of the Cold War* (Oxford, 1993); C. Eisenberg, *Drawing the Line: The American Decision to Divide Germany, 1944-1949* (Cambridge, 1996).

[70] See, for example, W. Benz, *Von der Besatzungsherrschaft zur Bundesrepublik: Stationen einer Staatsgründung 1946-1949* (Frankfurt/M., 1984); T. Eschenburg *et al.*, *Jahre der Besatzung, 1945-1949*, vol. I, *Geschichte der Bundesrepublik Deutschland* (Stuttgart and Wiesbaden, 1983); H.-J. Rupieper, *Die Wurzeln der deutschen Nachkriegsdemokratie: der amerikanische Beitrag 1945-52* (Opladen, 1993).

United States within the Cold War framework has been explored.[71] The extent to which 1945 represented a German 'Stunde Null' or 'zero hour' has been debated for several decades now. Most recent scholarship accepts that there were significant continuities from earlier periods, whilst acknowledging the contemporary perception of a *tabula rasa*.[72]

Whilst such investigation has not precluded study of the constitution and its formulation, no satisfactory and comprehensive historical analysis of the Parliamentary Council, the body responsible for the drafting of the Basic Law, has yet been undertaken, despite the wealth of easily accessible sources.[73] The first account of the formulation of the articles of the Basic Law was published by the office responsible for the liquidation of the Parliamentary Council in 1951.[74] It recorded the passage of the articles through the various committees in detail but gave little context for the deliberations. Subsequently several former MdPR tried their hand at the task. In 1953 Prof. Hermann von Mangoldt wrote an historical introduction for his commentary on the Basic Law.[75] Dr. Josef Ferdinand Kleindinst and Dr. Anton Pfeiffer made the first attempt at a lengthier, more comprehensive history in 1957 but this manuscript was never published.[76] Other MdPR,

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[71] See, for example, A. Doering-Manteuffel, 'Turning to the Atlantic: The Federal Republic of Germany's Reorientation, 1945-1970', in *Bulletin* 25 (German Historical Bulletin, Washington, D.C., 1999), pp. 3-21, with commentary by C. Maier, pp. 22-28; A. Doering-Manteuffel, 'Wie westlich sind die Deutschen? Überlegungen zum Verhältnis von Amerikanisierung und Westernisierung in der westdeutschen Gesellschaft', in *Potsdamer Bulletin für zeithistorische Studien* 17 (1999), pp. 7-19; H.A. Winkler, *Der lange Weg nach Westen*, 2 volumes (Munich, 2000), and A. Doering-Manteuffel, 'Eine politische Nationalgeschichte für die Berliner Republik. Überlegungen zu H.A. Winklers *Der lange Weg nach Westen*', in *Geschichte und Gesellschaft* 27/3 (2001), pp. 446-462; A. Schildt, *Zwischen Abendland und Amerika. Studien zur westdeutschen Ideenlandschaft der 50er Jahre* (Munich, 1999).

[72] Doering-Manteuffel (1993), pp. 1-29 (pp. 24-25); E. Holtmann (ed.), *Wie neu war der Neubeginn? Zum deutschen Kontinuitätsproblem nach 1945* (Erlangen, 1989);G. Giles (ed.), *Stunde Null* (Washington, DC, 1997).

[73] See particularly the following editions of sources: *Akten zur Vorgeschichte der Bundesrepublik Deutschland 1945-1949*, edited by the Bundesarchiv and the Institut für Zeitgeschichte, 5 volumes (Munich, 1976-1983); *PR. A&P*, I-XIII.

[74] *Jahrbuch des Öffentlichen Rechts der Gegenwart. Neue Folge*, vol. I, *Entstehungsgeschichte der Artikel des Grundgesetzes - im Auftrage der Abwicklungsstelle des Parlamentarischen Rates und des Bundesministerium des Innern auf Grund der Verhandlungen des Parlamentarischen Rates* compiled by K.-B. von Doemming, R.W. Füsslein and W. Matz (Tübingen, 1951).

[75] *Das Bonner Grundgesetz* commented upon by H. von Mangoldt, first edition (Berlin and Frankfurt/M., 1953), pp. 1-22.

[76] BA, Z5/Anhang 15.

in particular Prof. Carlo Schmid, took an historical approach to the writing of the section on the Bonn assembly in their memoirs.[77]

In 1960, Friedrich Karl Fromme sought to put the formulation of the Basic Law in the context of Germany's immediate past, by examining how experience of the Weimar Republic and the National Socialist dictatorship had influenced the thinking of members of the Parliamentary Council.[78] A decade later, Volker Otto analysed the Parliamentary Council's perception of the state as a contribution to the study of the genesis of the Basic Law.[79] Karlheinz Niclauß adopted a similar approach in his fundamental study of the establishment of democracy in Germany after the war, when he examined the main currents of thinking which subsequently found expression in the Basic Law.[80] In particular, Niclauß argued that two concepts of democracy, which he characterized as '*soziale Mehrheitsdemokratie*' and '*konstitutionelle Demokratie*', shaped political debate in 1948/9.[81] (See chapters II and IV, pp. 66-67 and pp. 155-202.) Six years ago, Michael Feldkamp aimed at a broader and more comprehensive historical analysis but his study is of an introductory kind and suggests much that still remains to be explored further, as he himself recognized.[82] Most recently, Rolf-Ulrich Kunze has written on the Parliamentary Council, yet he does not present anything substantially new.[83]

Various studies have, however, addressed the formulation of the Basic Law from a particular perspective. The role of the Allies in the formulation of the Basic Law, for

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[77] C. Schmid, *Erinnerungen* (Bern, Munich, Vienna, 1979), pp. 318-413.
[78] F.K. Fromme, *Von der Weimarer Verfassung zum Bonner Grundgesetz: Die verfassungspolitischen Folgerungen des Parlamentarischen Rates aus Weimarer Republik und nationalsozialistischer Diktatur* (Tübingen, 1960).
[79] V. Otto, *Das Staatsverständnis des Parlamentarischen Rates. Ein Beitrag zur Entstehungsgeschichte des Grundgesetzes für die Bundesrepublik Deutschland* (Bonn, 1971).
[80] K. Niclauß, *Demokratiegründung in Westdeutschland: Die Entstehung der Bundesrepublik Deutschland von 1945-1949* (Munich, 1974); revised and updated in K. Niclauß, *Der Weg zum Grundgesetz* (Paderborn, 1998).
[81] Niclauß (1974), pp. 29-61 and pp. 62-88 respectively; cf. Niclauß (1998), pp. 27-72 and pp. 73-108 respectively.
[82] M. Feldkamp, *Der Parlamentarische Rat 1948-1949: Die Entstehung des Grundgesetzes* (Göttingen, 1998), p. 8. See review by S. Lee, '"Erziehung zur Demokratie". Post-war German Reconstruction in Biographical and Historical Writing', in *German History* 18/3 (2000), pp. 364-374.
[83] R.-U. Kunze, 'Reconsidered: "Der Mensch ist nicht für den Staat, sondern der Staat für den Menschen da." Der Parlamentarische Rat und die Entstehung des Grundgesetzes', in *Der Staat* 40/3 (2001), pp. 383-404.

example, has been investigated by Georg Wehner, Hans-Jürgen Grabbe, and Adolf Birke, amongst others, from an historical perspective.[84] Heinrich Wilms approached the topic from the perspective of constitutional history.[85] Similarly, the interaction between the churches and the Basic Law has been examined,[86] as have various politicians and the constitution,[87] and the electoral law and the Parliamentary Council.[88] However, public debate, if it is acknowledged to have taken place, is generally dealt with in a cursory fashion in such studies, if at all.

Even Werner Sörgel's seminal study on interest groups and the Parliamentary Council falls within this category.[89] He concentrated on the intermediary level, that is interest groups such as the churches or trade unions and their leadership, which, he argued, represented the people (or sections of it) in their participation in the public debate. In contrast, the "broad public" was, in his view, less concerned with technical aspects of the constitution and more interested in a "good constitution in the material sense".[90] Consequently, Sörgel did not consider what sort of debate took place in the population at large; debate, which manifested itself in the mass media (press and radio) and in the letters of submission sent to the Parliamentary Council, and which was only partially represented by the interest groups in Bonn. Whilst the selection of themes for

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[84] Wehner; A. Birke, *Britain's Influence on the West German Constitution* (London, 1995); H.-J. Grabbe, 'Die deutsch-alliierte Kontroverse um den Grundgesetzentwurf', in *VfZ* 26 (1978), pp. 393-418.
[85] H. Wilms, *Ausländische Einwirkungen auf die Entstehung des Grundgesetzes* (Stuttgart, 1999).
[86] See, for example, B. van Schewick, *Die katholische Kirche und die Entstehung der Verfassungen im Westdeutschland 1945-1950* (Mainz, 1980).
[87] See, for example, R. Morsey, 'Die Rolle Konrad Adenauers im Parlamentarischen Rat', in *VfZ* 18 (1970), pp. 62-94; R. Morsey, 'Föderalismus im Bundesstaat: Die Rolle des bayerischen Ministerpräsidenten Hans Ehard in der Vor- und Frühgeschichte der Bundesrepublik Deutschland', in R. Morsey, *Von Windhorst bis Adenauer: Ausgewählte Aufsätze zu Politik, Verwaltung und politischem Katholizismus im 19. und 20. Jahrhundert* edited by U. von Hehl, *et al.* (Paderborn, 1997), pp. 469-484; K.J. Matz, *Reinhold Maier (1889-1971): Eine politische Biografie* (Düsseldorf, 1989), pp. 317-333; U. Wengst, *Thomas Dehler 1897-1967: Eine politische Biografie* (Munich, 1997), pp. 121-130.
[88] E.H.M. Lange, *Wahlrecht und Innenpolitik. Entstehungsgeschichte und Analyse der Wahlgesetzgebung und Wahlrechtsdiskussion im westlichen Nachkriegsdeutschland 1945-1956* (Meisenheim am Glan, 1975); M.L. Recker, 'Westminster als Modell? Der Deutsche Bundestag und das britische Regierungssystem', in G.A. Ritter and P. Wende (eds.), *Rivalität und Partnerschaft. Studien zu den deutsch-britischen Beziehungen im 19. und 20. Jahrhundert. Festschrift für Anthony J. Nicholls* (Paderborn, 1999), pp. 313-335 (pp. 313-320).
[89] W. Sörgel, *Konsensus und Interessen. Eine Studie zur Entstehung des Grundgesetzes*, reprint of original 1969 edition (Opladen, 1985).
[90] Ibid., p. 97.

this thesis was dictated by the sources, Sörgel, in contrast, chose those interest groups on which he focussed, on the basis of their common objective:

> "to guarantee their existence and the possibilities of development within the political system. The desire for as comprehensive as possible *autonomy* [*sic.*], to be guaranteed by the Basic Law, proved to be *the interest* [*sic.*] of all of these groups, irrespective of whether they were the employers, trade unions, civil servants, judiciary, churches, etc."[91]

A notable consequence of Sörgel's approach was his neglect of women and the question of full equality. (See chapter VI, p. 260.)

On the whole, studies of the press between 1945-1949 have not examined the newspapers' content in depth. Much the same can be said of studies of the radio, where organization but not content has tended to be the focus of investigation so far.[92] The most eminent historian of German newspapers, Kurt Koszyk, wrote on the organization of the press under occupation. The scale of this undertaking is reflected in the devotion of an entire volume to the years 1945-1949, whilst the preceding century and a quarter, 1815 to 1945, are dealt with in three volumes.[93] Koszyk did not, however, look at what was covered by the press. Newspaper case studies have been used to explore British, US or French press policy and the development of the German media landscape under occupation.[94] A rare example of analysis of contemporary press content on a particular question, using a local case study, is given by Jutta Beyer and Everhard Holtmann, who investigated the SPD-leaning *Westfälische Rundschau*'s coverage of women's

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[91] Ibid., p. 92.

[92] See, for example, H. Bausch, *Rundfunkpolitik nach 1945*, vol. I, *1945-1962* (Munich, 1980), pp. 13-159 (p. 151). Recent overview, in A. Kutsch, 'Rundfunk unter alliierter Besatzung', in Wilke (1999), pp. 59-90. For partial exception, but focussing on literary programmes rather than on broadcasts with political content, see R. Bolz, *Rundfunk und Literatur unter amerikanischer Kontrolle. Das Programmangebot von Radio München 1945-1949* (Wiesbaden, 1991).

[93] K. Koszyk, *Geschichte der deutschen Presse*, vol. IV, *Pressepolitik für Deutsche 1945-1949* (Berlin, 1986).

[94] For American press policy, see Frei; for an earlier and broader picture of American policy, see H. Hurwitz, *Die Stunde Null der deutschen Presse. Die amerikanische Pressepolitik in Deutschland 1945-1949* (Cologne, 1972). Except for brief analysis of coverage of the Berlin blockade and conferences of West German Ministers President in summer of 1948 in relation to blockade, pp. 367-397, Hurwitz did not analyse press coverage of day-to-day politics. For British press policy, see, for example, H.-D. Fischer, *Reeducations- und Pressepolitik unter britischem Besatzungsstatus. Die Zonenzeitung* Die Welt *1946-1950. Konzeption, Artikulation und Rezeption* (Düsseldorf, 1978). For French press policy, albeit without a case study, see S. Schölzel, *Die Pressepolitik in der französischen Besatzungszone 1945 bis 1949* (Mainz, 1986).

participation in politics in1945-1949.[95] Jutta Gröschl examined British, French, American and Soviet media policy from the perspective of the newsreels produced in the different zones. Whilst Gröschl compared Anglo-American, French and Soviet newsreels' coverage of the currency reform in the Western zones and the Berlin Blockade 1948-1949, she did not comment on their coverage of the Parliamentary Council.[96]

One of the few historians to have addressed the question of the Basic Law and its reception by German society, is Erhard Lange, who acknowledged the desirability of a study of the Basic Law and its coverage in the press.[97] Yet, aside from two very short pieces, in which he is dismissive of the degree of public interest without having evaluated all the source material, Lange has not pursued the investigation further.[98] Thus neither he nor others have taken as their point of departure the public debate about the West German constitution – neither the debate conducted in the mass media nor the closely linked and broader debate in the population as a whole. As already alluded to above, various articles and chapters have been written on aspects of the public debate on the formulation of the West German constitution within, for example, histories of women, the electoral law or the flag.[99] Such treatment did not, generally, set out to question the nature of the public debate on the formulation of the constitution as a whole but rather to illuminate the public discussion on the particular aspect of the debate, such as full equality for women, which had been singled out for study. The discussion on that particular issue is therefore

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[95] J. Beyer and E. Holtmann, '"Auch die Frau soll politisch denken" – oder "Die Bildung des Herzens". Frauen und Frauenbild in der Kommunalpolitik der frühen Nachkriegszeit 1945-1950', in *Archiv für Sozialgeschichte* 25 (1985), pp. 385-419 (pp. 398-403).

[96] J. Gröschl, *Die Deutschlandpolitik der vier Großmächte in der Berichterstattung der Deutschen Wochenschauen 1945-1949. Ein Beitrag zur Diskussion um den Film als historische Quelle* (Berlin, 1997), pp. 213-221.

[97] "It would certainly be interesting to analyse the content and status of the reporting in the press on the constitutional problems of the day thoroughly at some point.", in E.H.M. Lange, 'Entstehung des Grundgesetzes und die Öffentlichkeit: Zustimmung erst nach Jahren', in *Zeitschrift für Parlamentsfragen* 10/3 (1979), pp. 378-404 (p. 392).

[98] Ibid., and very short article 'Viel Skepsis und wenig Interesse. Die öffentliche Meinung und die Entstehung des Grundgesetzes', in *Das Parlament* 15 (7 April 1989), p. 10. Lange takes up much same material again in summary fashion in *Die Würde des Menschen ist unantastbar. Der Parlamentarische Rat und das Grundgesetz* (Heidelberg, 1993), pp. 58-63.

[99] See, for example, R.G. Moeller, *Protecting Motherhood: Women and Family in the Politics of Postwar West Germany* (Berkeley, 1993), pp. 38-75; for the Parliamentary Council's debate of electoral law and public opinion, see Lange (1975), pp. 303-326, especially pp. 318-326; for debate on flag, see M. Myers Feinstein, *State Symbols. The Quest for Legitimacy in the Federal Republic of Germany and the German Democratic Republic, 1949-1959* (Boston, 2001), pp. 16-52.

insufficiently put into context, if at all, within the framework of the broader debate on the Basic Law. The value of their contribution to an analysis of the public debate of the Federal Republic's constitution is thereby reduced. This is true even if the study puts the aspect of the constitutional debate 1948/9 under scrutiny within the broader context of its own subject matter, such as the question of full equality for women within the context of women's rights.[100]

Historians have traditionally shied from study of the media, whilst media studies often do not provide an adequate account of events within their historical context.[101] However, to place the contemporary constitutional debate in the media, especially in the press, within its context, "it is imperative", as Andreas Schulz has argued,

> "to see the study of the media primarily as an integral part of a comprehensive history of politics. A history of politics, which understands power also as a public representation of claims to power, which pays attention to the changing forms of the staging and medialization of power, and which, thirdly, acknowledges that under the influence of the interpretation of reality by the media political actions themselves constantly change."[102]

This thesis seeks to acknowledge this. Whilst the media, particularly the newspapers, have furnished much of the evidence underlying this investigation, this thesis is a study of the public debate about the formulation of the Basic Law 1948-1949, primarily as it took place in the press, and not a study of the media.

Sources

Occupation and its implications for the organization of the media and censorship

Allied planning for the reorganization of the German press after the war began during the war as part of the plan for achieving their four 'd's: democratization, denazification, demilitarization and decentralization. Their policies were implemented as the Allied armies invaded and occupied Germany. Thus in November 1944, Law 191 of

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[100] See, for example, B. Böttger, *Das Recht auf Gleichheit und Differenz. Elisabeth Selbert und der Kampf der Frauen um Art. 3 II Grundgesetz* (Münster, 1990).
[101] Cf. A. Schildt, 'Das Jahrhundert der Massenmedien. Ansichten zu einer künftigen Geschichte der Öffent-lichkeit', in *Geschichte und Gesellschaft* 27/2 (2001), pp. 177-206.
[102] A. Schulz, 'Der Aufstieg der 'vierten Gewalt'. Medien, Politik und Öffentlichkeit im Zeitalter der Massenkommunikation', in *Historische Zeitschrift* 270/1 (2000), pp. 65-97 (p. 96).

the Allied High Command, for example, which introduced the so-called information 'black-out', forbade the publication of all German newspapers in occupied territories and abrogated all Nazi legislation on the press.[103] Law 191, which came into force on 12 May 1945, made publication dependent upon a licence from the Allies and journalists subject to Allied denazification procedures before they were allowed to write or broadcast again. The 'black-out' was succeeded by Allied information services and then by the reconstruction of German information services, whether published or broadcast, under Allied auspices. The Soviets were the first to introduce a newspaper in their zone, the *Tägliche Rundschau* run by the Military Government, in May 1945. The American Military Government followed suit with the *Neue Zeitung*, which carried the subtitle 'an American newspaper for Germany', on 17 October 1945.[104] Half a year later, on 2 April 1946, the British Military Government published *Die Welt*, without an indication of its official character in the title.[105] The French Military Government's newspaper, the *Nouvelles de France*, first appeared on 26 September 1946 in Konstanz in French only. It was subsequently published in French and in German (January 1947), with the German edition called *West-Ausgabe. Nouvelles de France*, before assuming the title of *West Echo* on 3 November 1948, under which it was licensed as a German paper.[106]

The process of licensing German newspapers for publication by the Military Governments began in August 1945 and was done differently in each zone. Broadly speaking, the American Military Government (OMGUS) wanted to prevent the establishment of a party press and consequently gave licences only to individuals, initially in groups of six, later in pairs, of different political persuasions. On the whole, licences were only given to those who had not been active as journalists during the Third Reich, but who had some journalistic experience, which led to a high average age amongst journalists and editors. In the British zone, licences were initially given to pairs of individuals, who could, in contrast with the American zone, be suggested by the political parties, which resulted in a largely party-oriented press. This approach was

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[103] Reproduced in Fischer, pp. 30-31.
[104] Koszyk, pp. 45-49.
[105] Ibid., pp. 204-226; Fischer, p. 65.
[106] Koszyk, pp. 265-266; Schölzel (1986), pp. 180-181.

modified in 1948, when a few above-party newspapers were licensed. In the French zone, licences were given only to one person and a mixed body of journalists on each paper was meant to guarantee a party-neutral orientation.[107] Party newspapers were permitted by the French from 1947. Whilst newspapers, therefore, were predominantly, although not exclusively, party-neutral in orientation in the American zone, they were likely to have a party-political orientation in the British zone. The picture in the French zone was the most mixed, since newspapers might be above-party or lean towards a political party. Party orientation or lack thereof are clearly indicated whenever quotations are made from newspapers in this thesis. Since there was no national newspaper, and very few newspapers were zonal in reach, regional origin is a further significant indicator of a newspaper's particular sympathies. Newspapers published in Southern Germany, for example, tended to have a less centralist outlook than their Northern German counterparts, mirroring their readerships' inclinations. Similarly, papers from Southern Germany were often more Conservative in tenor than those in the North. (See appendix for place of publication and political orientation of individual newspapers, pp. 300-310.)

Not only were the editors of the German press subject to licensing, the newspapers were censored. Initially every piece written was subject to censorship before publication, but this arrangement was terminated in all four zones by Control Council Directive Number 40 of 12 October 1946.[108] With the exception of the decisions of the Control Council and the Military Governors, upon which the press was still forbidden from commenting, the press could now report more freely on political developments within Germany. Pre-broadcast censorship of the radio in all three Western occupation zones continued officially until the radio stations were given over to the Germans.[109] However, whilst censorship rules existed on paper, it is clear that the application thereof varied, whether intentionally or otherwise is unclear. Writing about censorship of the radio, Dr. Peter von Zahn, a broadcaster in the British zone, recollected, "we were not

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[107] S. Schölzel, 'Die Pressepolitik in der französischen Besatzungszone 1945 bis 1949', in *Jahrbuch für westdeutsche Landesgeschichte* 8 (1982), pp. 227-249 (p. 235).
[108] *Documents on Germany under Occupation*, p. 179.
[109] *Quellen zur Programmgeschichte des deutschen Hörfunks und Fernsehens* edited by K. Dussel and E. Lersch (Göttingen, 1999), p. 234.

surprised that there was censorship. It was miraculous how little we noticed it." He continued,

> "tricks were practised to circumvent censorship, such as the writing of reports at the last minute so that there was no time left for censorship or so that the responsible officer would already have gone for dinner."[110]

It is unclear to what extent Germans were aware of the remaining limited censorship during the formulation of the Basic Law.[111] Six months earlier the British Military Government in Hamburg observed in March 1948,

> "reports continue to make reference to the farce of democracy with its 'unreliable newspapers subject to censorship' and with its politicians playing at politics while the occupation powers rule."[112]

It is likely that such remarks expressed as much resentment against the occupation powers, as actual awareness of censorship.

A clear differentiation between factual reporting and opinion-based pieces was very much encouraged by the Allies in the post-war German media, since they believed this to have been one of the weaknesses of the Weimar Republic.[113] Thus, for example, von Zahn, writing about one of the NWDR's British controllers, remembered, "he fought tooth and nail against the German inherited malady of mixing news and opinion."[114] Similarly, Dr. Günter Sawatzki, commenting on the writing of editorials for the *Welt*, which he had joined as an editor in December 1946, noted,

> "the *Welt* was meant to become something like a German *Times* according to the wishes of its founders. Separation of news and commentary was the golden rule.... Immediately after [having written] my first editorials, it was simply pointed out to me by the Britons that I had no reason to speak of 'us' or 'we' in editorials. None of the Germans had appointed me or given me authority to speak on their behalf."[115]

Much as with newspapers, the first step taken by the Allies was to assume control of the radio stations and to introduce radio broadcasts under the auspices of the Military

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[110] P. von Zahn, *Stimme der ersten Stunde: Erinnerungen 1913-51* (Stuttgart, 1991), p. 257.
[111] No surveys were conducted on this subject.
[112] Control Commission for Germany and Austria: CCG (British Element); German Morale. Public Opinion Research Office, German Morale Report No. 13, 1-15 March 1948, in PRO, FO 1014/121.
[113] However, insufficient changes were made to the editorial organization of German newspapers to encourage this separation, according to J. Wilke, 'Redaktionsorganisation in Deutschland', in J. Wilke (ed.), *Unter Druck gesetzt. Vier Kapitel deutscher Pressegeschichte* (Cologne, 2002), pp. 9-67 (p. 43).
[114] Von Zahn, p. 259.
[115] Cited by Fischer, p. 212.

Government.[116] Again, each occupying power adopted a different approach. In the British zone, one central radio station, the NWDR, was set up in Hamburg, to which studios in Cologne, Berlin and Hanover were later added.[117] In the American zone, each *Land* had its own station, including Bremen.[118] In the French zone the Südwestfunk in Baden-Baden served Baden, the Rhineland-Palatinate and Württemberg-Hohenzollern, and the Saarland had its own station.[119] In 1948/9 the Allies insisted that all these radio stations, with the exception of Radio Saarbrücken,[120] were incorporated under German public law, which, purged of Nazi paragraphs, continued to be valid. The British and the Americans were determined to prevent state interference in broadcasting, especially by the *Bund*. This meant, for example, discontinuing the established German practice of collecting listenership fees through the federal post office.[121] This reorganization of the media marked a significant break with previous practices in Germany.[122]

Newspapers

The extensive collection of newspaper articles on the Parliamentary Council's deliberations in the Federal Archive in Koblenz has been the primary source for this thesis. The collection covers the whole period of the Council's deliberations from September 1948 until May 1949, with some further articles from the preceding and succeeding months.[123] For almost every day of the deliberations, the collection contains on average about 10-15 articles on the activities of the Bonn assembly, more on Saturdays and Sundays. The majority of the articles are of a factual reporting kind; however, there is a considerable number of editorials and other opinion pieces, which can easily be distinguished. Whilst the articles were drawn from many different papers, they

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[116] Organization of radio under occupation, in Bausch, pp. 13-159; and Kutsch, pp. 59-90.
[117] Bausch, pp. 46-64.
[118] Ibid., pp. 65-126.
[119] Ibid., pp. 134-143.
[120] Ibid., pp. 143-148.
[121] Ibid., pp. 24-43.
[122] Cf. Kutsch, p. 85, "the expression of democratization and administrative decentralization created by the type of organization incorporated under public law formed a core element of the reorganization of radio broadcasting undertaken by the Western occupation powers and represented a deep break in the tradition of the organization of the medium in Germany. With regard to the idea of socially pluralistic control, this type of organization incorporated a degree of independence from the state that had been unknown in the history of German broadcasting until 1945."
[123] Collection in BA, Z5/178-201. Werner, p. vi, on press and Parliamentary Council; p. 27, notes that occasional articles were added to collection later.

are all in one location. A great number of newspaper titles was published in Germany at this time: Koszyk cites a figure of 165 licensed papers in the Western zones in September 1949, the date when unlicensed newspapers were let onto the market.[124] For the first two and a half months alone of the Parliamentary Council's deliberations, the Federal Archive's collection includes articles clipped from about 150 different papers. There was no national or otherwise dominant newspaper in 1948/9, and, as mentioned above, the organization of the press was different in each zone because of the different Allied licensing procedures. Comparison with another smaller but not insignificant collection in the Hamburg State Archive made clear that a very broad range of newspapers from all three zones of occupied Germany is represented in the Federal Archive's collection and that it includes most articles of substance.[125] It therefore gives a representative overview and fair impression of the constitutional debate in and by the press at the time. Journals and magazines, which appeared much less often than newspapers, have also been consulted when relevant.

The correspondence files of the Parliamentary Council's Secretariat include some information on the selection and variety of newspapers taken by the Parliamentary Council, providing useful background on the nature of the Federal Archive's collection. Some newspaper editors particularly those based in the Rhineland, sent the Parliamentary Council free copies of their publication.[126] For other titles, the Parliamentary Council paid and stipulated the number of copies, sometimes noting that copies were required for archival purposes. The correspondence files also contain information on which journalists were given press cards and the newspapers to which the journalists were attached.[127] Very little is known about most of these journalists; indeed little has been written about post-war journalists in general.[128] One rare study on post-war journalists in the

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[124] Koszyk, p. 319.
[125] HHStA, Staatliche Pressestelle V, I c I d, Parlamentarischer Rat in Bonn, and I c II a 6, Politische Neuordnung Deutschlands.
[126] See correspondence in BA, Z5/11.
[127] BA, Z5/9 and 11.
[128] Schildt (1999), p. 13. Recent exceptions include L. Hachmeister and F. Siering (eds.), *Die Herren Journalisten. Die Elite der deutschen Presse nach 1945* (Munich, 2002); and C.-D. Krohn, and A. Schildt (eds.), *Zwischen den Stühlen? Remigranten und Remigration in der deutschen Medienöffentlichkeit der Nachkriegszeit* (Hamburg, 2002).

Rhineland-Palatinate under French occupation found that about two thirds had been active during the Third Reich, whilst only a handful had returned from emigration.[129] Further studies are necessary to establish figures for *Länder* in other zones, since the French were the least rigorous in their denazification procedures.[130] The anonymity of the majority of newspaper articles makes the task of commenting on individual journalists even more difficult.

Factual reporting of events took place on a regular basis, often on the front page, particularly after press conferences, although the days on which a paper was published affected the coverage. Factual coverage was based on information gathered by a reporter *in situ* and/or from news agencies. In Bonn and Frankfurt, when delegates from the assembly met the Military Governors, journalists gathered their information at press conferences, as well as through informal conversations with MdPR, Military Government officials, and fellow journalists, including foreign correspondents. (Cf. Adenauer's and Schönfelder's respective concerns about journalists plying SPD and KPD MdPR for information. See above, p. 16.) It is likely that German journalists also read the foreign press; certainly, pertinent articles from foreign newspapers were clipped for MdPR.[131] Radio broadcasts, particularly if they took the form of an interview of a delegate, were also occasionally used as a source for newspaper articles.[132] Official sources of information were generally acknowledged at the beginning of an article. The different use of news bulletins supplied by the news agencies (pre-censorship of which ended also in 1946) - what was included or excluded, and the choice of emphasis, especially which aspect of the story was considered the most attention-catching and therefore employed in the headline - is often revealing of the political orientation and regional origin of a paper and its readership.

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[129] S. Schmid, *Journalisten der frühen Nachkriegszeit. Eine kollektive Biografie am Beispiel von Rheinland-Pfalz* (Cologne, 2000), pp. 224-225.
[130] Eschenburg, pp. 118-119.
[131] See, for example, *Neue Züricher Zeitung*, 22 October 1948, and *Manchester Guardian*, 17 May 1949.
[132] For example, KPD-leaning *Niedersächsische Volksstimme*, 22 October 1948, used broadcast by August Hoppe on NWDR as basis for a comparison of the public interest being shown in the formulation of the West German constitution with that shown in France in 1946.

Articles on the Parliamentary Council also took the form of editorials, in which comment was given on a current topic by the editor or sanctioned by the editor. Editorials frequently took the Parliamentary Council as their subject matter at weekends, often summing up and commenting upon the week's deliberations. Occasionally MdPR contributed articles, benefitting from the unmediated transmission of their views offered by publication. Heuss (FDP) and Paul Löbe (SPD), both journalists in their own right, as well as Dr. Adolf Süsterhenn (CDU), wrote regularly on the Parliamentary Council for the press. Occasionally the MdPR's journalistic activities led to disagreement; Heuss, for example, felt compelled to rebuke Süsterhenn over an article he had written on party attitudes to the concordat, which, according to Heuss, maligned his opponents and was not conducive to cooperation in the assembly.[133] The experience of twelve years of National Socialism inevitably influenced not just the content and style, but also, sometimes inadvertently, the vocabulary of the debate about the Basic Law.[134] American press officers insisted that licensed newspapers had to avoid any statements which might serve to spread nationalistic, pan-Germanic, militarist, Fascist or anti-democratic ideas.[135] Nonetheless, the language of National Socialism was discernible, for example, in the US-zone *Münchner Allgemeine*, which often adopted a Conservative tone, when it spoke of the "red chaos (*dem roten Chaos*)", to which the inhabitants of the Eastern zone threatened to fall prey.[136]

Many newspapers included commentary and opinion pieces, sometimes written by outsiders, such as a professor of political science or a leading lawyer, on a regular basis. These were presumably commissioned by the editors. This practice can be linked to what Schildt sees as part of a post-war trend, in which

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[133] 15 December 1948, in *Parlamentarischer Rat. Verhandlungen des Hauptausschusses*, p. 315.
[134] Cf. *PR. A&P*, V/I, p. xxv; Viktor Klemperer's seminal study of the language of the Third Reich, *LTI*, had just been published in Leipzig in 1947.
[135] Control Council Directive Nr. 40, 12 October 1946, in *Documents on Germany under Occupation*, p. 179.
[136] 12 September 1948, in BA, Z5/178. For letter of submission, whose language had National Socialist echoes, see Erich Dickes, Berlin, 20 January 1949, EN1794, in BA, Z5/113.

> "an intellectual stratum not 'only' translated academic discussions for a broader public, but also combined this with its own interpretations."[137]

It can also be related to the faith in 'experts' and the quest for non-partisanship still prevalent at the time. (See chapter II, pp. 65-75.) What newspapers sought to achieve by including such pieces, and the impact of such contributions on the public debate will be explored in this thesis.

The importance assigned to the deliberations of the Parliamentary Council by the press was not only the choice of the editors but was also constrained by external factors resulting from defeat and occupation. Thus the British-zone, CDU-leaning *Aachener Volkszeitung*, for example, remarked in January 1949 that the US-zone *Süddeutsche Zeitung* had been in the fortunate position to have enough paper to print a complete draft of the Basic Law, which, by implication, it had not.[138] Paper shortages meant that newspapers in the British and French zones tended to be published rather less frequently than in the US zone.[139] (See appendix, pp. 300-310.) The calculation of the paper allocation for newspapers was different in each zone. This complicates the identification of the three-way relationship between the reader and the political party/direction and the journalist/editor. Headlines did matter, and the papers did seek to catch the eye of the reader but the reader's choice was limited by the day of the week, and by the area or city within the zone in which she or he lived. It is very difficult to establish empirically whether a reader automatically bought a paper of the same political persuasion as her or himself, or whether the reader bought a paper in order to be persuaded of a political case. (See British Military Government survey, February 1948, below, p. 34.) Regardless of the political persuasion of the readership, however, a paper's coverage of events sheds light on the importance given to debates, which aspects of the debate were highlighted, which aspects the paper expected its readers to find interesting, and the extent to which the paper sought to convey a party-political message. This is particularly evident in the

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[137] Schildt (1999), p. 12. He continues that the impact of such "second-rank" authors is as yet unknown, since, although they had a broad impact, they rarely contributed original ideas and therefore have not attracted biographers.

[138] 5 January 1949. US-zone *Süddeutsche Zeitung*, 25 December 1948, in HHStA, Staatliche Pressestelle V, I c I d.

[139] "The lifting of paper rationing soon after the currency reform on 20 June 1948 made possible the transition to daily publication", in Koszyk, p. 73, did not translate into reality immediately.

conscious emphasis, namely in headlines, subheadings and the use of bold or italic script. Demand nevertheless played an increasing role after the currency reform in June 1948 in determining the number of newspapers sold.[140]

Even if articles were written and published on the deliberations of the Parliamentary Council in numerous newspapers, it is difficult to establish how widely they were read. (See discussion of circulation figures below, p. 34.) Newspapers cost money, a scarce commodity in post-war Germany, and this affected the size of their readership. The US-zone *Kasseler Zeitung*, published six times a week, cost 2.95DM a month, or, to cite another example, the KPD-leaning *Niedersächsische Volksstimme* cost 20Pf per issue and was published three times a week. The price of a newspaper is put into some context by an article in the *New York Herald Tribune*. Written after the currency reform in the autumn of 1948, it gave an example of a 'typical' German family, with which it sought to inform its American readership of the economic constraints under which most Germans were living at the time.[141] In the family cited as example, the salary of the breadwinner and father, a qualified worker, was given as 218DM a month. The worker was married with two children.

> "They spend some 110 marks a month on food.... The rent costs 40 marks, and electricity, gas, and coal 20 marks. Since tobacco has reappeared on the free market Bauer [the worker] spends 10 marks for his pipe; 13 marks a month go for soap, cleansing materials, medication, daily transportation, etc. The children's education costs an average of 10 marks a month. When Bauer has paid his four-mark dues for social insurance and labor union, he has only 11 marks left for clothing, repair of shoes or purchase of anything failing in the household."

The article continued, "A pair of shoes for a workman costs at least 30 marks, a woman's plain cotton dress 40 marks." It is interesting that newspapers were not listed specifically; perhaps their expense was included in the 13 marks a month spent on necessities. To give another comparison: the fee for radio receivership was 2DM per month after the currency reform in 1948.[142]

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[140] Cf. A. Brix, 'Anzeigenwerbung in der Nachkriegspresse (1945-1950)', in Wilke (2002), pp. 199-225 (pp. 224-225).
[141] 20 October 1948.
[142] A. Schildt, 'Hegemon der häuslichen Freiheit: Rundfunk in den 50er Jahren', in A. Schildt and A. Sywottek, *Modernisierung im Wiederaufbau: Die westdeutsche Gesellschaft der 50er Jahre* (Bonn, 1998), pp. 458-476 (p. 460).

Some of those who could not afford to subscribe to a newspaper or to buy one regularly turned to reading publicly displayed papers. In February 1948, *before* the currency reform, the British observed that

> "the significant fact which emerges from the question on other sources of information is that one third of Hamburgers read the newspapers which are stuck up as posters. Half of them gather their information about the happenings in the world from the radio."[143]

(See section on radio below, pp. 36-38.) As a consequence of such practices of reading papers stuck up as posters or reading papers in a library or waiting room, at work or at a neighbour's, for example, it is difficult to establish readership numbers for the newspapers. A minimum readership figure is suggested by the circulation figures, which also suggest the size of the readerships of different publications relative to one another. (See appendix for circulation figures, pp. 300-310.)

Some information on readership preferences and patterns is given by surveys conducted by the British and American Military Governments. The British investigated newspaper readership in Hamburg in February 1948 *before* the currency reform.[144] In response to the question 'which paper do you read', 22% said they read the [SPD-leaning] *Hamburger Echo*, 15% the [CDU-leaning] *Hamburger Allgemeine Zeitung*, 12% the [FDP-leaning] *Hamburger Freie Presse*, 10% *Die Welt* [published by the British Military Government], 4% the [KPD-leaning] *Hamburger Volkszeitung*, 1% the [independent] *Zeit*, and 1% the [DP-leaning] *Niederdeutsche Zeitung*. In addition, 15% said they read several papers and 20% said they read none. The report commented on which paper was read by whom, noting, for example,

> "*Die Welt* was read more by middle-aged people from the higher social scale of doctors, shop-keepers and higher officials."

In response to its second question 'do you read your own party newspaper', it reported,

> "21% said that they read their own party newspaper and 79% that they did not. The higher social grades tend not to read their own party's paper. Age, sex and religious denomination have no effect upon this. The 79% who do not read their own party paper include those who read no paper at all."

Whilst it is probable that the overall distribution of reading preferences stayed the same in Hamburg, the number of newspapers sold declined in the immediate aftermath of the

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[143] Control Commission for Germany and Austria: CCG (British Element); German Morale. Public Opinion Research Office, Special Report 803, 6 February 1948, in PRO, FO 1014/121.
[144] Ibid.

currency reform in June 1948.[145] An American survey conducted in Berlin in August 1948 (see following paragraph) cites similar overall readership numbers: in Hamburg and Berlin 70-80% read a newspaper regularly, whilst *c.* 15% said they read a newspaper occasionally or not at all. It is likely that fewer people read newspapers regularly outside such large cities.

The American Military Government polled 300 residents of West Berlin in late August 1948 on their newspaper-reading habits.[146] It noted,

> "72% claimed to read a newspaper regularly and 14% said they read one occasionally.... In August, 83% of the men and only 66% of the women were regular readers. The British-licensed *Telegraf* continued to be the most widely read and popular newspaper in West Berlin with almost six in ten (57%) of the total reading public reading it and over a third (36%) preferring it. The American-licensed *Tagesspiegel* remained in second place both in readership (32%) and preference (22%). ... Newspapers seemed to have an adequate 'pass along' rate, with an average of 2.38 people reading each copy of a paper, and with most (80%) of the exchanges going on between members of a family."

The American Military Government also sought to establish opinions on its own publication, the *Neue Zeitung*. It questioned 1,500 adults in the American zone, 150 in West Berlin and 150 in Bremen in December 1948, and reported,

> "Claimed readership of the *Neue Zeitung* was largest in Berlin where 20% said they read it regularly, smallest in Bremen where only four per cent claimed regular readership; in AMZON ten per cent were regular readers.... Large majorities of present and former readers (63%) said they liked the paper 'well' and another large fraction (27%) said 'moderately well'; very few of the respondents (3%) claimed not to like it at all. ... Only bare majorities (51%) in AMZON called the paper 'impartial' in its political reporting, as opposed to 22% who thought the paper 'one-sided'."[147]

Whilst readership of the *Neue Zeitung* ranged from 4-20%, 10% read it regularly in the American zone, which, again, compares with the 10% who said they read the *Welt*, published by the British Military Government, in Hamburg. These 10% probably correspond with the number of people in positions of influence. Surviving records do not suggest that the French conducted such surveys in 1948/9.[148]

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[145] Koszyk does not give overall figures for impact of currency reform on number of editions published. He notes that in Bavaria the number of editions did not fall significantly, in Koszyk, p. 73; for the British zone, he notes that circulation of *Welt* fell from *c.* 1m to *c.* 300,000 in year after currency reform, p. 216; in French zone number of papers sold on street fell dramatically but number of subscriptions remained constant, p. 305.

[146] Report 138 (17 September 1948), in Merritt, pp. 257-258.

[147] Report 154 (3 February 1949), in ibid., pp. 274-275.

[148] Results of surveys of newspaper readership conducted by the French Military Government in 1946-1947, in Schölzel (1986), pp. 292-299.

Radio

The radio was the other major source of information for Germans alongside the press. In the immediate post-war years, it has been argued, "the radio remained [from the pre-war and war periods] the undisputed leading medium."[149] Power cuts notwithstanding, the radio played a particularly important role since paper was in short supply and transport and communication poor, but also von Zahn believed,

> "because many sought consolation, something only rarely found in editorials, but which might be detected in words spoken close to the ear."[150]

The *Deutschland-Jahrbuch 1949* cited as its most recent figure a total of *c.* 8,232,331 registered radio-receivers on 1 July 1947, comprising 2,500,000 in the American zone of occupation; 3,012,331 in the British zone; *c.* 520,000 in the French zone; and 2,200,000 in the Soviet zone.[151] This, the *Jahrbuch* continued, was about 6m less than the largest number of receivers thus far registered in Germany, which was *c.* 14.5m in 1944. These figures cannot, however, indicate how many actually listened to the radio, since there were doubtless some who did not pay the licensing fee, whether because they could not afford the 2DM monthly fee or because of the confusion of the post-war conditions.[152] Radios were also rented on a short-term basis. Others listened to the radio at work, with family or friends, in waiting rooms, or in other public spaces. These figures do not reveal which broadcasts were heard.

Determining the impact of the radio on the formation of public opinion generally in the immediate post-war years is not easy.[153] Few listener surveys were conducted. OMGUS reports do not yield much information about listening patterns in 1948/9,

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[149] Schildt (2001), pp. 177-206 (p. 201). Figures for radio production: *c.*130,000 were produced in 1946, *c.* 260,000 (1947), *c.* 420,000 (1948) *c.* 1,200,000 (1949), in Schildt (1998), p. 459.
[150] Von Zahn, p. 281.
[151] *Deutschland-Jahrbuch 1949* edited by K. Mehnert and H. Schulte (Essen, 1949), p. 462. In comparison, *c.* 13m radio licences were held in UK in 1945, increasing to *c.* 16m in 1950, in A. Briggs, *The History of Broadcasting in the UK*, vol. IV, *Sound and Vision*, revised edition (Oxford, 1995), p. 14.
[152] Schildt (1998), p. 460.
[153] I. Marßolek, 'Radio in Deutschland 1923-1960. Zur Sozialgeschichte eines Mediums', *Geschichte und Gesellschaft* 27/2 (2001), pp. 207-239 (p. 209), for some of the problems which need to be surmounted.

focussing only on the listenership of particular stations or cities.[154] Thus a survey conducted in September 1948 in Bremen found,

> "nine out of ten radio-owners (89%) said that they were regular listeners. On average three people listened to each set. A vast majority (96%) reported listening to the radio in the evening. Every single person interviewed claimed to listen to Radio Bremen, with the Nord-West Deutscher Rundfunk being the second most popular station (63%). Most people (87%) preferred news broadcasts with light music a close second (69)...."[155]

Apart from comments on the price of radio sets, British reports do not contain much information on radio listening. In a report on public opinion in Hamburg in October 1948, the British noted,

> "the present prices asked for radio sets is generally criticized, together with the high price asked for if the apparatus is bought on the instalment system. It is said that people are unable to keep up-to-date with the news because many are unable to purchase a radio and it has been suggested that a 'utility' or 'people's' set should be put on the market at a figure within the reach of the poorest workman."[156]

Again, there do not seem to be any French sources.

Programme lists still exist.[157] However, very little information about the content of news bulletins and other programmes has survived, since most broadcasting tapes were reused and no transcripts seem to have been made.[158] Every Wednesday evening whilst the Parliamentary Council was in session, the Northwest German Radio (NWDR) broadcast an half-hour long programme on the assembly's work in the British zone and Berlin, entitled 'From the work of the Parliamentary Council'. Aside from a general programme description:

> "the public is to be given a regular overview of the problems and progress of the Parliamentary Council through reports, commentary, lectures, interviews and round-table discussions",

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[154] See, for example, report 148 (30 November 1949), or 176 (27 May 1949), in Merritt, pp. 268-269 and pp. 298-299, respectively.
[155] Report 148 (30 November 1949), in ibid., pp. 268-269.
[156] Control Commission for Germany and Austria: CCG (British Element); Public Safety, Monthly Report on Public Morale and Public Opinion, Hansestadt Hamburg, from Hamburg Public Safety Branch to Regional Commissioner, October 1948, in PRO, FO 1014/39.
[157] See for example *Die Ansage* in NWDR (Northwest German Radio) records in HHStA, NDR [as NWDR later became] Provisional Index: Regal 112A/ Fach 4/Feld 3, 4 files.
[158] Von Zahn, p. 281, "the tapes were too valuable for them to be allowed to land in the sound archive after having been used just once." Cf. "After the broadcast the content of the tapes was deleted as usual, except for the excerpt that had been broadcast, since they [the tapes] were required for other recordings in light of the lack of new tapes.", in 'Zum Max Reimann-Prozeß', in *Die Ansage*, 26 January 1949, in HHStA, NDR Provisional Index: Regal 112A/ Fach 4/Feld 3, file 2.

we do not know what was covered by these broadcasts.[159] Otto Schumacher-Hellmold, a journalist involved in their production, recollected that

> "...[the broadcast] was put together in the Cologne radio station by August Hoppe, and I had, for example, to organize statements from faction leaders, commentaries from experts on the current state of the work on the Basic Law, and interviews with politicians for it."[160]

(This use of 'experts' resembled the practice of asking experts to comment on the Basic Law in the press. See above, pp. 31-32.) Schumacher-Hellmold had the rare privilege of his own office in the building housing the Parliamentary Council, partly because the NWDR, for which he worked, was the largest radio station in the Western zones, partly because he was an FDP town councillor in Bonn. His office was next to the press office of the assembly, making his office a frequent destination for MdPR. This allowed him,

> "almost without competition to transmit precise pieces of news at the earliest possible moment to my editorial offices in Cologne and Hamburg."[161]

Schumacher-Hellmold frequently invited leading delegates into his office to speak on the radio.[162] It is predominantly such speeches of leading politicians and Allied officials that have survived and these emphasize the informative character of the radio.[163] The radio is therefore less useful than the press for determining public opinion on the Parliamentary Council.

Welt im Film newsreels

Only four newsreels of the weekly bizonal news show, *Welt im Film*, have the Parliamentary Council itself as their subject matter.[164] They are of limited value overall since they mainly record the ceremonial occasions, with the exception of the coverage of the public interest shown in the design of the flag, yet it is interesting that the

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[159] *Die Ansage*, 18 October 1948, in HHStA, NDR Provisional Index: Regal 112A/ Fach 4/Feld 3.
[160] Schumacher-Hellmold, p. 203.
[161] Ibid., p. 203.
[162] Ibid., pp. 204-205. MdPR were paid for NWDR interviews, p. 205.
[163] For example, NWDR interview with Adenauer, 18 December 1948, NDR Archive No. D22661/1, or NWDR New Year's broadcast by the British Military Governor, 30 December 1948, NDR Archive No. D22805/1, both in NDR Archive, Hamburg.
[164] *Welt im Film* numbers 172, 190, 205 and 207, in P. Bucher (ed.), *Wochenschauen und Dokumentarfilme 1895-1950 im Bundesarchiv-Filmarchiv* (Koblenz, 1984). Newsreel No. 164 featured the Frankfurt conference, July 1948; No. 170 featured the Herrenchiemsee Constitutional Convent. It does not seem that the French zone's newsreel, *Welt im Blick*, featured the Bonn assembly.

Parliamentary Council featured so little.[165] The theoretical quality of constitutional debate did not lend itself easily to the post-war newsreel medium, which showed images relevant to the spoken text. Such debate was rarely very visually arresting.

Letters of submission to the Parliamentary Council

In the first German constitution of 1848/9, article 159 laid down that

> "every German possesses the right of petition to the authorities, to the representatives of the people and to the *Reichstag*. This right may be exercised by individuals as well as by associations and by several people jointly...."[166]

Whilst the Reich constitution of 1871 made no such provision, the National Assembly formulated an almost identical article (126) in 1919.[167] However, both the Imperial and Weimar Reichstag set up a Petitions Committee to deal with the petitions received. The right to petition was a basic right crucial to the expression of public opinion and the formulation of political demands. Consequently, the National Socialists regarded it as a threat to their totalitarian aspirations and condemned those who wrote letters as "whiners" and "malcontents".[168] It was soon reintroduced after the war, however, when the *Länder* constitutions included it once more in their comprehensive catalogues of basic rights.[169] The right to petition was incorporated by the Herrenchiemsee Convent in its draft constitution without discussion.[170] 12 years of Nazi rule had not encouraged expressions of political dissent, making the individuals who wrote letters after the war more remarkable. It was against this background that Germans addressed letters of submission to the Parliamentary Council in 1948/9.

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[165] Perhaps this explains Gröschl's focus on the coverage of the currency reform and blockade rather than the Bonn assembly, pp. 213-221. (See above, p. 23.)
[166] E.M. Hucko (ed.), *The Democratic Tradition: Four German Constitutions* (Leamington Spa, 1987), p. 109.
[167] Ibid., p. 177. The inclusion of the right to petition in the catalogue of basic rights was barely discussed in 1919, in *Verhandlungen der verfassunggebenden Deutschen Nationalversammlung* (Berlin, 1920), vol. 328, p. 1599.
[168] R. Schick, *Petitionen. Von der Untertanenbitte zum Bürgerrecht*, third revised edition (Heidelberg, 1996), p. 20.
[169] See, for example, article 16 of Hessian constitution, 29 October 1946, in *Die Entstehung der Hessischen Verfassung von 1946. Eine Dokumentation* edited and introduced by H. Berding and K. Lange (Wiesbaden, 1996), p. 131. The constitution came into effect on 1 December 1946. Cf. Pfetsch, pp. 284-287, on *Länder* catalogues of basic rights, although he does not refer specifically to right to petition.
[170] Article 10, in *PR. A&P*, II, p. 581.

In this thesis, the description 'letter of submission' is taken as an umbrella term to include letters in which a specific demand was made, that is letters in which the Parliamentary Council was petitioned to include or exclude a particular provision, and letters in which an opinion was expressed on one or more aspects of the formulation of the Basic Law.[171] As this thesis will show, the former were more likely to be written by groups of people and the latter by individuals and whilst both might be spontaneous, the former were often written at the instigation of an interest group or, in the case of full equality for women, an MdPR. Whilst Wolfram Werner was right to note that the letters of submission from individuals were only of modest use to the Basic Questions Committee, since the majority were

> "individual declarations of belief and general appeals for freedom, [and] for Christianity as the foundation of the future new state",

they do provide useful information on the population's awareness of, and engagement in, the public debate about the formulation of the constitution.[172] Furthermore, the reactions of the MdPR to these letters is also revealing of the attitudes they held towards their electorate. It is the differing impact and responses produced by the letters of submission which will be explored in subsequent chapters. (For brief overview of impact of different letters, see chapter II, pp. 59-61.)

A person was prompted to write to the Parliamentary Council on an issue upon which she or he felt strongly. The authors of the missives were persuaded to write by a mixture of their own volition and news of the deliberations in Bonn. In many cases they were encouraged to write by an association to which they belonged, such as the Catholic Church. (See chapter V, pp. 203-248.) Some of the letters addressed to the Bonn assembly were written explicitly in reaction to articles read in the press or broadcasts heard on the radio. Thus, for example, K. Axt from Alterding began his letter to Bonn on the subject of the appellation of the future West German state,

> "in the *Münchner Merkur* of the 8th of this month, I read the notice 'One has largely agreed on the name 'Republic of Germany.' As a German democrat, who feels partly responsible for the future of his country...",

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[171] The German term '*Eingabe*' is ambiguous and includes both definitions: a letter making a specific demand and one expressing an opinion. The Parliamentary Council's Secretariat did not distinguish between the two when filing the letters received in Bonn.
[172] *PR. A&P*, V/I, p. xxvi.

he felt compelled to write and suggest 'West German Republic'.[173] Such opening sentences reveal which newspaper articles and broadcasts generated debate and led people to make a contribution, occasionally several, to the discussion about the formulation of the constitution.

Letters of submission were then sent to the Parliamentary Council, whether addressed to the assembly as a whole or to individual MdPR. Shortly after the assembly began its work, the Standing Orders Committee agreed that a register of all the letters of submission received by the Council should be kept.[174] Furthermore, this register was to be open for inspection by the MdPR at all times to prevent the President from dismissing a letter for political reasons.[175] Consequently each letter was numbered and entered into the register of letters of submission by the Parliamentary Council's Secretariat upon its arrival in Bonn.[176] The Parliamentary Council's Secretariat did not distinguish, it seems, between any of the written material it received. All authors were sent acknowledgement of receipt of their letters. Next the letters were passed on to the relevant committees on behalf of the Council's President.[177] The committees then considered their content. The Basic Questions and Main Committees, whose remits included topics that aroused much interest in the population, set up sub-committees to sift through the letters and recommend either their dismissal or further discussion of the issues raised. The letters of submission were then catalogued by the Secretariat according to the committee under whose remit they fell.[178] The number of letters on the design of the flag led to these letters of submission being filed separately.[179] Letters of submission regarded as

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[173] 8 October 1948, EN107, in BA, Z5/108. For example of reaction to radio broadcast, see letter from Erich Hantke, Knetterhausen über Halle/ Westfalen, [November 1948], EN439, in BA, Z5/109.
[174] 16 September 1948, in *PR. A&P*, X, pp. 171-172.
[175] The Secretariat informed MdPR that a register was being kept and that it could be inspected in room 143 of the Council's Secretariat. 27 September 1948, Drucksache 9.48-85, in PA, PR Drucksachen I.
[176] The register has not survived. Cf. *PR. A&P*, X, p. 172. Search aids from register, in BA, Z5/122.
[177] "Letters to the Parliamentary Council will be referred to the responsible committee by the President. Letters not falling within the responsibility of the Parliamentary Council will be dealt with by the President himself." Article 23, Standing Orders, 22 September 1948, in *PR. A&P*, X, p. 193.
[178] See, for example, BA, Z5/107-115, for letters of submission dealt with by Basic Questions Committee; or BA, Z5/98, for letters of submission discussed in the Occupation Statute Committee.
[179] See BA, Z5/99-106, for flag letters of submission. See chapter II, pp. 75-88.

particularly interesting by the Secretariat, it seems, were occasionally chosen for reproduction as *Drucksachen* and distributed to the MdPR.[180]

It is impossible to determine the exact number of letters of submission received by the Parliamentary Council. It seems that several thousand were sent.[181] However, not all letters of submission have survived; some were destroyed and others did not reach the archive.[182] The register kept by the Parliamentary Council's Secretariat has not survived.[183] The surviving search aids list the letters of submission alphabetically rather than according to the individual number (*Eingabennummer* or *EN*) assigned to them upon arrival by the Secretariat.[184] The numbering of the letters of submission (assuming they were numbered consecutively) suggests a total of 8,000-10,000 letters, though this estimate excludes letters of submission on the subject of *Elternrecht* and the flag. 20-30,000 letters of submission had been sent on the subject of *Elternrecht* alone by March 1949, if signatures are counted singly.[185] Some people sent several letters of submission, sometimes on the same topic; sometimes each letter was on a different topic. Some letters were from private individuals, others from groups of people. Particularly letters arguing for the anchoring of *Elternrecht* in the Basic Law had several signatories.[186] Consequently the number of letters of submission does not correspond with the number of people who wrote to the Parliamentary Council. Furthermore, letters were also addressed to individual MdPR and their number cannot be established.[187]

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[180] See, for example, letter from Europa-Union, Europäische Einigungsbewegung, Stuttgart, 6 September 1948, EN55, in BA, Z5/94. It was reproduced as Drucksache 10.48-119, in PA, PR Drucksachen I. It proposed that the Parliamentary Council consider "the introduction of a provision, according to which certain rights of sovereignty could be ceded to a European federation by the federal state being created."

[181] Feldkamp does not give a figure.

[182] Werner, p. iii.

[183] *PR. A&P*, X, p. 172.

[184] BA, Z5/122.

[185] BA, Z5/94, p. 11. See following footnote.

[186] In March 1949, the Parliamentary Council's Secretariat noted that the assembly had received about 2,690 letters of submission on the question of *Elternrecht* so far, not counting letters from church leaders. Yet "[for this figure] single signatures and signatures from whole villages have been counted only as one [sic] petition. Were one to count all incoming mail individually, one would arrive at a total figure of *c.* 20,000-30,000." in BA, Z5/94, p. 11.

[187] For examples of such correspondence, amongst others, see PA, Sammlung Elisabeth Selbert, file 27; AdsD, NL Walter Menzel, file R3; AdsD, NL Carlo Schmid, file 468; BA, NL Theodor Heuss, N1221/418.

On occasion, newspapers mentioned the number of letters of submission sent to the Bonn assembly and gave an overview of the topics addressed.[188] Indeed, some newspapers even used the number and nature of the letters for their own ends. In a similar fashion the MdPR sought to use the 'public echo' to support their case in the assembly. (See chapter II, pp. 61-62.) The SPD-leaning *Rheinische Zeitung*, for example, contrasted the uniformity of the letters of submission from churches and religious organizations in favour of the anchoring of *Elternrecht* in the constitution with the variety of letters in favour of full equality for women, thus making clear which it considered the more authentic expression of the people's wishes, and which cause the article thereby supported.[189] Another example of the selective citation of figures is to be found in the Z-leaning *Rhein-Ruhr-Zeitung* in May 1949.[190] It listed a total of 5,131 letters of submission, of which 314 were on the electoral law, 353 on the flag, 15 on the national anthem, and 2,690 on *Elternrecht* (which was further supported by 20-30,000 people in collective letters of submission). No source was given for these figures and the nature of the article and Z-leaning newspaper in which they were included – in support of *Elternrecht* shortly after the Basic Law was promulgated without the desired federal guarantee, which had led the two Z MdPR to reject the Basic Law – call for caution in accepting them at face value.[191] They nevertheless suggest how the level of public engagement, expressed in the number of letters of submission sent on the various topics, was contested already in 1948/9. For this reason alone, it is rewarding to study the letters of submission more closely.

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[188] See, for example, "Parliamentary Room or Sick Ward", in independent Socialist *Telegraf*, 5 March 1949. It reported, "in room 144 the letters, which document the interest of the trizonal citizens, continue to be numbered with careful precision. 4134 is the present total. The biggest current of letters flooded in on the question of *Elternrecht*. 500 parents from one town sent in postcards at the same time with the same message. The flag question has enjoyed a great response.... Suggestions for laws are made in huge numbers; the questions of federalism, of conscientious objection, equality for women, and the status of the illegitimate child are often discussed." In an amusing article on the amount of paper consumed by the Bonn assembly, the above-party *Westdeutsche Allgemeine*, 24 May 1949, noted, "the enormous number of letters of submission that reached the Parliamentary Council. Over 30,000 – obviously organized from interested quarters – were on the subject of *Elternrecht* alone."

[189] 19 and 22 January 1949.

[190] 28 May 1949.

[191] For example, the figure of 2,690 letters on *Elternrecht* was the Council Secretariat's figure for March (see above, p. 42) and more letters of submission were received subsequently. Similarly, the number of letters of submission in favour of full equality for women was not included, which certainly amounted to more than the number on the anthem. It is unclear whether this omission was the result of the source(s) used or, more probably, a reflection of the paper's lack of interest in or sympathy with this demand.

It is difficult to establish a yardstick for the number of letters of submission received. There were few comparable situations. Comparison could be made with the number of letters of submission received by the *Deutscher Volksrat* or German People's Council. Here too the attempt was being made to formulate a new German constitution after the experience of Nazism, defeat and occupation. However, political developments in the Soviet zone suggest that the process of drawing up the constitution in the Eastern zone took place in very different circumstances from those in the three Western zones, notwithstanding the fact that the *Länder* of the SBZ all already had constitutions like the *Länder* of the French and American zones.[192] In February 1949, the Offenburg-based KPD-leaning *Unser Tag*, quoted Otto Grotewohl's statement on the

> "lively participation of the population of the Eastern zone in the public discussion about the constitutional proposal of the German People's Council, which was a pleasant sign for the degree to which the democratic consciousness of the German people had already developed."[193]

This interest was underlined by a cited figure of 15,000 so-called resolutions and 500 proposed amendments that had been sent to the People's Congress. These figures need to be treated with caution, since it is likely that the resolutions were SED-inspired, but it is interesting in itself that the figure is taken as a measurement of the democratic interest being shown in the constitution being drafted in the Soviet zone, in implicit contrast with the one being formulated in the three Western zones of occupation.

Two years earlier in August 1947 a survey of 3,400 Germans in the American zone and in the American and British sectors of Berlin conducted by OMGUS observed,

> "most (61%) would not take any effective measures to protest an unpopular political measure and 96% said that they had never written to an official about a political matter."[194]

It is impossible to establish the number of letters received by the various *Landtage* during the formulation of the various *Länder* constitutions 1946/7. Large numbers of letters of submission were written a century earlier during the constitutional deliberations in Frank-

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[192] Laufer, pp. 36-41; cf. brief introduction to formulation of constitution in Eastern zone, in C. Kleßmann, *Die doppelte Staatsgründung: Deutsche Geschichte 1945-1955*, fifth edition (Bonn, 1991), pp. 202-208. A comparative study of the constitution-drafting processes in Eastern and Western Germany, and the extent, to which they influenced one another, has yet to be written now that Soviet archives are more accessible.
[193] 19 February 1949.
[194] Report 74 (27 October 1947), in Merritt, p. 178.

furt; *c.*12,000 letters of submission were received by the Prussian parliament alone in 1848.[195] Or to cite another example, in 1871/2, more than 190,000 letters of submission, bearing more than 326,000 signatures, were sent to the Prussian *Landtag* to protest against the new School Inspection Law.[196] A "large number of letters" was received by the National Assembly in 1919.[197] Once article 17 of the Basic Law, which guaranteed the right to petition, had come into effect on 23 May 1949, Luise Albertz (SPD), chair of the Committee of Petitions, reported that 27,200 letters had reached the *Bundestag* in its first session (1 September 1949 - 5 September 1953).[198]

A further consideration is whether the German voter would actually write to her or his local representative in the same way, say, as a British voter might write to her or his Member of Parliament, not just because of the difficult circumstances of the immediate post-war years but also because of the nature of the electoral system, which was generally one of proportional representation. Perhaps too it was a reflection of the manner in which the delegates of the Bonn assembly were selected through appointment by the *Landtage* rather than direct election in each *Land*. As one scholar has observed,

> "in the early post-war period priests, pastors and bishops were flooded with letters and oral appeals concerning individual and community problems, with urgent demands to 'do something' to put things right."[199]

It seems that, on the whole, letters were addressed to prominent delegates or *Persönlichkeiten* (see chapter II, pp. 72-75) rather than to delegates from the author's own *Land*, for example, to Adenauer as President of the Council, or to Heuss as the leading FDP spokesman.

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[195] D. Langewiesche, 'Revolution in Germany. Constitutional State - Nation-State - Social Reform', in D. Dowe *et al.* (eds), *Europe in 1848. Revolution and Reform* translated by D. Higgins (New York, Oxford, 2001), pp. 120-143 (p. 136).
[196] M.L. Anderson, *Practicing Democracy. Elections and Political Culture in Imperial Germany* (Princeton, NJ, 2000), p. 96.
[197] Statement by the Chair of the Committee of Petitions on the work of his committee, but no figure given. 17 April 1920, in *Verhandlungen der verfassunggebenden Deutschen Nationalversammlung*, vol. 333, pp. 5232-5233.
[198] 2. Deutscher Bundestag – 30. Sitzung, 21 May 1954, in *Verhandlungen des Deutschen Bundestages*, vol. XX (Bonn, 1954) pp. 1374-1378 (p. 1375).
[199] F. Spotts, *The Churches and Politics in Germany* (Middletown, 1973), p. 61.

Not all letters on constitutional matters were sent directly to the Parliamentary Council or its delegates and certainly not all letters written are preserved in the Federal Archive's collection. Some letters, for example, were written to newspapers on constitutional issues and published on the letters page. Few were preserved by the Parliamentary Council's Secretariat; yet it is doubtful that many were written. The CDU-leaning *Aachener Volkszeitung*, for example, remarked in January 1949 that it "would be happy to hear from [its] readers on the subject of the constitution."[200] Whilst this was an encouragement to its readers to write, it implies that they had not written much on the subject so far. Early in February, however, the US-zone *Süddeutsche Zeitung* wrote that it would lend the Parliamentary Council two folders full of letters it had received in response to its publication of the Basic Law on 25 December, which, the paper believed, would interest the MdPR.[201] There is no further record of these letters.

Whilst it is easy to identify the topics on which most letters of submission were sent, namely on *Elternrecht* and the design of the flag, it is much harder to assess the authors of the letters of submission. Clearly it depends partly on the subject of the letter; thus, for example, it was often religious organizations or teachers' unions that wrote on the subject of *Elternrecht*, or women's organizations on the subject of full equality. However, those letters of submission, which did not address quite such popular issues, seem to have been written by both men and women and come from all over Germany. Since the author of a letter rarely gave information about his or her background - although it is generally possible to determine the gender and location of the author from the letter - more specific statements cannot be made.

Opinion polls

Few opinion polls were conducted in the Western zones of occupied Germany during the formulation of the Basic Law. The majority were conducted by the American Military Government.[202] The British Military Government carried out only occasional

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[200] 5 January 1949.
[201] 7 February 1949, in BA, Z5/94. Cf. US-zone *Süddeutsche Zeitung*, 25 December 1948, in HHStA, Staatliche Pressestelle V, I c I d. It published the constitution so that, as it informed its readers, they could form an opinion and prepare themselves for a referendum early in the New Year.
[202] Cf. Merritt.

surveys, such as the one on newspaper readership. (See above, p. 34.) More often, the British reported on their impressions of German morale or public opinion and, whilst empirically perhaps less reliable, the morale reports do give an indication of the mood in their zone of occupation. It does not seem that the French conducted such investigations. The Institut der Demoskopie in Allensbach had begun to undertake German surveys of public opinion.[203] Some newspapers and journals asked their readers to respond to various questions and then compiled and published the results.[204]

Having established the existence of source material pertinent to an investigation of the public debate about the formulation of the Basic Law in 1948/9, two key questions shape this thesis: what was the public involvement in the Basic Law's formulation, and what was the impact of the public debate on the Council's deliberations? Initial answers are given in general terms in chapter II and then refined in subsequent chapters as various contentious topics debated by the Parliamentary Council are explored. Expressions of anti-parliamentarianism in the public debate about the Basic Law (specifically manifested in the obsession with *Sachlichkeit*, the aversion to party-political debate and ideologies, and the desire for *Persönlichkeiten* in politics), and the search for new symbols and a name for the new West German state are also examined in chapter II. Chapter III discusses the Basic Law and the Western Allies, specifically press perceptions as a reflection of the reality of interaction between occupier and occupied in the formulation of the constitution. An aspect of the federalism-centralism debate, namely the nature and status of the second chamber, which entails analysis of the perception of the relationship between the *Bund* and the *Länder*, as well as between the past and the present, is the focus of Chapter IV. Chapter V addresses the relationship between God and the Basic Law, a topic hotly debated in the press and in the letters of submission sent to the Parliamentary Council. Chapter VI examines the public debate about full equality for women, that is the guarantee of both legal (*staatsrechtlich*) and civil (*staatsbürgerlich*)

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[203] E. Noelle and E.P. Neumann, *Jahrbuch der öffentlichen Meinung 1947-1955* (Allensbach am Bodensee, 1956), p. 157.
[204] See, for example, FDP-leaning *Hamburger Freie Presse*, 24 December 1948 and *Spiegel* 3/10 (5 March 1949).

equality in the Basic Law. The various threads are then brought together to give a picture of the public debate as a whole in the conclusion.

Chapter II - Justified expectations? Public involvement and impact, anti-parliamentarianism, and the future symbol and name.

Clearly, expectations of the level and form of public engagement in the formulation of the Basic Law in 1948/9 varied hugely. Contrary to the *perception* of a lack of public interest held by many in positions of influence, study of the public debate makes clear that the West German population was interested in the constitutional deliberations and did seek to make its voice heard in Bonn. In subsequent chapters it will be argued that not only did considerable public debate take place both in the mass media and in the letters sent to the Bonn assembly, but that public opinion influenced the course of the Council's deliberations. Here, however, general characteristics of the public debate will be explored, as well as the reactions the public input called forth when it did not correspond with views held by the MdPR.

Public involvement or apathy?

The public debate about the formulation of the Basic Law under Allied occupation in 1948/9 needs to be seen against the difficult economic circumstances in Germany after the war. For a lot of Germans, economic considerations came first, in light of their quest for food, accommodation and employment, particularly in the immediate post-war years. The role of food in determining the morale of the population had, however, declined since the currency reform on 20 June 1948.[1] Now other questions, such as employment, became more important. Clearly, without the subsequent achievement of economic stability as well as the successful integration of refugees,

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[1] Special Reports on German Morale, Public Opinion Research Office, Control Commission for Germany and Austria (British Element) [CCG(BE)], in PRO, FO 1014/121, for British zone as whole. For trends in individual *Länder* of the British zone of occupation, see, for example, Public Safety, Monthly Report on Morale and Public Opinion, Hamburg, from Hamburg Public Safety Branch to Regional Commissioner, CCG(BE), in PRO, FO 1014/38; or Lower Saxony Reports, CCG(BE), in PRO, FO 1005/1668-1671. For the American zone of occupation, see A.J. and R.L. Merritt, *Public Opinion in Occupied Germany: The OMGUS Surveys, 1945-1949* (Urbana, 1970), particularly reports 85, 100, and 175 on trends in German public opinion. Discussion of impact of hunger 1945-1949, in G.J. Trittel, *Hunger und Politik. Die Ernährungskrise in der Bizone (1945-1949)* (Frankfurt/M, 1990).

democracy would probably not have established itself so successfully in the Federal Republic.

It is difficult to quantify the interest of the German population in the constitutional deliberations, although crude first opinion polls were conducted which indicate that at least half the population was interested. Asked by the FDP-leaning *Hamburger Freie Presse* whether they knew the Parliamentary Council was at work, 59% in Hamburg replied that they did, whilst 41% did not know.[2] Hamburg was a large SPD-run city-state, with a heavy concentration of media, but nonetheless the level of interest shown is remarkably high. Similar responses were elicited across Western Germany three months later. In a poll conducted by the Institut für Demoskopie in March 1949, 54% of Germans in the three Western zones said they were interested (of which 21% were very interested and 33% moderately interested), 40% indifferent and 6% undecided, when asked whether they were interested in or did not care about the future German constitution.[3] An American Military Government survey produced more negative results: only 36% of Germans in the US zone of occupation indicated an interest in politics in May 1949. Further,

> "about four in ten (39%) were aware of the fact that the Parliamentary Council had drawn up a constitution for the Federal Republic, and less than half of these (17%) claimed any knowledge of its provisions."[4]

These responses no doubt partly reflected the nature of the American zone of occupation, in which Bavaria was the largest *Land*, and in which much of the population was rural and Catholic with strong regional loyalties.

Surveys asking specific questions produced different results. In March 1949, for example, the *Spiegel* asked its readers in detail about Germany's current state and the future West German state.[5] A substantial 8,000 people responded to this survey, indicating a lively interest in the future of Germany. Although not probed explicitly on

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[2] 24 December 1948.
[3] E. Noelle and E.P. Neumann, *Jahrbuch der öffentlichen Meinung 1947-1955* (Allensbach am Bodensee, 1956), p. 157. The Institute conducted and published such surveys to provide "an interested public with a group picture of the German people produced in a novel way", p. v.
[4] Report 191 (9 December 1949), in Merritt, pp. 314-317.
[5] *Spiegel* 3/10 (5 March 1949).

the work of the Parliamentary Council, readers were asked, for example, whether Germany should be

> "(i) a democracy, in which the current government can be toppled at any time by the parliament, (ii) a democracy, in which a certain government under a certain Minister President should have government authority for a fixed period of time, (iii) a dictatorship, (iv) a federal state (*Bundesstaat*), in which the *Bund* is responsible only for post, railways and foreign policy, or (v) a confederation of states (*Staatenbund*), in which the *Länder* of their own accord and as sovereign states conclude treaties with other states."

To which 18% (i), 54% (ii), 13% (iii), 10% (iv) and 5% (v) replied in the affirmative respectively. Other questions included whom they would propose as head of state or whether the illegitimate child should enjoy the same status as a legitimate one. The responses to such a survey suggest that people felt more comfortable answering specific questions, just as they felt more comfortable voicing specific grievances and demands in their letters of submission to the Council.

West Germans learned about the activities of the Parliamentary Council from the media. Hence journalists and editors, through the nature of their work, assumed the function of transmitting the Parliamentary Council's work to the public and also of seeking to engage the public in the activity of the Parliamentary Council. The journalists criticized both: the public for not interesting itself sufficiently, the Parliamentary Council for not engaging with the people sufficiently. Yet journalists themselves were not immune from criticism on the transmission process. Seeking reasons for the Parliamentary Council's "alarming unpopularity" in October, for example, the SPD-leaning *Hamburger Echo* held the press and radio, alongside the Council, responsible for not interesting the people sufficiently in the constitutional deliberations.[6] The newspaper gave no evidence for its judgement on the Council's popularity and it is unclear how it expected the public to manifest its interest. Yet such self-criticism by journalists was rare; more common was criticism of the Parliamentary Council's press policy. Just as some newspapers had criticized the Herrenchiemsee Convent (10-23 August 1948) for the 'secrecy' with which it had conducted its deliberations, several criticized the Parliamentary Council for inadequately informing the public about its work.[7] The

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[6] 26 October 1948.
[7] See, for example, CDU-leaning *Westfalen Zeitung*, 9 November 1948.

Tagesspiegel, published in the US sector of Berlin, for example, cited the "often more than curious content" of the letters of submission received by the Parliamentary Council, listed in the Secretariat's register, as evidence that the Council did not inform the public sufficiently about its deliberations.[8] The *Tagesspiegel* clearly considered the Parliamentary Council's press policy ineffective. (See chapter I, pp. 16-18, on Council's press policy.)

The US-zone *Hessische Nachrichten*'s Rhineland correspondent, Gerd Zepter, was equally critical of the Parliamentary Council's press policy.[9] In his opinion, it

> "is not tuned to allowing anything of the struggle for formulations, or of the attempts to assimilate the different conceptions within the parties, to leak through the doors until things seem so mature that they can be served to the news-hunters in the press conferences. ... A people that has become disaccustomed to democracy, indeed does not even know it, needs to be kept informed through regular comment. The person who has to take on this task must be able to participate in the whole goings-on, and must have access to the abundance of all the material, which far exceeds that which is released in 'press statements'."

The CDU-leaning *Aachener Volkszeitung* believed the problem went even deeper.[10] In its view, Council members were not doing enough to persuade the population that the constitution's formulation was not

> "an abstract matter solely for constitutional law experts and professional politicians but rather in its core a matter for the people and a task on the accomplishment of which depends the weal and woe of the whole people as well as of every individual."

The paper did not advocate the popularization of constitutional law or the translation of legal terms into the language of the people. Instead, the *Aachener Volkszeitung* argued, it was necessary

> "to fulfil the task of bringing the most important basic political concepts ... so close to the understanding of the average citizen that they mean something to him and he is gradually prompted to think himself."

This was a sentiment expressed by several papers.[11] It was easy (and necessary, perhaps) for the newspapers to recommend that the Bonn assembly improve its press policy. It was much more difficult to suggest how to make the constitutional matter more accessible to the public, for which a better press policy was just the first, albeit vital, step.

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[8] 9 November 1948.
[9] 26 October 1948. Cf. letter of submission from Karl-Heinz Voigt, Wuppertal, 18 October 1948, EN177, in BA, Z5/99.
[10] 8 September 1948.
[11] Cf. *Welt*, published by British Military Government, 24 October 1948.

Perhaps to counter criticism of the type outlined in the preceding paragraph, the SPD proposed holding a plenary session in public in October. The SPD faction believed that this would serve to engage the public further in the assembly's work.[12] The CDU/CSU faction, however, did not think the time was yet ripe for public deliberations.[13] The question of whether to hold a plenary session was taken up by several newspapers. Commenting on the SPD call, the *Tagesspiegel*, published in the US sector of Berlin, observed,

> "the intention is to give an interim appraisal of the committee work, and, at the same time, to stimulate the interest of the public."[14]

Others were more sceptical and posited that this urge to engage the public suited the delegates' party-political purpose. Thus the *Neue Zeitung*, published by the American Military Government, commented,

> "political circles in Bonn believe that the SPD will seize the chance to force the CDU/CSU finally to adopt the hitherto missing clear position on the bigger contentious issues...."[15]

When the Plenum was eventually held on 20/21 October, the CDU-leaning *Frankfurter Neue Presse* commended the decision to convene a Plenum, since "the work of the Council must be shown to the public."[16] On behalf of the SPD, Schmid explained that parliamentary democracy did not just mean votes to establish majorities, but also meant public discussion.[17] Democracy was not to be reserved for when the Basic Law came into force, Schmid continued, but ought to be put into practice already in Bonn. The SPD thereby consciously and cleverly emphasized its democratic credentials. Leading politicians from each party set out their party's positions on the key questions. According to the above-party *Westdeutsche Zeitung*, the decision to hold a plenary session to engage the public further was at least partially successful, since

> "the work of the Parliamentary Council, which has over the past weeks been conducted primarily behind the barely open doors of the committees, is now penetrating into the open much more."[18]

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[12] Prof. Carlo Schmid (SPD), 20 October 1948, in *PR. A&P*, IX, p. 179.
[13] 13 October in 1948, in *Die CDU/CSU im Parlamentarischen Rat: Sitzungsprotokolle der Unionsfraktion* introduced and edited by R. Salzmann (Stuttgart, 1981), pp. 75-76; and in *PR. A&P*, XI, pp. 8-9.
[14] 13 October 1948.
[15] 14 October 1948. Cf. chapter IV, pp. 173-174.
[16] 21 October 1948.
[17] 20 October 1948, in *PR. A&P*, IX, p. 179.
[18] 23 October 1948.

A great deal of space and comment over several days was devoted to the Plenum by the press. The public was thus given the opportunity to inform itself in greater detail about the parties' positions and the principal bones of contention than hitherto. To that extent the SPD's strategy was effective. Yet the occasional criticism of the Council's efforts to make its work accessible to outsiders was still made. Thus, for example, Margarete Müller from Passau wrote to complain that it was

> "shameful and outrageous to discover what has been achieved in the long and expensive deliberations from which the public have been excluded...."[19]

In her opinion, the US-zone *Süddeutsche Zeitung*'s publication of the Basic Law on 25 December was the first opportunity the people had been given to form an opinion on Bonn. This was not quite accurate, since newspapers had discussed the content of the catalogue of basic rights already in October and November (see chapter V, pp. 203-248), but illustrates that criticisms of the Council's policy for informing the public persisted.

Dr. Ernst Friedlaender, writing in the independent *Zeit* in January 1949, suggested that one reason for the "lack of political enthusiasm" was generational.[20] At the time, the older Weimar politicians and the very young were active but the necessary middle generation had not been successfully engaged in politics again, which made politics difficult. "It is precisely because this great success is missing", Friedlaender continued,

> "that this lack of political enthusiasm has developed here, about which one may complain but which one must under no circumstances confuse with lack of political interest. If at present it looks as if we have a democracy without the people then this does not mean that we are an undemocratic people. Rather we are a people that has not yet found its true representation."

Friedlaender, like most of his colleagues, did not make clear how he expected "political enthusiasm" to manifest itself. The middle generation, identified by Friedlaender, was less engaged in politics than might be expected in part because they had little experience of democratic government, having come of age in the Third Reich, partly because they were often more implicated in the Nazi regime, and partly because they, perhaps more

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[19] 4 January 1949, EN1185, in BA, Z5/96. Cf. US-zone *Süddeutsche Zeitung*, 25 December 1948, in HHStA, Staatliche Pressestelle V, I c I d. The *Süddeutsche Zeitung* published the catalogue of basic rights so that, it informed its readers, they could form an opinion and prepare themselves for a referendum early in the New Year.

[20] 'Unser Haus und seine Hypotheken', 27 January 1949, in *Die Zeit*, in N. Frei and F. Friedlaender, *Ernst Friedlaender: Klärung für Deutschland. Leitartikel für Die Zeit 1946-1950* (Munich, 1982), pp. 236-239. Dr. Ernst Friedlaender (1885-1973), businessman and journalist, 1946- journalist for *Die Zeit*. See N. Frei, 'Ernst Friedlaender – eine biographisch-publizistische Skizze', in ibid., pp. 7-33.

than other generations, were unwilling to commit to the one side or the other in politics. Furthermore, many men of this generation had died during the war and many women had limited opportunity or time to engage in politics. (See chapter VI, on female political activity in immediate post-war years, pp. 249-288.)

Other observers attributed what they regarded as the public's limited interest less to the style of the debate and more to its content. The CSU-leaning *Münchner Merkur*, for example, ascribed it to the lack of new ideas being put forward in 1948/9.[21] In its view,

> "the [political] parties are not exactly suited to creating a well thought-through constitution, since they are tied to outdated programmes and ideologies. Furthermore, their representatives are often unable to rid themselves of their old ideas, indeed have often not understood why their predecessors, who were assembled in Weimar in 1919, failed."

As contemporaries observed, the average age of the Parliamentary Council's delegates was 52, the oldest was 74 and the youngest 34.[22] Furthermore, Dr. Helene Weber, Wilhelm Heile and Paul Löbe, all MdPR in 1948/9, had helped formulate the constitution in 1919 as members of the National Assembly. A Communist newspaper, without doubt seeking to put down the Council, referred to the constitutional assembly as the "Seniorenkonvent von Bonn".[23] The KPD and its supporters were in a good position to make such a remark because KPD delegates were on average the youngest constitution-drafters at *Länder* and federal level.[24] However, the Parliamentary Council's age structure was not unusual. Of the 2,138 politicians, who participated in the formulation of the various *Länder* constitutions and the Basic Law, 95% were born before 1913, and the average age was 51 years and four months.[25] This age structure was the consequence not of a lack of political imagination but of Germany's recent political history. Only those

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[21] 3 November 1948, in AdsD, NL Carlo Schmid, file 468. Cf. FDP-leaning *Westdeutsche Rundschau*, 25 May 1949.
[22] K. Mommsen, 'Bonn: Ein Beamtenparlament', in *Die Wandlung* 4/3 (1949), pp. 250-254 (p. 252). F. Pfetsch, *Ursprünge der Zweiten Republik: Prozesse der Verfassungsgebung in den Westzonen und in der Bundesrepublik* (Opladen, 1990), p. 89, gives average age of Parliamentary Council delegates as 53½ years. His average is based on the total number of delegates, 77, which includes replacements made during the deliberations.
[23] KPD-leaning *Niedersächsische Volksstimme*, 21 October 1948. The article was quoting August Hoppe, however, who used this epithet on NWDR a few days earlier.
[24] Pfetsch, p. 72.
[25] Ibid., p. 69.

untainted by participation in the Nazi regime were able to participate in the democratic rebuilding of Germany. This strongly favoured the older generation.

There was a widespread and subjective *perception* amongst Germans in positions of influence, particularly amongst those towards the right of the political spectrum, that the German public showed only limited interest in the deliberations of the Bonn assembly. For example, Dr. Adolf Süsterhenn (CDU) spoke of the "widespread lack of interest shown by the widest sections of the population" in a contribution to the debate on the preamble.[26] His impression was shared by Dr. Rudolf Katz (SPD), who remarked,

> "we all know that the reaction to our deliberations in Bonn has not been as great as we had all expected or at least hoped it to be."[27]

In Katz' opinion this was partly the fruit of the Parliamentary Council's decision to hold its committee meetings in private. The perceived limited interest of many Germans was nonetheless difficult to understand for those engaged in post-war politics and seeking to rebuild their country. Understandably perhaps, they had expected that after the experience of the Third Reich Germans would welcome and endorse democratic politics and had pegged their expectations accordingly highly.[28] However, their expectations were perhaps too high. Indeed, the *perception* of limited interest says more about the men and women who held that view than it does about the public's actual interest, particularly if compared with the interest documented in the opinion polls and letters of submission sent to the Council, as well as the extensive debate in the media.

A slightly humorous example was given in the *Neue Zeitung*, published by the American Military Government, of two men who wanted to speak to a lawyer delegate of the Parliamentary Council.[29] The delegate's colleague in the legal practice informed them that the lawyer was in the Parliamentary Council but would be back in two days. This the two men were unwilling to believe – "We know better; nobody gets out of such a Parliamentary Council so quickly." This, Heinz Medefind, author of the article, reported,

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[26] 20 October 1948, in *PR. A&P*, IX, p. 187.
[27] Ibid., p. 229.
[28] A. von Plato and A. Leh, *"Ein unglaublicher Frühling". Erfahrene Geschichte im Nachkriegsdeutschland 1945-1948* (Bonn, 1997), p. 23.
[29] 2 October 1948.

was given as illustration in Bonn of "the bitter fact of quite how little the German people knew" about the purpose of the Parliamentary Council's debates, namely to formulate a constitution that would secure for the German people those human and political rights which it had lost. The Allies too were perplexed by what they regarded as the limited interest of the German public in the early stages of the Council's deliberations. As the FDP-leaning *Hamburger Freie Presse* reported, the Allies constantly reiterated that they did not seek to influence the decision-making of the Germans "as if they could read the minds of many Germans".[30]

Whilst the perception of limited interest on the part of the German population was widespread and dominant in political circles, it was not shared by everyone. Erich Ernst, writing in the *Welt*, published by the British Military Government, for example, questioned this assumption.[31] He argued that the German people showed more interest in politics than many critics in Germany and abroad were willing to admit. How else, he continued, was the participation in the local and district elections to be explained?[32] Indeed, this thesis will make clear that the perception of limited public interest did not necessarily correspond with the reality.

The various discussions on aspects of the Basic Law, which will be explored in greater depth in subsequent chapters, demonstrate that substantial public debate took place, whether in the media or in the letters of submission sent to the Council. The perception that the people showed only limited interest had its roots in the past and in the scepticism of those in positions of influence about the democratic potential of the Germans. The discrepancy between the perception of limited interest and the actual level of interest shown is also to be explained by the unwillingness or inability of those in positions of influence to recognize fully that the majority of the population was not versed in the drafting of constitutions, despite having witnessed the formulation of *Länder* constitutions in the French and American zones after World War II and, if

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[30] 12 October 1948.
[31] 24 October 1948.
[32] Cf. E. Holtmann, *Politik und Nichtpolitik: Lokale Erscheinungsformen politischer Natur im frühen Nachkriegsdeutschland: Das Beispiel Unna und Kamen* (Opladen, 1989), pp. 198-213.

amongst the older generation, the Weimar constitution. Hence most people were unable to comment on the larger picture, instead preferring to voice specific hopes or grievances. This they did throughout the Parliamentary Council's deliberations. Clearly, therefore, whilst those in positions of influence, including MdPR, believed that the public showed only a limited interest in the Parliamentary Council's deliberations, much of the evidence on the ground points in a different direction. How the public interest manifested itself and the impact of the public debate on the formulation of the Basic Law are the subject of this thesis.

Impact of the public debate

The public debate was often amorphous and as such its impact upon the deliberations of the Parliamentary Council is hard to delineate. Evidence of public debate is to be found in the published and broadcast media, letters to the Parliamentary Council and in opinion polls. (See chapter I for discussion of sources, pp. 24-47.) As subsequent chapters will make clear and explore in depth, the nature and scope of the public debate varied according to the topic under discussion. The following is a brief synopsis of how members of the Parliamentary Council occasionally encouraged but more often reacted to and interacted with the public debate during the formulation of the Basic Law.

It is difficult to determine the impact of the press on the Parliamentary Council's debates precisely. Clearly, the politicians read newspapers, either privately or in the assembly's Secretariat.[33] The Council took a range of newspapers from across the three Western zones. (See chapter I, p. 29.) Delegates certainly referred to the press on occasion during their deliberations. Obviously, reactions to the press coverage varied according to what was being discussed. Nonetheless, two main forms of response can be distinguished: one pre-emptive, where parties acted for fear of negative criticism in the press, and the second a reaction to negative coverage in the press. The former is, by its very nature, harder to discern than the latter, since for this reason the political parties and the Council as a whole adopted press policies, whereby the parties tried to present themselves in the best possible light, particularly *vis à vis* their opponents, and to dictate

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[33] See, for example, AdsD, NL Walter Menzel, file R3.

the news agenda. The press policy pursued by Dr. Konrad Adenauer and the CDU/CSU, in which they tried to match the amount of information given to the media by the SPD, in order to prevent potentially damaging one-sided coverage, is an example of how one party tried to pre-empt the impact of the press. (See chapter I, p. 16.) On occasion, the CDU/CSU faction even invited selected journalists to its internal meetings to encourage favourable transmission of its ideas to the public.[34] An example of the second type of response is to be found in the debate on full equality, when the CDU/CSU and FDP modified their position in light of the criticism their objections to full equality received in the press. (See chapter VI, pp. 263-280.) Much the same, *mutatis mutandis*, can be said of the radio, although the dearth of surviving radio sources (see chapter I, pp. 36-38) limits an analysis of its impact.

The impact of a letter of submission depended upon a variety of factors. Perhaps most important was the identity of its author. Letters written by established interest groups and well-known individuals, or individuals in relevant professions, were likely to receive more serious consideration than letters written by otherwise unknown authors or groups.[35] An example of this attitude is to be found in the discussion of letters of submission in the Basic Questions Committee, chaired by Prof. Hermann von Mangoldt (CDU).[36] Prof. Theodor Heuss (FDP) contended that the Committee could not consider personal letters.[37] In his opinion, only letters from corporations, such as trade unions or churches, ought to be taken into account. Von Mangoldt, however, believed that if a private individual had written something fundamental, the Committee should not pass over it. He added, "I have already put aside the unimportant letters." Prof. Ludwig Bergsträsser (SPD) interjected, "personal letters are not important for us; they are entirely random." Yet, von Mangoldt countered, if a lawyer had something to say, which was

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[34] *Die CDU/CSU im Parlamentarischen Rat*, pp. xxiii-xxiv.

[35] Cf. W. Sörgel, *Konsensus und Interessen. Eine Studie zur Entstehung des Grundgesetzes*, reprint of original 1969 edition (Opladen, 1985), pp. 97-98.

[36] 18 November 1948, in *PR. A&P*, V/II, pp. 586-587.

[37] Cf. Heuss' earlier expression of similar opinion: "I don't know the 'valuable material' but for all the high regard in which I hold democracy, I can only say that I was for a very long time in the Petitions Committee of the *Reichstag*. There so much rubbish was sent to the house that I would not be at all in favour of every letter being reported upon here [in the Parliamentary Council]. We must leave that to the gentlemen in the subcommittee. We should not as Petitions Committee also train malcontents on the side." Basic Questions Committee, 5 October 1948, in *PR: A&P*, V/I, p. 147.

helpful to the deliberations, then this should be discussed. To which Bergsträsser replied, "that is something different." It is likely that von Mangoldt had in mind the recent letter from the constitutional lawyer, Prof. Richard Thoma, when he made his remark.[38] Thoma had sent the Council a lengthy critical appraisal of the catalogue of basic rights as it had been published in the *Welt* on 9 October.[39] In fact the committee agreed with von Mangoldt's evaluation and proceeded to discuss Thoma's appraisal in detail once the general discussion of letters had ended. It influenced the deliberations in this and four subsequent sessions of the Basic Questions Committee.[40] There is no doubt that Thoma's standing as a constitutional lawyer determined the reception of his letter.

Heuss and Bergsträsser were probably the most outspoken in their scepticism towards the letters of submission but their attitude was shared by other MdPR. As will be seen in chapter V, both men were very vocal in their condemnation of the letters in favour of a federal guarantee of *Elternrecht*, which they regarded as having been orchestrated by the Church hierarchies. The debate on *Elternrecht* also illustrates another point: even a huge number of letters written with the support or at the instigation of the Churches could fail to achieve their objective if a majority of members in the relevant Council committees refused to accede to the demands made. In this case neither the SPD, FDP and KPD factions nor their supporters in the press and public were willing to countenance a guarantee of *Elternrecht* in the Basic Law.

Letters of submission from unknown individuals were normally considered too inconsequential by the MdPR to influence proceedings. Yet one of the possible alternative gauges of public sentiment, the opinion poll, was still in its infancy. Few opinion polls were conducted in the Western zones of occupied Germany during the formulation of the Basic Law. The majority were conducted by the American Military Government and it is not clear how widely their findings were disseminated.[41] No reference was made to the American surveys in the press. The Institut der Demoskopie in

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[38] Prof. Richard Thoma (1874-1957), 1928-1945 Professor of Constitutional Law at University of Bonn.
[39] 26 October 1948, EN386, in BA, Z5/108; Drucksache 10.48-244 in PA, PR Drucksachen II; *PR. A&P*, V/I, pp. 361-379. Cf. report on Thoma's appraisal in *Tagesspiegel*, 6 November 1948.
[40] 18-24 November 1948, in *PR. A&P*, V/II, pp. 584-770.
[41] Cf. Merritt.

Allensbach had begun to undertake German surveys of public opinion and the press occasionally referred to the results of these surveys.[42] Some newspapers and magazines asked their readers to respond to various questions and then compiled and published the results.[43] It is hard to gauge the impact of opinion polls, since no direct reference was made to them in the Parliamentary Council's debates. It is unlikely that their impact was very great since so few were conducted. Yet, if consulted, the surveys would have given the politicians an idea of the resonance of a decision already taken or how a decision still to be taken might be received by the public, and politicians might have altered their policies accordingly. The lack of attention paid to opinion polls by politicians contributed to the discrepancy between what they perceived to be the public's limited interest and the public's actual awareness of the assembly's work. The scarcity of opinion polls, in turn, meant that politicians relied more heavily on the press and radio to give them an idea of public opinion, without always questioning the reliability of the media as a guide.

Aside from impressions gained from the press, radio, letters of submission and talking to journalists in Bonn, most politicians will have learned about currents of public opinion through engaging with their constituents and others whom they encountered. All this information was brought into the Council's discussions, when delegates referred rather vaguely to 'the public echo' a particular topic enjoyed. Dr. Walter Strauß (CDU), for example, welcomed the public echo occasioned by the discussions on the design of the flag, which, he argued, revealed the wish held by broad sections of the public that a new design be introduced.[44] Strauß was not the only one to allude to the people's wishes. Delegates frequently made reference to the 'public echo' when pushing for a particular decision, seeking to use public opinion, which, naturally, coincided with their demand, to back up their case. Almost inevitably opponents of the demand questioned how representative the 'public echo' was. Thus, Bergsträsser, who favoured the re-introduction of the black-red-gold tricolour, questioned the public wish for something

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[42] Cf. *Jahrbuch der öffentlichen Meinung 1947-1955*. For references to Allensbach surveys, see, for example, above-party *Der Kurier* and US-zone *Mannheimer Morgen*, 13 and 17 May 1949 respectively, and *Welt*, published by the British Military Government, 25 July 1949.

[43] See, for example, FDP-leaning *Hamburger Freie Presse*, 24 December 1948 and *Spiegel* 3/10 (5 March 1949).

[44] 17 November 1948, in *Parlamentarischer Rat. Verhandlungen des Hauptausschusses. Bonn 1948-1949* (Bonn, [1950]), p. 49.

new, which Strauß and von Mangoldt claimed to have identified in the letters of submission.[45] (See below, p. 80.)

It is difficult to distinguish when delegates referred to public opinion because they were genuinely interested in its form and when they did so for political reasons. The SPD's call for a plenary session to be held in October is an example.[46] Clearly, it was desirable to engage the West German population in the assembly's deliberations more. The SPD, however, also hoped that the plenary session would force the CDU/CSU faction to set out its position openly, something it had not yet done. The first aim was declared publicly, the second was not, although the press commented upon both. (See above, p. 53.) The attitude on the part of the Parliamentary Council's delegates towards the public and press was frequently and fundamentally ambivalent. On the one hand delegates were keen for the public to be involved and show an interest, on the other hand, some delegates were worried about the consequences of making public the content of their deliberations. On 9 October 1948, for example, the US-zone *Kasseler Zeitung* reported that the Organization Committee had decided no longer to make public any details of its work in order, according to the Committee's spokesman,

> "to prevent polemics in public, which could make reaching agreement [in Bonn] more difficult."[47]

The *Kasseler Zeitung*'s headline, "Fear of the public", was blunt and its implication clear: the newspaper believed delegates were afraid that they would not be so free in their deliberations if they had to defend their positions in front of their electorate.[48] Such an analysis seems to be substantiated by von Mangoldt in his later commentary on the deliberations in Bonn.[49] The public nature of the deliberations had, in his view, contributed to the determination of the results. He remarked,

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[45] Ibid., p. 50.
[46] Prof. Carlo Schmid (SPD), 20 October 1948, in *PR. A&P*, IX, p. 179.
[47] 9 October 1948; Organization Committee, 8 October 1948, in *PR. A&P*, XIII/I, p. 495. Cf. Lehr's earlier objection in the Organization Committee to a plenary session being held, since "to hold a plenary debate now, when everything depends on sensitiveness [to the possibilities for agreement] would be very dangerous.", 6 October 1948, in *PR. A&P*, XIII/I, p. 392.
[48] 9 October 1948. Cf. Adenauer's comment to his faction, 22 September 1948, in *Die CDU/CSU im Parlamentarischen Rat*, p. 26. "If the press attends all committee meetings, then one will stop some people from giving an opinion, which is not yet fully formed."
[49] *Das Bonner Grundgesetz* commented upon by H. von Mangoldt, first edition (Berlin and Frankfurt/M., 1953), p. 17. Cf. concern expressed by von Mangoldt in November 1948, in 'Zum Beruf unserer Zeit für

> "As much as this decision [to hold meetings in public] was to be welcomed in the interests of the publicity of the constitutional work, it would have been advisable temporarily to exclude the public when one or other question was under discussion."

Evidently, von Mangoldt considered the impact of public scrutiny, imagined or real, to have been detrimental to the Council's work on occasion. Again, other delegates shared this view, as the discussions over whether to hold committee meetings in public indicate.

Most members of the German public were not in a position to assess accurately the public's impact on the Council's proceedings. Individuals and interest groups expressed their opinions to the Council in letters of submission. It is clear that interest groups, such as the Churches, sought to lobby on behalf of their members and talked publicly about these efforts.[50] The interest groups moulded their efforts to influence the Parliamentary Council according to the impact they thought they were having. Whilst several thousand letters were sent to the Council, overall their number is limited. (See chapter I for possible yardsticks for measuring number of letters sent, pp. 39-46.) Nonetheless, precisely because of the lack of numerous opinion polls, the letters sent are a valuable indicator of the more or less unmediated opinions held by Germans at the time. For this reason, the letters should be considered seriously, even if their impact upon the deliberations varied considerably. The press, in contrast, knew that it exerted an influence upon the Parliamentary Council's deliberations and tried to exploit its influence fully.[51] The press both reflected and made opinion, both reported upon and participated in the public debate, shaping in reporting, and as such was a powerful medium, with which the Parliamentary Council's members had to engage.

Anti-parliamentarianism

With the exception of the KPD, all the major political parties advocated the (re-)introduction of parliamentary democracy in Germany after the war. (See chapter I, pp. 7-8.) Much of the public were also in favour, as this thesis will show, although their ideas on democracy were rarely clearly articulated. Nonetheless, ideas or opinions critical

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die Verfassungsgebung. Grundsätzliches zu den Bonner Verfassungsarbeiten', in *Die Öffentliche Verwaltung* 1/2 (Nov. 1948), pp. 51-53 (p. 52).

[50] Cf. Sörgel, pp. 89-119.

[51] See, for example, analysis of role of press in German-Allied exchange by *Flensburger Tageblatt*, 22 March 1949, in chapter III, p. 154.

of the parliamentary system of government were certainly expressed in post-war Western Germany. Such expressions of anti-parliamentarianism were not new. They had been uttered during the formulation of the Weimar constitution, were repeated in the Weimar Republic, found expression in resistance circles, and were subsequently voiced during the Parliamentary Council's deliberations.[52] Naturally, opinions critical to varying degrees of the parliamentary system were expressed in discussions about the composition of parliament itself, and especially of the second chamber. Such criticism was generally directed against the political parties, which were closely identified with the parliamentary form of government. However, the debates about the composition of the second chamber will be discussed further in a later chapter. (See chapter IV, pp. 155-202.) Nonetheless, three general aspects of anti-parliamentarianism featured prominently in the broader public debate in 1948/9: firstly, the insistence upon *Sachlichkeit*, secondly, the aversion to party-political debate and ideologies being expressed openly and, thirdly, the attachment to *Persönlichkeiten*.

All three found public expression in the press and in the letters sent to the Bonn assembly, particularly in the autumn of 1948, when the assembly began its work. Such sentiments were not new in 1948/9, although they were probably voiced with greater intensity after the Second World War. Yet they have received scant attention in the literature. No study of the public debate on the formulation of the Weimar constitution exists. Thomas Mergel touches upon the National Assembly in 1919, but focuses on the subsequent debates in the *Reichstag* and their public reception.[53] Hans Mommsen explored anti-parliamentarianism in his study of the continuity of political thinking from the late Weimar Republic to the early Federal Republic but devotes little space to its broader public appeal.[54]

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[52] E.R. Huber, *Deutsche Verfassungsgeschichte seit 1789*, vol. VII, *Ausbau, Schutz und Untergang der Weimarer Republik* (Stuttgart, 1984), pp. 43-46; Cf. H. Mommsen, 'Der lange Schatten der untergehenden Republik. Zur Kontinuität politischer Denkhaltungen von der späten Weimarer zur frühen Bundesrepublik', in K. Bracher *et al.* (eds.), *Die Weimarer Republik 1918-1933* (Bonn, 1998), pp. 552-586.

[53] T. Mergel, *Parlamentarische Kultur in der Weimarer Republik. Politische Kommunikation, symbolische Politik und Öffentlichkeit im Reichstag* (Düsseldorf, 2002), pp. 67-74, on National Assembly and the public.

[54] H. Mommsen, p. 570-581.

Sachlichkeit

Much as in 1919, when the National Assembly was formulating the Weimar constitution, *Sachlichkeit* or impartiality was one of the most sought-after characteristics in the deliberations of the Parliamentary Council.[55] Politicians, press and public expected the Bonn assembly's debates to be characterized by *Sachlichkeit* - the objective, efficient, quiet, non-partisan accomplishment of the tasks in hand.[56] Such a desire inevitably became more pronounced after periods of tumultuous political upheaval, such as after both World Wars in Germany. Yet calls for *Sachlichkeit*, with reference both to style and content of the debate, also accompanied the political exchange in the *Reichstag* in the 1920s.[57] In certain key respects, however, the desire for *Sachlichkeit* in 1948/9 was specific to the years after the Second World War. It was a reaction to the pomp of the Third Reich and the excessive partisanship, which was believed to have characterized the politics of the late 1920s and 1930s. It was an extended expression of the unwillingness to commit to the one side or the other in politics, since, within one generation, the Communists had been persecuted by the Nazis, and now the Nazis were being punished for their political record.[58]

Evidence for the post-war aspiration for *Sachlichkeit* is to be found in many of the press articles of the time and in some letters of submission. Particularly in September 1948, as the Parliamentary Council began to formulate a provisional constitution for the future West German state, many newspaper articles called for the assembly's work to be characterized by *Sachlichkeit*, both in style and content. Subsequently, an article's description of the Council's deliberations as *sachlich* must be read as praise. The wish for *Sachlichkeit* was linked to the desire for compromise and coalition government, to the avoidance of strong party political positions, to the objection to party differences being carried out in the open, to the desire for politicians who were experts in their profession

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[55] Mergel, p. 68.
[56] For an example of the desire for *Sachlichkeit* at local level, see J. Meyer and E. Holtmann, '"Sach-politik", Partizipation und Apathie in der Nachkriegsgesellschaft', in *Politische Vierteljahresschrift. Sonderheft* 18 (1987), pp. 144-153 (p. 152).
[57] Mergel, pp. 252-259.
[58] B. Hochstein, *Die Ideologie des Überlebens. Zur Geschichte der politischen Apathie in Deutschland* (Frankfurt/M., 1984), pp. 257-266, on the "without-me attitude" in politics. Hochstein does not discuss the Parliamentary Council at all.

(lawyers or civil servants, for example) and not party bureaucrats, and to the desire for politicians who were personalities (*Persönlichkeiten*) above the political fray.[59]

Frequently the wish for *Sachlichkeit* was linked to an adherence to the concept of a '*konstitutionelle Demokratie*'.[60] Adherents of this concept believed in the incorporation of checks and balances in the constitution, and consequently advocated curbing the power of parliament. This view, held by members of the CDU/CSU, FDP and DP, was based on a fear of the masses. The possibility that the SPD and KPD might gain an absolute majority compounded this fear and led them to call for a second chamber to act as a brake on the powers of the directly elected first chamber.[61] (See chapter IV, pp. 155-202, for debate about second chamber.) Such sentiments were often articulated in calls for a check to be put on so-called "parliamentary absolutism".[62] In contrast, adherents of the concept of a "*soziale Mehrheitsdemokratie*' viewed parliament as the only legitimate representative and executive organ of the will of the people.[63] This view was held by the SPD and KPD and a similar view was shared by the Z. Throughout the formulation of the Basic Law, it was particularly the newspapers towards the centre and right of the political spectrum which referred again and again to *Sachlichkeit*.

The wish for *Sachlichkeit* influenced the presentation of news and coverage of the Parliamentary Council's deliberations. (Objective reporting was required by the Allies. See chapter I, pp. 24-35.) Particularly, CDU-leaning papers and those hostile to Social Democracy, such as the *Rheinischer Merkur*, edited by Paul Wilhelm Wenger, praised the objectivity of the Parliamentary Council's debates and frowned upon party

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[59] Calls for leading offices of state to be filled with experts also made in National Assembly in 1919. See, for example, *Verhandlungen der verfassunggebenden Deutschen Nationalversammlung* (Berlin, 1920), vol. 327, p. 951.
[60] K. Niclauß, *Der Weg zum Grundgesetz* (Paderborn, 1998), pp. 73-108.
[61] Cf. Adenauer on need for second chamber to balance out the popularly elected parliament, 28 October 1948, in *Die CDU/CSU im Parlamentarischen Rat*, pp. 92-93.
[62] Cf. Explanation given by Dr. Robert Lehr (CDU) for Council's decision to opt for two chambers: "Those of us in parties willing to be constructive (*aufbauwillige Parteien*) agreed to reject the *parliamentary absolutism* [*sic*] of the people's-democracy variety, to adhere to the principle of the separation of powers, and to express the principle of the *polarity* [*sic*] of the *political forces* [*sic*] wherever it was appropriate. Therefore there was unanimity from the beginning that we had to create a second chamber, a true federal organ.", 8 May 1949, in *PR. A&P*, IX, p. 518.
[63] Niclauß (1998), pp. 27-72.

differences.[64] These papers were less prepared to accept a questioning of the status quo, which the SPD was regarded as doing by its very nature, and were hence more hostile towards party debate. Clearly, this was linked to sympathy with the ideas of a '*konstitutionelle Demokratie*'. These papers were also representative of those sections in society more prone to a belief in authority rather than those seeking to challenge it.

The quest for objectivity was accompanied by changes in the media culture itself. In the 1920s, a partisan press, in which fact was not generally clearly separated from opinion, combined with unstable governments and increasing extra-parliamentary political agitation at the extremes of the political spectrum, helped persuade many that politics was no longer pursued in an objective manner but for party ends. It has been argued that the press contributed significantly to the destabilizing and undermining of parliamentary democracy in the Weimar Republic.[65] After 1933, propaganda and political mobilization by the NSDAP were vital and prominent elements of Hitler's regime. Press and radio were brought into the service of the regime by the National Socialists for their political purpose. After 1945, the Allies, each differently in their zone of occupation, introduced numerous changes in the structure of the media, and kept a degree of control through the licensing procedure up until September 1949. (See chapter I, pp. 24-28.) Some of the changes in the media culture after the war were also German in origin, such as the recognition of the need to be less polemical. As in the Weimar Republic, but with less overt animosity after 1945, newspapers sometimes commented on the reporting style of other publications, and remarked upon whether, in their view, it was objective and contributed to the democratic debate in an appropriate manner. Newspapers thus held each other to account. More generally, the regularity with which newspapers included commentary or opinion pieces written by outsiders, such as a professor of political science or a leading lawyer, was another indication of the value attached to *Sachlichkeit*. The respect paid to professorial opinions in the press was a reflection of the desirability

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[64] Paul Wilhelm Wenger (1912-1983). 1945-1948 judge in *Land* court Tübingen, co-founder of CDU in South Baden in 1945, 1948- Bonn correspondent and political editor of *Rheinischer Merkur*.
[65] B. Fulda, 'Press and Politics in Berlin, 1924-1930' (unpublished Ph.D. thesis, University of Cambridge, 2003), pp. 234-260.

of their perceived attributes: experts, in command of their subject, without a party-political bias.

Some questioned the impact of the change in political and journalistic styles. The SPD-leaning *Württemberger* claimed that the interest of the public in public affairs was very much linked with the extent to which the public's "craving for sensation" was met.[66] Consequently, whilst the newspaper welcomed the "relinquishment of soapbox oratory" in Bonn and commended the assembly for its thorough work for the future, it believed that in the eyes of the public "all seems boring and has little appeal."[67] The *Württemberger* regarded this as a far from complimentary assessment of the degree of political formation of the Germans. Dr. Hermann Schäfer, an FDP MdPR, echoed this view several months later. He did not doubt that the German public was not following the developments in Bonn with the interest

> "which would correspond to the historical import of the decisions being taken. I fear that the thought habits of the National Socialist way of thinking continue to manifest themselves here. They [the people] still measure the historical significance of the political decisions by the volume of the ostentatious accompanying music."[68]

Such observations tie in with the perception of limited public interest in the formulation of the Basic Law discussed above. Again, however, such comments reveal more about the beholder than the public, and it is unclear how Schäfer expected the public to manifest its interest.

An example of extreme advocacy of *Sachlichkeit* can be found in a proposal published, but not endorsed, by the US-zone *Süddeutsche Zeitung*, in which F. Lütge, called for a 'chamber of experts' or *Sachverständigenkammer*.[69] The *Süddeutsche Zeitung*'s closing remark was perspicacious, however, "the defects of a 'democracy of parties' will not be corrected by a 'democracy of experts'." Not only in the press was such a 'chamber of experts' advocated: a letter of submission from a group calling itself

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[66] 14 October 1948.
[67] FDP-leaning *Westdeutsche Rundschau* and DP-leaning *Deutsche Volkszeitung* also complimented the Parliamentary Council for not indulging in soapbox oratory, 16 and 19 October 1948 respectively.
[68] FDP-leaning *Hamburger Freie Presse*, 22 January 1949, in HHStA, SP V/ I C I d/ PR.
[69] 26 October 1948.

the Arbeitsgemeinschaft Sachverständigenkammer, Munich, recommended the establishment of such a chamber, whose members

> "without attachment to a specific political will and through elimination of their own direct political influence and responsibility will express their opinion on the questions which arise in a purely objective and expert manner."[70]

A similar argument was employed by the above-party *Rheinpfalz* later in the autumn.[71] In its view, a second chamber was necessary, since

> "a counterweight needs to be given to the one-sided parliamentarianism and the perhaps too stormy and changeable people's parliament should be confronted with a conservative element of the state, which guarantees constancy and calm deliberation."

The *Rheinpfalz*'s condemnation of parliamentarianism clearly encompassed an aversion to the political parties represented in the first chamber. It is particularly this desire for *Sachlichkeit* as a manifestation of the post-war aversion to strongly expressed party-political ideologies which is interesting.

Aversion to party-political debate and to ideologies

Just a week after the assembly had begun its work, the CDU-leaning *Westfalenpost* remarked that the German public could have faith that

> "far from narrow-minded party-political doctrines, [the Parliamentary Council's delegates] will shortly do objective (*sachlich*) work of use to the whole population."[72]

Writing in the US-zone *Hessische Nachrichten* shortly after the bitter disagreement between the parties over Adenauer's handling of the meeting with the Allies in Frankfurt in mid-December (see chapter III, pp. 116-121), Zepter argued that the factions in Bonn had quite obviously confused their interests with the interests of the people.[73] The people, he continued,

> "does not belong exclusively to one party, but is made up of the sum of citizens, who want at last to live in peace and freedom again after the previous era, without being bossed about by doctrines."

Condemnation of party debate was explicit in the letter from Hermann Winter, a young person from Augsburg.[74] He wrote to the Bonn assembly in April to ask:

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[70] 23 September 1948, EN81, in BA, Z5/116. The letter was acknowledged but not discussed in Bonn, 14 October 1948, in *PR. A&P*, XIII/I, p. 557.
[71] 30 November 1948.
[72] 9 September 1948.
[73] 23 December 1948.
[74] 24 April 1949, EN5064, in BA, Z5/115. Information on the authors of the letters is given only when it is given by the authors themselves in their letters to the assembly.

> "Could not those responsible put aside the goals of their parties in the interest of the whole people? ... Young people are always accused of indifference towards politics. But how can young people be interested when they only ever hear futile debates?"

These comments illustrate how much value was attached to *Sachlichkeit*, in contrast with the disregard in which party-political debate was held. Both clearly express their author's anti-party sentiment.

Party politics were identified with narrow-mindedness and were seen as inappropriate in the circumstances. In some cases, 'anti-party' sentiment took the form of alternative political groupings, one of which even referred to itself as the '*Unpartei*', a phenomenon that received a certain amount of press coverage in the following summer.[75] Furthermore, political parties did not have a good image following the excesses of the NSDAP. The CDU-leaning *Allgemeine Kölnische Rundschau* noted after the first few weeks that the work was still being carried out in an objective manner, since the delegates were aware of their responsibility.[76] This was echoed by the *Westausgabe. Nouvelles de France*, published by the French Military Government,

> "in Bonn, it is not party doctrine nor the obligation to vote in accordance with party policy which rule, as is sadly so often the case. Here [in Bonn] discussions are led in a sober fashion and objective, good work is being done."[77]

The above-party *Badische Zeitung* observed that the *Sachlichkeit* of Bonn was only being preserved because the parties did not feel that the questions addressed in Bonn would make good election slogans.[78] The *Westausgabe. Nouvelles de France* believed that

> "one of the most striking features of the Parliamentary Council's work is the rapid move away from the party-political position",

which it attributed to the mediatory role of the small parties.[79] This interpretation, however, was not borne out in the longer term. As the deliberations progressed, and, in particular, once debate took place in the Plenum (20/21 October) and began in the Main

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[75] See, for example, "The Idea of Peace and an Obsession with Clubs. On the state of pacifist organizations in Germany", in *Neue Zeitung*, published by the American Military Government, and "The Boom in Political 'Circles'. Attempted Breakouts from the Party-Monopoly. A Stocktaking before the Federal Elections", in US-zone *Süddeutsche Zeitung*, 11 and 14 June 1949 respectively. For *Unpartei*, see EN1818, no date given, in BA, Z5/106.
[76] 24 September 1948.
[77] 30 September 1948.
[78] 9 October 1948.
[79] 10/11 October 1948.

Committee (11 November), the factions in Bonn emphasized the differences in their party-political positions.

"Objectivity and the readiness to come to an understanding", was the itself already indicative headline of an article in the US-zone *Weser Kurier*.[80] In the view of the young citizen of Bremen giving his impressions of the Parliamentary Council in this article, the modern building, in which the assembly was housed, the Pädagogische Akademie, exuded an atmosphere of *Sachlichkeit*, as did the Council's sessions themselves. In this objective atmosphere, he believed, the will to come to an understanding, the basis for which was the willingness to see the representative of the opposing party not as a political opponent but as a dissident motivated by the same good will, predominated. In contrast, he characterized KPD delegate Hugo Paul's exclamation as "unsachlich". A month later, the above-party *Trierische Volkszeitung* ran a similar headline "Objective battle of opinions in Bonn", again suggestive in its choice of words, with the subtitle "Wrestling for the best form of democracy".[81] The *Sachlichkeit* of the Parliamentary Council was praised comparably highly in the CDU-leaning *Rheinischer Merkur*, which further argued that this was the only method by which a constitutional assembly could proceed.[82] Wenger, author of the article, claimed that the Parliamentary Council could

> "fully dispel all initial doubts about the validity of its representation of the German people if it continues along the path of responsible objectivity. For this an assembly, in which 36 politically experienced lawyers form the majority, has the best conceivable qualifications, since there is little serious chance that party doctrine will lead to a narrowing of vision."

The independent *Flensburger Tageblatt* set out a stark choice: either Switzerland or the Balkans, by which it sought to characterize the choice facing the Parliamentary Council, namely, either to free the forces, which through union lead to organization, the Swiss approach, or to unleash the egoistic tendencies of the *Länder* and parties which would lead to the 'balkanization' of Germany.[83] 'Balkanization' was clearly perceived to be the antithesis of *Sachlichkeit*.

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[80] 18 September 1948.
[81] 22 October 1948.
[82] 18 September 1948.
[83] 23 September 1948.

In many respects, the almost obsessive quest for *Sachlichkeit* in a democracy was counter-productive. Democracy, especially of the parliamentary variety, only functions if political debate takes place in which party-political opinions are expressed and endorsed by the electorate. The ideal against which parliamentary democracy was generally measured was nineteenth-century Britain, in which debate was believed to have taken place in an objective manner, untainted by party political considerations. The ideal did not in fact correspond with historical reality.[84] Without differences in opinion, channelled through political parties, discussion cannot take place in a democracy. Nevertheless, by not wishing to hear debate between politicians of different political persuasions openly carried out, many post-war Germans were demonstrating the limits of their democratic consciousness.

Persönlichkeiten

The desire for *Sachlichkeit* was linked to the belief in the need for *Persönlichkeiten* or personalities as head of state or even in other leading offices though this might seem to be a contradiction in terms at first sight. These personalities were to be persons above the political fray, that is above the polemical debate of the political parties, which was considered to be the opposite of *sachlich*. They were expected to be men, with the exception of Louise Schroeder (1887-1957) in Berlin, who was the first and one of only two women to be nominated by readers of the *Spiegel* in response to the question 'who should become president?' in March 1949.[85] The question of whether she might actually be a candidate for the federal presidency was taken up by several newspapers in the summer.[86] With echoes of Max Weber's profile of a charismatic leader, the role of these personalities was to resemble that of a monarch, much as Hindenburg had been an "*Ersatzkaiser*" for many in the Weimar Republic. Some, particularly in Bavaria and in

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[84] A. Birke, 'Die Souveränität des viktorianischen Parlaments und die moderne Parlamentarismuskritik', in A. Birke, *Deutschland und Grossbritannien: Historische Beziehungen und Vergleiche. Britain and Germany: Historical Relations and Comparisons* (Munich, 1999), pp. 19-31.

[85] *Speigel* 3/10 (5 March 1949). Louise Schroeder (SPD), member of Weimar National Assembly, MP in *Reichstag*, 1920-1933, deputy mayor of Berlin, 1946-1947, amtierende Oberbürgermeisterin of Berlin, 1947-1948. See M. Koerfer, 'Louise Schroeder', in W. Mühlhausen and C. Regin (eds.), *Treuhänder des deutschen Volkes. Die Ministerpräsidenten der westlichen Besatzungszonen nach den ersten freien Landtagswahlen. Politische Porträts* (Kassel, 1991), pp. 139-162.

[86] See, for example, CDU-leaning *Allgemeine Kölnische Rundschau* and above-party *Allgemeine Zeitung*, 20 and 21 July 1948, or *Neue Zeitung*, published by American Military Government, 5 August 1949.

Lower Saxony, which had monarchic pasts of which their citizens were proud, even toyed with the idea of the reintroduction of monarchy at *Land* level.[87]

Several letters of submission called for *Persönlichkeiten* in 1948/9, especially as head of state. August Drexel, a retired chief architect from Heppenheim, for example, argued that the Germans wanted to be led by an "outstanding personality".[88] "In party quarrels", he believed, "even the Basic Law will fail". Richard Scheid from Munich wrote to suggest that neither the Federal President nor the Chancellor should be permitted also to be the leader of a political party.[89] In a similar vein, Erich Hantke from Knetterhausen über Halle in Westfalen, argued against parties and for *Persönlichkeiten.*[90] Paul Alt from Wiesbaden went even further and called for *Persönlichkeiten* in parliament too.[91] In his opinion, it was necessary above all else "to ensure that men are elected into the parliament, who understand something [of the art] of governing." For every other profession, Alt continued, one had to have a qualification. Furthermore, he argued, only about half of the delegates should be elected and towns, *Landkreise*, universities, and other such bodies should appoint the remainder so that "personalities" would enter parliament. All these views show clearly how intimately related anti-party sentiment was with calls for a personality as head of state, as well as with the idea of introducing a check on the directly elected representatives of political parties in the first chamber, so dear to the adherents of a '*konstitutionelle Demokratie*'.

There was considerable debate in the Bonn assembly about the role and function of the head of state.[92] Politicians advocated the notion of a neutral head of state but were unwilling to let the people elect their head of state directly. They believed that the direct election by the electorate of a president with considerable powers, particularly in an emergency, alongside parliament had contributed significantly to the undermining of

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[87] D.E. Rogers, *Politics after Hitler: The Western Allies and the German Party System* (London, 1995), pp. 63-68 on Bavarian case, p. 67 on Lower Saxon case.
[88] 27 December 1948, EN693, in BA, Z5/117.
[89] 30 September 1948, EN84, in BA, Z5/116.
[90] November 1948, EN439, in BA, Z5/109.
[91] 25 September 1948, EN50, in BA, Z5/116. Cf. EN4434, in BA, Z5/97.
[92] E.H.M. Lange, 'Die Diskussion um die Stellung des Staatsoberhauptes 1945-1949 mit besonderer Berücksichtigung der Erörterungen im Parlamentarischen Rat', in *VfZ* 26 (1978), pp. 601-651.

parliament in the Weimar Republic. Consequently, applying this lesson from the past, not only was the president's role significantly reduced in favour of parliament, the Bonn assembly decided that the president was not to be elected directly by the German people. Instead a *Bundesversammlung* or Federal Assembly, composed of members of the *Bundestag* and an equal number of representatives of the various *Landtage*, was given the task of electing the president.[93] The establishment of the Federal Assembly was another expression of the politicians' fear of 'the masses', which were taken by many in post-war positions of influence to have been largely responsible for Hitler's rise to power.[94] Alongside its decision not to allow the direct popular election of the president, the Parliamentary Council excluded all other plebiscitarian elements from the constitution, with the exception of a referendum on the eventual union of Baden, Württemberg-Baden and Württemberg-Hohenzollern.[95] Unlike many of the *Länder* constitutions formulated in 1946/7, which made limited provision for referenda, the Basic Law therefore provides only for a representative democracy. Consequently, it has been argued that the aversion towards referenda in 1948/9 also reflected changes in CDU/CSU and SPD party policy, which partly resulted from their experience at *Länder* level.[96] Both parties, albeit for different reasons, had come to believe that the referendum as constitutional instrument did not help them to achieve their political goals.

In contrast, in a survey on the Federal President's powers conducted in March 1949 by the Institut für Demoskopie, more people favoured giving greater influence to the president than to the parliament.[97] In response to the question, "Do you favour a president having as strong a position as possible just like in the USA or do you favour a parliament with as strong an influence as possible?", 41% replied that they preferred a strong president, 23% a strong parliament, 6% neither, 28% did not care and 2% could not decide. It is not clear how widely the results of this survey were known but they did

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[93] Article 54 of Basic Law.
[94] This view was shared by many in the resistance to Hitler, some of whom were actors on the post-war stage. Discussion of the constitutional rejection of plebiscitarian elements, in H. Mommsen, pp. 552-586 (p. 567).
[95] Cf. K. Niclauß, 'Der Parlamentarische Rat und die plebiszitären Elemente', in *Aus Politik und Zeitgeschichte* B45 (1992), pp. 3-15.
[96] Ibid., pp. 11-13.
[97] *Jahrbuch der öffentlichen Meinung 1947-1955*, p. 157.

not have any impact on the Council's deliberations. Motions for the introduction of a presidential democracy brought in the Main Committee by Dr. Thomas Dehler and Dr. Max Becker, both of the FDP, were rejected.[98] Instead, after the bad experience with the presidential system in the final years of the Weimar Republic, the Basic Law provides for a parliamentary not a presidential democracy.

The search for a new symbol

One of the many challenges confronting the Parliamentary Council as it began its work was the identification of symbols for the embryonic West German state. Several considerations ensured that the Bonn assembly, once it had taken the decision to have a flag, would devote considerable attention to this question. Most significant was the desire to prevent a recurrence of the divisions occasioned by the flag in the Weimar Republic. Members of the Parliamentary Council recognized that symbols mattered, and that it was vital to unite West Germans behind one flag, which would, in turn, symbolize not only the unity of the West German population but also the West German state. The fact that all the *Länder* of the Western zones of occupation already had flags was a further incentive for the identification of a national symbol on the international stage. Yet deciding upon the design of the federal flag was much less easy, pitting attachment to old symbols against the desire to create something new. The choice of design would therefore send an important message about the relationship of the new state to Germany's past, as well as the direction in which it intended to go in future. For exactly this reason, the choice of name for the new West German state was also of symbolic significance.

Debate about the federal colours and the design of the flag was not new.[99] The colours are the visual representation of the state, of which the flag is perhaps the most obvious, but also include seals or stamps for example. Black-red-gold were the colours associated with freedom and German unity already early in the nineteenth century and

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[98] 7 January and 9 February 1949 respectively, in *Verhandlungen des Hauptausschusses*, pp. 395-397 and pp. 637-638.

[99] History of colours of flag, in E. Klein, 'Artikel 22', in *Bonner Kommentar*, second edition (Hamburg, 1964-), pp. 1-24 (pp. 15-20); E. Fehrenbach, 'Über die Bedeutung der politischen Symbole im National-staat', in *Historische Zeitschrift* 213 (1971), pp. 296-357 (pp. 341-357); and M. Myers Feinstein, *State Symbols. The Quest for Legitimacy in the Federal Republic of Germany and the German Democratic Republic, 1949-1959* (Boston, 2001), pp. 16-52.

were flown by the Frankfurt Parliament in 1848/9. The question of the colours of the Reich was, however, only discussed in the Navy Committee in Frankfurt.[100] Black-white-red was introduced as the national merchant flag on 25 October 1867 by Bismarck and subsequently confirmed in article 55 of the Reich constitution of 1871.[101] Only in 1892 did Wilhelm II elevate black-white-red to the "national flag" of the Reich by decree.[102]

Almost thirty years later, the national flag was the subject of considerable debate in the National Assembly in 1919.[103] Representatives on the left argued in favour of black-red-gold, which they associated with the tradition of the Paulskirche, whilst those on the right preferred the black-white-red of the Empire, whose end they regretted. Eventually a majority voted in favour of a compromise, whereby black-red-gold was adopted for the Reich flag whilst black-white-red was kept for the merchant flag with black-red-gold only as an inset.[104] In April 1921 President Friedrich Ebert decreed, without any objection from his own Social Democratic party, that the Reich ensign should have the same design as the merchant flag.[105] Five years later, in May 1926, President Paul von Hindenburg decided that all Reich legations and consulates located outside Europe and in European ports should fly the merchant flag alongside the Reich flag.[106] His decision, however, angered SPD deputies and led to fierce debate in the *Reichstag*, which aggravated the already ongoing dispute about the colours of the flag, the so-called *Flaggenstreit*.[107] Those in favour of the Weimar Republic and the parliamentary democracy it had introduced adhered to the black-red-gold flag, whilst Weimar's opponents rallied around the old imperial colours. In the debates in the National Assembly, it has been argued, the flag was a 'holy object' for the right, embodying a sacred self-image of a society and representing the synthesis of social

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[100] Fehrenbach, p. 343.
[101] Ibid., p. 345; and E.M. Hucko (ed.), *The Democratic Tradition: Four German Constitutions* (Leamington Spa, 1987), p. 138.
[102] Fehrenbach, p. 348.
[103] *Verhandlungen der verfassunggebenden Deutschen Nationalversammlung* (Berlin, 1920), vol. 326, pp. 285-292, pp. 384-389, p. 400, and vol. 327, p. 1206, and pp. 1124-1246.
[104] *Verhandlungen der verfassunggebenden Deutschen Nationalversammlung*, vol. 327, pp. 1244-1245. Subsequently article 3 of 1919 constitution, in Hucko, p. 149.
[105] *Reichsgesetzblatt*, p. 483.
[106] *Reichsgesetzblatt* I, p. 217.
[107] E.R. Huber, *Deutsche Verfassungsgeschichte seit 1789*, vol. VII, *Ausbau, Schutz und Untergang der Weimarer Republik* (Stuttgart, 1984), pp. 581-585.

relations, which, it was believed, existed before 1918.[108] The reverse was true in 1948/9, when the black-red-gold tricolour was a symbol of Germany's democratic tradition for the SPD and FDP. In the 1920s, the debate over the flag, normally a unifying symbol for the state, in fact made obvious the lack of unity within the Republic. The *Flaggenstreit* became symbolic of the divisions within the Weimar Republic.

Two months after Adolf Hitler's appointment as Chancellor, the President ordered that the swastika flag be flown alongside the black-white-red flag until the final regulation of the Reich colours.[109] Two years later, on 15 September 1935, Hitler announced that black-white-red were the colours of the Reich but made the black, white and red swastika flag the Reich and national flag.[110] The Allies banned the swastika and other Nazi symbols in 1945.[111] The British and American Military Governments objected to the flying of the black-red-gold flag at the opening ceremony of the Economic Council of the Bizone on 25 June 1947, since they regarded it as anticipating a settlement for the whole of Germany.[112] Once the decision had been taken to proceed with the creation of a West German state at the Six-Powers Conference, however, the Western powers neither objected to the flying of the black-red-gold flag nor otherwise exercised any influence on its design. During the centenary celebrations of the Frankfurt Parliament in May 1948, at which the black-red-gold tricolour was flown, the German People's Congress in the Soviet zone declared that black-red-gold would be the official colours of the future German Republic.[113] Later article 2 of the German Democratic Republic's constitution, which was promulgated on 7 October 1949 after the Parliamentary Council had completed its work, declared that black-red-gold were the colours of the GDR.[114] Both East and West clearly sought to lay claim to the democratic heritage that the colours black-red-gold were seen to symbolize in May 1948.

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[108] Mergel, p. 64.
[109] 12 March 1933, *Reichsgesetzblatt* I, p. 103.
[110] *Reichsgesetzblatt* I, p. 1145.
[111] Military Government Germany, Supreme Commander's Area of Control: Law No.1, on the Abrogation of Nazi Law [undated; issued on first occupation of Germany by Allied Expeditionary Force], in *Documents on Germany under Occupation 1945-1954* edited by B. Ruhm von Oppen (London, 1955), pp. 9-11.
[112] Dr. Walter Strauß, Secretary of State for Hessen 1946-1947, quoted by T. Pünder, *Das bizonale Interregnum. Die Geschichte des Vereinigten Wirtschaftsgebiets 1946-1949* (Waiblingen, 1966), p. 100.
[113] *Keesings Archiv der Gegenwart* (18 May 1948), p. 1502.
[114] *Gesetzblatt der Deutschen Demokratischen Republik* (1949), pp. 4-16 (p. 6).

Both at Herrenchiemsee (10-23 August 1948) and subsequently in Bonn, the question of whether a provisional state could have a flag had to be answered before delegates could choose the federal colours and flag. Much like their successors would do in Bonn, a majority of delegates at Herrenchiemsee decided that a flag was necessary for technical and political reasons.[115] In order to avoid creating the impression of a 'separate' flag, the colours black-red-gold were chosen, since they had been the colours of the German unity and freedom movement from its beginning, as well as the emblem of the German Republic. The majority formulation of article 23 of the Herrenchiemsee draft consequently declared that the flag was to be "the black-red-gold flag of the German Republic" and that the details were to be regulated by law.[116] The minority recommended that the federal authorities, foreign missions, and sea-going ships, fly the colours black-red-gold until the matter was regulated by law.[117] A further minority was against regulation of the federal colours in the Basic Law at all and recommended their regulation in a flag law.[118]

When the Parliamentary Council began its deliberations in Bonn, responsibility for the question of the federal colours and flag was given to the Basic Questions Committee under the chairmanship of von Mangoldt. Practical considerations persuaded delegates that it was necessary to introduce a flag: West German trade would benefit from no longer having to fly the 'C' flag of occupation but instead having an internationally identifiable symbol.[119] The citizens of the new West German state also needed a visual symbol with which they could identify their government. Initially the debate in the Basic Questions Committee focussed on whether the Bonn assembly should specify only the federal colours. Just specifying the colours meant leaving the design of the flag to subsequent legislators. Many delegates felt that this path raised the prospect of renewing the *Flaggenstreit* of the Weimar Republic and therefore advocated fixing the design of the flag in the Basic Law itself. Heuss and Bergsträsser both argued forcefully

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[115] *PR. A&P*, II, p. 204.
[116] Ibid., p. 583.
[117] Ibid., p. 583.
[118] Ibid., p. 583.
[119] 'C' flag was the Provisional Civil Ensign or C-Ensign, the international signal flag for 'c' with triangle cut out on right, to be worn by every German or ex-German vessel under Allied Control Authority. Control Council Law No. 39, 30 November 1946, in Klein, *Bonner Kommentar*, p. 14.

in favour of specifying the flag's design in the constitution.[120] Heuss, in particular, argued that this needed to be done to prevent the "propagandists in the Eastern zone" from laying sole claim to the colours black-red-gold.[121] (See above, p. 77.) Nobody proposed re-introducing the imperial colours in Bonn, presumably because they were identified too closely with the excesses of German nationalism, which was now completely discredited.

Whilst the Basic Questions Committee could agree on the colours, it could not agree on the design of the flag. SPD representatives favoured the black-red-gold tricolour of 1848/9 and Weimar, which, they believed, represented Germany's democratic tradition. Heuss shared this view and was adamant that the Council should not create new symbols but reintroduce the black-red-gold combination which had historical symbolism.[122] Those on the right of the political spectrum were more wary of reintroducing this flag. As reasons, von Mangoldt cited difficulties in recognizing the black-red-gold tricolour, the need to create something new, and the fact that for historical reasons the old tricolour met with resistance in fairly broad circles of the public.[123] The CDU therefore proposed a new design: a black cross with a gold edge on a red background.[124] The design was inspired by the wish to mark a new beginning and the desire to show Germany's attachment to the *Abendland* in order to set it apart from its atheist Communist neighbours to the East, evident also in the debates about an *invocatio dei*. (See chapter V, pp. 207-218.) Unlike in 1919, and in contrast with the debate over the appellation of the new German state, when the DP advocated adhering to the imperial 'Reich' (see below, p. 92), no one proposed a return to the imperial colours in the Parliamentary Council.[125]

Members of the Basic Questions Committee could not agree. Consequently, they submitted two variants to the Main Committee, one proposing the black-red-gold

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[120] 14 and 20 October 1948, in *PR. A&P*, V/I, p. 301 and p. 341 respectively.
[121] 18 October 1948, in ibid., p. 302.
[122] E.H.M. Lange, 'Theodor Heuss und die Entstehung des Grundgesetzes', in *liberal - Vierteljahresheft für Politik und Kultur* 35/3 (1993), pp. 61-69 (p. 66).
[123] 3 November 1948, in *PR. A&P*, V/I, p. 465.
[124] 5 November 1948, in ibid., p. 485.
[125] The DP did, however, adopt black-white-red as its campaign colours in the federal election in August 1949, in Myers Feinstein (2001), p. 30.

tricolour, the other the CDU's new design.[126] Many of the arguments in the Main Committee, which was chaired by Prof. Carlo Schmid (SPD), echoed those used in the Basic Questions Committee. On 17 November Dr. Robert Lehr (CDU) put forward the CDU proposal for a black cross with a gold edge on a red background.[127] Bergsträsser promptly dismissed the proposal and argued in favour of the black-red-gold tricolour.[128] Strauß questioned whether the tricolour really had the attraction Bergsträsser claimed in light of the public echo.[129] In his view, the echo had shown that people, especially young people, would be more prepared to gather around a new symbol than the old black-red-gold flag. Strauß was backed up by his party colleague von Mangoldt, who referred to the great and still growing number of letters the Council was receiving on the subject, which often incorporated a cross in their proposal.[130]

In the ensuing discussion about these letters of submission, von Mangoldt believed that they should not be passed over with "a simple movement of the hand".[131] Instead he proposed the creation of a subcommittee to sift through the letters to establish which views were widely held in the population. He continued:

> "No part of the Basic Law has attracted such strong interest and, I think, we should at least once here respond to that which has been suggested to us."

Much like Bergsträsser's reaction to the potential contribution from an expert lawyer quoted above (see above, p. 60), von Mangoldt's "at least once" here implies that public comment was only taken up when it suited the MdPR or – as subsequent chapters will show – when it could not be ignored.[132] In his reply Bergsträsser expressed his scepticism about letters of submission and questioned how representative they were.[133] If few letters argued in favour of the Weimar flag design, he said, it was because its partisans assumed that these colours would remain exactly the same as they had been at the centenary celebration of the Paulskirche parliament in May 1948 and when the Parliamentary

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[126] 5 November 1948, in *PR. A&P*, V/I, p. 494.
[127] *Parlamentarischer Rat. Verhandlungen des Hauptausschusses*, p. 49.
[128] Ibid., p. 49.
[129] Ibid., p. 49.
[130] Ibid., p. 50.
[131] Ibid., p. 50.
[132] Bergsträsser, 18 November 1948, in *PR. A&P*, V/II, p. 587.
[133] *Parlamentarischer Rat. Verhandlungen des Hauptausschusses*, p. 50.

Council began its work. If its supporters were encouraged to write, he believed, many letters could be presented to the Council in favour of the black-red-gold tricolour. Dr. Hans-Christoph Seebohm (DP) also thought that it was difficult to judge the mood of the people on the basis of the letters of submission received, since, in his view, it was always only the more politically active who composed letters.[134] Seebohm lamented that

> "the public had only reacted to this question, since the other problems of our work are much more serious and crucial."

By disparaging the public's ability to identify the important topics of discussion, Seebohm questioned the people's ability to contribute to the Council's work in a meaningful way. At the same time such views suggest that he thought the majority of Germans was not sufficiently interested in the formulation of the Basic Law. Clearly, therefore, and in keeping with his Conservative outlook, Seebohm shared the widespread perception of limited public interest in the assembly's work.

Heuss, like Bergsträsser, was unconvinced about the significance to be attached to the letters of submission. Both men, both historians, were similarly sceptical about the letters of submission sent in favour of the federal guarantee of *Elternrecht* in 1948/9. (See chapter V, pp. 235-236.) Heuss believed that many of the letters were from people who were simply playing with colours.[135] Concluding the discussion on how to proceed, since delegates could not agree, Adolf Schönfelder (SPD) argued that it was necessary at the very least to reach a decision on the colours.[136] He explained,

> "if we were to postpone a vote today, after having begun to discuss the question, this would be a signal to the press and there would be the possibility that this [decision] would be used against us in terms of public opinion."

The Main Committee agreed and voted 11:8 in favour of black, red and gold as the federal colours - with commas rather than hyphens, since it was felt that hyphens suggested a decision had already been taken on the arrangement of the colours - and to decide upon the flag's design at a later date.[137] Schönfelder's remark and the committee's

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[134] Ibid., pp. 50-51.
[135] Ibid., p. 51.
[136] Ibid., p. 52.
[137] Ibid., p. 52.

vote illustrate how mindful the majority was to avert any possibility of a recurrence of the *Flaggenstreit*.

On 8 December Bergsträsser reported back to the Main Committee on behalf of the subcommittee set up to read the letters of submission on the flag sent to the assembly.[138] The subcommittee comprised Bergsträsser for the SPD, Lambert Lensing for the CDU, and Dr. Hans Reif for the FDP.[139] It acknowledged that the number of letters on the flag was relatively large but was unanimous in its opinion that it was nonetheless difficult to draw conclusions about the people's attitude on this basis.[140] After eliminating all fantastic suggestions, Bergsträsser continued, there were a few letters that advocated the swastika flag, a series of suggestions with black-red-white, and quite a number of suggestions which sought to combine black-white-red with black-red-gold. According to Bergsträsser, these too, however, had to be dismissed in light of the Main Committee's vote in favour of black, red and gold as the federal colours (17 November). Of those who favoured the colours black, red and gold, Bergsträsser explained, some advocated retaining the old flag, and others proposed them in combination with the cross, pointing out that this was the flag of the men of 20 July 1944.[141] Since resolution of the debate in the Main Committee seemed unlikely, its chairman, Schmid, proposed that the Parliamentary Council vote only once on the design of the flag, since this was "a fundamental act".[142] The Main Committee agreed and the decision was therefore passed on to the Plenum.[143]

Rather late in the day, the Plenum addressed the question of the federal colours and flag on 8 May 1949.[144] The SPD proposed that article 22 read "The federal flag shall be black-red-gold.", whilst the CDU/CSU suggested "The federal colours shall be black, red, gold. The design of the flag shall be determined by federal law."[145] Both parties

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[138] Ibid., p. 265.
[139] *PR. A&P*, V/II, p. 873.
[140] No figure was given.
[141] Cf. Myers Feinstein, p. 26.
[142] *Parlamentarischer Rat. Verhandlungen des Hauptausschusses*, p. 265.
[143] Ibid., p. 265.
[144] *PR. A&P*, IX, pp. 587-590.
[145] Ibid., p. 587.

returned to arguments already made in Committee sessions. On behalf of the CDU/CSU, Lehr reiterated his faction's wish to incorporate a cross into the flag's design as a symbol of the *Abendland.*[146] Bergsträsser repeated the SPD's desire to return to the flag of 1848/9 and 1919.[147] No other flag fulfilled the two crucial requirements of an effective symbol, which Bergsträsser identified as tradition and a declaration of intent. Black-red-gold symbolized "Unity in Freedom" both in the past and for the future. He implored his colleagues to reach a decision now to prevent another *Flaggenstreit* in the run-up to the election for the first federal parliament.[148] The CDU/CSU's motion was rejected by 34:23 votes. The subsequent 49:1 votes in favour of the SPD formulation was greeted with lively applause from the SPD and FDP.[149] This then became article 22 of the Basic Law promulgated on 23 May 1949.

The opinions expressed in the letters of submission, as summarized by Bergsträsser in the Main Committee, broadly correspond with the results of a German survey conducted in December 1948.[150] 35% of the respondents favoured the black-red-gold flag design of the Weimar Republic; 15% preferred the new design being considered by the Bonn assembly, which showed a black cross with a gold edge on a red background; 10% rejected the tricolour and the new design; and the remaining 40% were indifferent. Half a year later a different survey produced different results, although the levels of indifference were comparable. 25% opted for the black-red-gold tricolour of 1918, 25% favoured the monarchical black-white-red, 6% chose the CDU's new design, 9% favoured a different combination of colours, and 35% held no opinion.[151] Whilst one may speculate about how different the responses would have been had the surveys associated the black-red-gold tricolour with the Paulskirche rather than Weimar, no clear-cut answer emerges.[152] On the other hand, the surveys make clear that a substantial number of the population had to be won over to the republican flag once the new West German state came into being. The lack of a repeat of the Weimar *Flaggenstreit* is a clear

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[146] Ibid., p. 587.
[147] Ibid., p. 588.
[148] Ibid., p. 589.
[149] Ibid., p. 590.
[150] *Jahrbuch der öffentlichen Meinung 1947-1955*, p. 158.
[151] Institut für Demoskopie, cited by Myers Feinstein (2001), p. 29.
[152] Ibid., p. 29.

indication that the Federal Republic succeeded in winning over adherents to black-red-gold and establishing a symbol that united its citizens. Crucial to this process was the CDU/CSU's decision to rally behind the black-red-gold tricolour, evident already in the final vote in the Plenum on 8 May 1949. (See above, p. 83.) Ongoing party resistance to the black-red-gold tricolour in the Weimar Republic, in contrast, had helped keep alive popular dissatisfaction with the national symbol.

In one of the few newsreels that took the activities of the Parliamentary Council as its subject matter, *Welt im Film* included a clip on '*Wie wird die Flagge?*' in January 1949.[153] It showed the many sacks of post which reached the assembly in Bonn every day. According to the clip, these demonstrated the "lively interest of the public" in the Council's deliberations, particularly, it was implied, in the design of the flag for the new West German state. Indeed, the large volume of letters of submission sent to the Parliamentary Council on this subject led the Council's Secretariat to file them in their own series.[154] In many cases, however, the Secretariat just noted receipt of a letter on the subject of the flag but nothing further apart from the author's name and origin.[155]

Nonetheless, earlier patterns of allegiance can be discerned in the public debate about the flag in 1948/9. Many of the letters of submission which argued against the black-red-gold combination framed their arguments with reference to the past. Yet rather than associate the black-red-gold tricolour with the nineteenth-century fight for constitutional rule, such letters generally referred to the more immediate and troubled history of black-red-gold in the Weimar Republic. For example, Ewald Voje, a 76-year old from Stade, opposed the re-introduction of black-red-gold, since it was associated with the "severe disharmony" of the Weimar Republic.[156] Others made even more explicit their disapproval of the black-red-gold flag, revealing their Conservative nationalist political sentiments in the process. Arnold Hadank from Ingolstadt, for example, made clear that the flag should not be black-red-gold in light of past experience

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[153] *Welt im Film* No. 190, 14 January 1949.
[154] See the eight volumes in BA, Z5/99-106.
[155] See, for example, BA, Z5/109.
[156] 14 September 1948, EN52, in BA, Z5/107. Cf. EN29, in BA, Z5/107.

and its "party-politically compromised nature".[157] Five POWs, recently returned from Siberia, recommended the return to the imperial colours, commenting,

> "why should one return to colours under which a regime could develop that destroyed Germany? Why not return to a flag under which the German Reich was once great?"[158]

Often those who called for the re-introduction of the imperial flag also argued in favour of the name 'Reich' for the state being created.[159] Unlike the Parliamentary Council, they were unable or unwilling to recognize that the imperial colours would in their symbolism contradict the essence of the "democratic and social federal state" being created.[160]

Perhaps in recognition of the divisive potential of the outward expressions of identity, namely the flag, the appellation of the new West German state (see below, pp. 88-94) and the anthem, Herbert Butzke from Opladen proposed an amalgamation of the two principal competing strands from the past.[161] He suggested the introduction of a black-red-gold-white flag and the name 'Reichsrepublik Deutschland'. Other letter-writers believed new symbols were needed. For this reason, much like the CDU/CSU in the Bonn assembly, they advocated the incorporation of the Christian cross into the flag's design.[162] Reference was not made to Germany's status and sovereignty *vis à vis* the Western Allies, although someone suggested at the time that the flag should be white so that it could be changed easily.[163] Perhaps this lack of reference in the letters of submission resulted from the recognition that the Allies had not made any stipulations on the design other than outlawing all Nazi symbols. On the other hand, this lack is somewhat incongruous with the hope that the Basic Law would be a step on the path to the re-attainment of full sovereignty, since a flag is an outward symbol of sovereignty. Similarly there seems to have been no reference in the letters of submission on the flag to Germany's division, of which two flags were also an outward symbol, except for the desire to set West Germany apart from its Communist East German neighbour. Some

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[157] 17 September 1948, EN30, in BA, Z5/107.
[158] 27 February 1949, EN52, in BA, Z5/115.
[159] See, for example, EN64, in BA, Z5/107.
[160] Article 20 of Basic Law, in *Bundesgesetzblatt* 1 (23 May 1949), p. 3.
[161] 8 October 1948, EN101, in BA, Z5/107. For debate about anthem, see M. Myers Feinstein, 'Deutschland über alles? The National Anthem Debate in the Federal Republic of Germany', in *Journal of Central European History* 33/4 (2000), pp. 505-531 and Myers Feinstein (2001), pp. 85-140.
[162] See, for example, EN96, in BA, Z5/107.
[163] Communication to the author by H. Pogge von Strandmann, 6 September 2002.

letters called for a referendum on the flag, perhaps to ensure that the decision was a popular one and would therefore be more widely accepted.[164] As on so many other aspects of the Basic Law, the question of a referendum on the flag was not raised in the Parliamentary Council.[165]

The volume of newspaper coverage on the question of the design of the flag does not compare with the coverage given to *Elternrecht* or full equality for women, two of the other subjects on which the Bonn assembly received many more letters of submission. Most press coverage was of a factual kind, reporting on the discussions in the Council, with few opinion pieces written on the design of the flag. Almost all articles of length were written in response to the interest expressed by the population in the flag's design.[166] Clearly, the press had been surprised by the degree of public interest shown in the flag. The CDU-leaning *Allgemeine Kölnische Rundschau* reported in mid November upon the Main Committee's determination to avoid launching another *Flaggenstreit*.[167] Rather unusually, it remarked on the number of letters of submission in favour of the Christian cross being included in the design. The remark clearly reflected the paper's Christian leaning and its support of the CDU/CSU's proposal. Equally unusual, the generally stalwart supporter of the CDU/CSU, Wenger, had condemned the CDU's new proposal as a "first-class funeral flag" a week earlier in the CDU-leaning *Rheinischer Merkur*.[168] He preferred the black-red-gold tricolour of 1848/9, which represented a tradition "of which Germany really did not need to be ashamed."

Several newspapers listed the number of letters received on the flag's design. The above-party *Allgemeine Zeitung* observed that over a quarter of the more than 600 letters of submission the Council had received by the close of 1948 were on the federal colours.[169] Much like the subcommittee responsible for sifting the letters of submission, it noted that most correspondents favoured the old colours black-red-gold, some preferred

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[164] See, for example, EN4398 or EN4406, in BA, Z5/114.
[165] Cf. Niclauß (1992), pp. 3-15.
[166] See, for example, CDU-leaning *Frankfurter Neue Presse*, or US-zone *Weser Kurier*, 20 October and 9 November 1948 respectively.
[167] 19 November 1948.
[168] 13 November 1948.
[169] 4 January 1949.

black-white-red, and others proposed completely new colour combinations. It is possible that the newspapers had seen a copy of Bergsträsser's report of 8 December. In a rare piece of commentary on the subject, but one which also showed an increasing German self-awareness, the above-party *Badische Zeitung* examined the letters of submission sent to Bonn.[170] It too observed that about a quarter of the letters addressed the question of the design of the flag. Its comment was sharp, however,

> "a state symbol should certainly be taken seriously, but the content which it represents is actually more important. Only that which is to be built in future can give the symbol credit and dignity. Does not the zeal, with which so many are getting excited about the choice of flag, signal a dangerous tendency to political dreaming?"

There was a certain paradox here, evident not only in the above-party *Badische Zeitung*: on the one hand, the lack of public letter-writing was decried, and on the other, when letters were written, they were criticized for being inadequate.

In March, the independent Socialist *Telegraf* counted 4,134 letters of submission received by the assembly to date.[171] It reported that whilst the question of the flag still enjoyed a "great echo", *Elternrecht* had overtaken it as the primary subject for letters of submission. The *Telegraf* observed that their authors sought to elucidate the "deeply symbolical meaning" of the various elements of the suggested flag composition in "long-winded letters". Two months later the Z-leaning *Rhein-Ruhr-Zeitung*, albeit in an article on *Elternrecht*, noted that the Council had received 5,131 letters in total, of which 314 were on the electoral law, 353 on the flag, 15 on the national anthem, and 2,690 on *Elternrecht*.[172] Clearly, the letters exerted a sufficient fascination on several newspapers for them to get figures from the Secretariat or to count them personally.

In May 1949, the flag was once again the subject of occasional articles. The democratic Christian *Tag*, for example, printed a small article entitled "Black-red-gold", which argued that the Germans should unite behind the flag, and that the *Fahnenspruch* should read "Unity-Freedom-Peace!"[173] The CDU-leaning *Allgemeine Kölnische*

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[170] 8/9 January 1949.
[171] 5 March 1949.
[172] 28 May 1949. See chapter I for comment on nature of this source, p. 43.
[173] 11 May 1949.

Rundschau carried a piece on the history of the flag.[174] Upon completion of the Basic Law in mid May much of the press evaluated the constitution's contents but article 22 on the colours of the flag was not cited. Many newspapers, however, referred to the black-red-gold tricolour that flew atop the Parliamentary Council's building, when reporting on the beginning of the assembly's deliberations or the closing ceremony.[175] Writing upon the preparations for the final ceremony on 23 May, the above-party *Westdeutsche Zeitung*'s headline announced,

> "Bonn is the first German town to fly the flag. 2000 black-red-gold flags [to be flown] for promulgation of Basic Law".[176]

Only the DP-leaning *Deutsche Volkszeitung* adopted a negative note.[177] It contended that the subject had been discussed too early and that the black-red-gold flag would not unite Germans. (Although the DP had accepted black-red-gold in the Bonn assembly, it went on to use the imperial black-white-red as its campaign colours in the federal elections in August 1949. Six years later, however, the DP endorsed the colours black-red-gold again, when it introduced a motion in the *Bundestag* that black-red-gold posts be erected along the border.[178]) The *Deutsche Volkszeitung*'s pessimistic article was an exception. The majority of articles regarded the flying of the black-red-gold flag as symbolic of the new beginning. The real challenge had, however, already been identified by the *Allgemeine Zeitung* in November.[179] Writing shortly after the decision in the Basic Questions Committee in favour of the colours black-red-gold, the newspaper commented,

> "Germans will now have to demonstrate that they are capable of showing greater loyalty to the old symbol than they did under Weimar. A good portion of their fate will depend on passing this test."

It was a challenge successfully met and celebrated with re-unification under the black-red-gold tricolour four decades later.

The search for a new name

On 23 May 1949 a "Basic Law for the Federal Republic of Germany" was promulgated. Under this heading, the preamble explained that the German people of the

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[174] 14 May 1949. Cf. article in *Welt*, published by the British Military Government, 24 May 1949.
[175] See, for example, *Spiegel* 2/37 (11 September 1948), CDU-leaning *Rheinische Post*, 11 September 1948, and above-party *Rheinpfalz*, 24 May 1949.
[176] 20 May 1949.
[177] 21 May 1949.
[178] Myers Feinstein (2001), p. 30 and p. 36.
[179] 4 November 1948.

Länder Baden, Bavaria, Bremen, Hamburg, Hesse, Lower Saxony, North Rhine Westphalia, Rhineland-Palatinate, Schleswig-Holstein, Württemberg-Baden and Württemberg-Hohenzollern had enacted a Basic Law for the Federal Republic of Germany. The elements 'federal' and 'republic' in the name given to the new West German state emphasized that it was a republic made up of a federation of German *Länder*. The geographical term 'Germany' bound together the people of the various *Länder* and signalled the aspiration towards German unity. Article 20, paragraph 1 made explicit that the Federal Republic was to be a "democratic and social federal state". In contrast with 1919 therefore, any reference to an imperial or monarchical form of state was banished from the constitution and the name of the state in 1949.

The union of German princes and free city-states that emerged from the Congress of Vienna in 1815 called itself *Deutscher Bund* or 'German Confederation' and was only dissolved in 1866 through the Prusso-Austrian War. Following the war in 1866, Bismarck united the Northern German states in the *Norddeutscher Bund* or 'North German Federation'. Both the constitutions of 1849, which did not come into effect, and 1871 were headed 'Constitution of the German Reich'. On neither occasion was there much debate about the name. 'Reich' had deep resonance in Germany, long after the demise of the Holy Roman Empire of the German Nation in 1806, as was evident still in the debates in 1919 and, albeit in much reduced form, in 1948/9. In 1849 and 1871, 'Reich' described the imperial framework of the German state being created. After World War I, however, the term 'Reich' became, technically speaking, anachronistic in light of the Emperor's abdication in 1918. The National Assembly responsible for formulating the constitution for the new German state in 1919 discussed different names but eventually decided to keep the appellation Reich, whilst article 1 read, "The German Reich is a Republic."[180] Various arguments were used to support both the case for change and the case for retaining the word 'Reich'. Dr. Oskar Cohn (USPD), for example, argued in favour of 'Deutsche Republik' rather than 'Deutsches Reich' as the name for the new German Republic being created in Weimar, since the word 'Reich' had negative connotations in

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[180] Hucko, p. 149.

France and England.[181] For Dr. Hugo Preuss (DDP), one of the primary architects of the constitution, however, the name 'Reich' had such symbolic meaning, representing centuries of tradition and the much sought-after and finally achieved German unity, that it could not be dismissed.[182]

Hitler demonstrated the power of the term 'Reich' when he chose to employ it to describe National Socialist rule. Yet it was the excesses of the Third Reich which for many finally made the term unacceptable subsequently.[183] The majority of the delegates at the Herrenchiemsee convent (10-23 August 1948) opted for 'Bund Deutscher Länder'.[184] According to Schmid, the name 'Reich' was not even discussed.[185] As Schmid put it early in the Herrenchiemsee deliberations, "nomina sunt omina".[186] The name of the new state, Schmid argued, suggested the direction in which the new state wished to go.

When the Parliamentary Council began its work in September 1948, the task of deciding the name for the new state was given to the Basic Questions Committee, chaired by von Mangoldt. Although one or two SPD politicians initially questioned whether the provisional state should even be given a name, the discussion quickly focussed on the extent to which the federal element should be emphasized in the name.[187] Whilst the CDU/CSU insisted on the federal element, the SPD considered 'republic' to be an essential component of the name. In his opening speech to the Plenum on 9 September, Heuss proposed the name 'Federal Republic of Germany'.[188] He elaborated on his proposal in the first discussion of the name in the Basic Questions Committee on 6 October.[189] In his view, the inclusion of 'Germany' gave the name "some sentimental rather than power-political pathos", which the formulations 'German Länder', 'German

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[181] 2 July 1919, in *Verhandlungen der verfassunggebenden Deutschen Nationalversammlung*, vol. 327, p. 1209.
[182] 24 February 1919, in ibid., vol. 326, p. 285.
[183] Cf. Schmid in Plenum, 6 May 1949, in *PR. A&P*, IX, p. 437.
[184] *PR. A&P*, II, pp. 578.
[185] *PR. A&P*, V/I, p. 169.
[186] 11 August 1948, in *PR. A&P*, II, pp. 70. Friedrich von Schiller was not quoted.
[187] Dr. Walter Menzel to SPD executive, 17 September 1948, in *PR. A&P*, IX, p. 34, footnote 31.
[188] Ibid., p. 107.
[189] *PR. A&P*, V/I, p. 171.

Union' and 'German Republic' all lacked. Schmid argued, much like Cohn had done in Weimar 30 years earlier, that for psychological reasons the name 'Reich' would no longer be acceptable abroad.[190] The Allies made no reference to the name of the future West German state, although it is highly likely that they would have regarded the name 'Reich' as contrary to their demand that a democracy be established, as Heuss pointed out to his colleagues.[191]

On the basis of what he had heard from many different sides, von Mangoldt believed that German youth aspired to the appellation 'Reich'.[192] However, he concurred with Schmid that 'Reich' had too many negative associations to be considered in Bonn. His party colleague, Jakob Kaiser, on the other hand, feared that abandonment of the concept 'Reich' would lead to a loss of emotional attachment to the new German state.[193] Von Mangoldt concluded the discussion by noting agreement on the name 'Republic of Germany', which several newspapers then proclaimed in their headlines in the following days.[194] In the subsequent discussion on 13 October, Heuss disagreed with Kaiser, convinced that an attachment to 'Republic' would soon develop.[195] Dr. Anton Pfeiffer (CSU) had, however, already let it be known that his faction wanted the name '*Bundesstaat*' or 'Federal State'.[196] Earlier that day, the CDU/CSU faction had voted 12:7 in favour of 'Federal State of Germany', whilst only 4 had voted in favour of 'Reich'.[197] 18 voted in favour of the 'Federal Republic of Germany' as a possible alternative to 'Federal State of Germany'. When Schmid responded that the SPD insisted on the inclusion of 'Republic', Pfeiffer indicated that his faction would be willing to consider 'Federal Republic' but was adamant that the CDU/CSU wanted "to underline the federal principle through the word 'Bund'."[198] Süsterhenn reiterated the CDU/CSU's demand in

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[190] Ibid., p. 169.
[191] 7 October 1948, in ibid., p. 173.
[192] Ibid., p. 170.
[193] Ibid., p. 170.
[194] Ibid., p. 175.
[195] Ibid., p. 281.
[196] Ibid., p. 280.
[197] *Die CDU/CSU im Parlamentarischen Rat*, p. 75.
[198] *PR. A&P*, V/I, p. 280.

the Plenum on 20 October.[199] The Basic Questions Committee agreed upon the name 'Federal Republic of Germany' in the first reading.[200]

In the second reading, the discussion on the name of the new German state was taken up again briefly in the discussion on the preamble. Proposals put forward by the Bavarians and the DP in favour of 'Bund deutscher Länder' and 'Reich' were both dismissed for much the same reasons as similar calls had been dismissed in the first reading.[201] No further discussion of the name took place in the third reading in the Basic Questions Committee in January.[202] In none of its four readings did the Main Committee discuss the appellation of the future West German state, although the formulation of the preamble was debated in the first reading.[203] In the first and second readings in the Plenum, however, the DP again called - unsuccessfully - for the heading to read 'Basic Law for the revival (*Erneuerung*) of the German Reich' to assert the continuity of the German state.[204] The failure to express the revival of the German Reich was subsequently cited by the DP as one of the reasons for its rejection of the Basic Law in the third reading in the Plenum on 8 May.[205] Presenting the results of the last reading in the Main Committee to the Plenum on 8 May, Schmid gave a final explanation for the choice of 'Federal Republic of Germany'.[206] He emphasized once again the need for a new name, the federal character of the state being created and the desire to put this new state in the republican tradition.

Whilst newspapers followed the Council's debates on the name for the new state, few pieces of commentary were written on the subject. The *Tagesspiegel*, published in the US sector of Berlin, did, however, discuss the significance of the name in mid October.[207] It believed that the politics of a state and the attitude of its citizens depended

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[199] *PR. A&P*, IX, p. 190.
[200] *PR. A&P*, V/I, pp. 333-340.
[201] 9 November 1948, in ibid., pp. 496-520.
[202] 19 January 1949, in *PR. A&P*, V/II, pp. 965-978 (p. 971).
[203] 10 December 1948, in *Verhandlungen des Hauptausschusses*, pp. 306-310.
[204] 20 October 1948 and 6 May 1949, in *PR. A&P*, IX, p. 200 and p. 445 respectively. Cf. DP-leaning *Niederdeutsche Zeitung*, 23 October 1948.
[205] *PR. A&P*, IX, p. 622.
[206] Ibid., pp. 637-638.
[207] 12 October 1948.

more than was generally supposed on the name of the state. Consequently, "a state, on whose emblems and seals is written 'German Reich', is simply not a republic." It condemned those who favoured the name 'Reich', arguing that they wanted to undo the capitulation and "just as after 1918 win the war retrospectively". In its view, identification with the Reich was one of the things that had constantly undermined democracy in Germany, since at its core lay not the democratic way of life but the society of warriors. The *Tagesspiegel*'s arguments tie in with those used against the old imperial colours - Germany needed to declare her democratic status openly. They underline the significance of the name and symbols to Germany's future, not only to satisfy her critics abroad but also to avoid repeating past mistakes.

Two other exceptions to the general absence of comment on the name of the new state are to be found in the CDU-leaning *Frankfurter Neue Presse* and in the *Süddeutsche Zeitung*, both published in the American zone. They approved of how the name made explicit the federal nature of the new state. For the *Frankfurter Neue Presse* the choice of 'Federal Republic of Germany' as name was to be welcomed, since it ensured an open-door policy.[208] It kept open the possibility for all German territories on the other side of the Iron Curtain to be incorporated into the Federal Republic. A fortnight later, one of the *Süddeutsche Zeitung*'s correspondents, Heinz Holldack, argued that the change of name from 'Reich' to 'Bund', which called forth memories of pre-Bismarck Germany, was not just a change of title but indicative of the welcome loosening of the unitary-state structures introduced by Bismarck and tightened under Weimar and Hitler.[209] Virtually no comment was passed on the name given to the West German state by the press in its evaluation of the Basic Law upon its conclusion in May 1949, although a large number of the evaluating articles were headed 'Federal Republic of Germany'.[210] Either the name of

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[208] 27 April 1949. On 14 October 1948, Wilhelm Ingensand, writing in the same paper, had criticized the preamble for speaking of a 'Republic of Germany', since he thought that this name suggested a centralist tendency which contradicted the requirement of a government of federal type.

[209] 10 May 1949. Heinz Holldack (1915-1971), correspondent for *Süddeutsche Zeitung* 1947-1954, rejoined German Diplomatic Service 1954, in P. Hoser, 'Vom provinziellen Lizenzblatt zur "New York Times von Bayern". Die Anfänge der *Süddeutschen Zeitung*', in L. Hachmeister and F. Siering (eds.), *Die Herren Journalisten. Die Elite der deutschen Presse nach 1945* (Munich, 2002), pp. 121-145 (p. 132).

[210] See, for example, above-party *Westdeutsche Allgemeine* or *Tagesspiegel*, published in US sector of Berlin, 24 and 25 May 1949.

the new state was not regarded as important or the new name met with few (voiced) objections in the press.

In contrast with the question of the pattern of the flag, only a handful of letters of submission addressed the name of the future West German state. Aside from Herbert Butzke's reference to Germany's imperial past with his proposal for 'Reichsrepublik Deutschland' (see above, p. 85), the suggestions varied primarily in their emphasis upon Germany's federal nature. Thus, for example, Johann Wendler from Düsseldorf proposed the appellation 'Staatenbund Deutschland', whilst Wilhelm Dietrich, Rektor a.D., from Fritzlau, preferred 'Deutschland' over 'Bund deutscher Länder'.[211] Evidently, the public debate on this topic, as it manifested itself in the press and in the letters sent to Bonn, was negligible and, although delegates made reference to the alleged desires of the people, the public had no direct impact on the choice of name.

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[211] [?] September 1948, EN18, and 3 September 1948, EN51 respectively, in BA, Z5/107.

Chapter III - The Western Allies and the Basic Law: Press perceptions as a reflection of the reality of interaction

The framework for interaction

In contrast to 1919, the German press coverage of the constitutional debates 1948/9 took place within a framework and timetable largely but not entirely determined by the Western Allies. Drafting the constitution took longer than expected by either the Germans or the Allies. Newspapers in all three zones were aware of the Allied determination of the framework and stated this openly.[1] Great Britain, France and the United States set out the German remit in the Frankfurt Documents on 1 July 1948.[2] Document I authorized the Ministers President to set up an assembly for the formulation of the German constitution, which

> "will draft a democratic constitution which will establish for the participating states a governmental structure of federal type which is best adapted to the eventual re-establishment of German unity at present disrupted, and which will protect the rights of the participating states, provide adequate authority, and contain guarantees of individual rights and freedoms."[3]

This authorization was an important step in the Allied policy of making German politicians responsible for the introduction of democracy in the Western zones of occupation. It had been preceded by the formulation of *Länder* constitutions in the French and American zones of occupation 1946/7, as well as provisional constitutions in the British zone in 1946. (See chapter I, pp. 6-10.) Indeed the German-Allied exchange of views on the formulation of the *Länder* constitutions helped prepare the way for the Allied-German exchange during the Basic Law's formulation, in particular over how best to achieve a constitution acceptable to both Allies and Germans.[4]

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1 See, for example, SPD-leaning *Aachener Volkszeitung* (British zone), 27 October 1948, *Tagesspiegel* (American sector of Berlin), 9 November 1948, and Christian *Schwarzwälder Post* (French zone), 12 December 1948.

2 For events leading up to July 1948, see chapter I, pp. 4-13.

3 Document I, in *Documents on Germany under Occupation 1945-1954* edited by B. Ruhm von Oppen (London, 1955), pp. 315-316.

4 See, for example, B. Fait, 'In einer Atmosphäre von Freiheit: Die Rolle der Amerikaner bei der Verfassunggebung in den Ländern', in *VfZ* 33 (1985), pp. 420-455 (pp. 431-433); B. Fait, *Demokratische Erneuerung unter dem Sternenbanner: Amerikanische Kontrolle und Verfassunggebung in Bayern 1946* (Düsseldorf, 1998), pp. 17-18; H. Auerbach, 'Die politischen Anfänge Carlo Schmids: Kooperation und Konfrontation mit der französischen Besatzungsmacht 1945-1948', in *VfZ* 36 (1988), pp. 595-

Frankfurt Document II required a review of the *Länder*'s size and borders. Document III dealt with the occupation statute, which was to be drawn up by the Allies whilst the Parliamentary Council was in session.[5] The statute was to set out the powers, including control of Germany's foreign policy, which the Allies would retain. A first draft of the Basic Law was prepared by German constitutional experts in Herrenchiemsee 10-23 August 1948.[6] The Western Allies also determined the set-up of the press in each of their zones, although by 1948/9 the press was able to operate in considerable freedom compared with the first years of the occupation. (See chapter I, pp. 24-35.)

The Western Allies did not withdraw from the constitutional process once they had initiated it – it had never been their intention to do so. The Allies did, however, seek to keep their own involvement within certain bounds. In the event, the Western Allies made four major interventions in the work of the Parliamentary Council on 22 November, 2 March, 5 and 22 April. It was inevitable that the German press coverage of the formulation of the Basic Law should include coverage of the Allied involvement in the constitutional debate at all levels, from the decisions taken by the governments in Washington, Paris and London down to the activities of the Allied liaison officers in Bonn itself. It is on this press portrayal of the Allied involvement that the chapter concentrates.

The 'Western Allies' were not always, though predominantly, seen as one entity. They were generally referred to as the *Westmächte* or 'Western powers' in the press. How the activities of Britain, France and the United States were perceived varied according to who was doing the perceiving, when and with which purpose. Differences in attitude towards the different powers and differences in the perception of the roles played by Britain, France and the United States do on occasion come through in the press coverage of the constitutional debates. Generally the press differentiated between the three powers in order to admonish rather than to praise one power over another, or to present the German position with particular reference to a

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648 (p. 623); W. Mühlhausen, *Hessen 1945-1950. Zur politischen Geschichte eines Landes in der Besatzungszeit* (Frankfurt/M., 1985), pp. 231-305.

[5] Documents II and III, in *Documents on Germany under Occupation*, pp. 316-318.

[6] *PR. A&P*, II, pp. 503-640.

position adopted by one of the powers. This often reflected the zonal origin of the newspaper. There was no all-German paper. The press did not, on the whole, seek to aggravate the differences between the Allies. In November 1948, for example, the French position received much attention, since it was believed to be primarily the French who were pushing for an Allied warning to be given to the Parliamentary Council to adhere strictly to the Frankfurt Documents.[7]

Analysis of the press is the principal means for establishing the extent to which the perception of the Allied role in the constitutional debate corresponded with reality. Newspaper articles have been selected for inclusion below on the basis of their representative nature or for their particular commentary on the Allied-German exchange, be it because of the acuity of their comment or because the comment itself is revealing of the perception of the Allied role. It is only with the benefit of hindsight that some comments may be considered to have been more percipient than others; yet all are interesting for the possibilities of interpretation at the time that they reveal. Study of the press gives an insight into the thinking of the time on the ground and gives the basis for subsequent arguments on, for example, attitudes towards the Basic Law or towards democracy in Germany at the time.

The perception of the Allied role exposes German attitudes to the formulation of the constitution and the extent to which this process was seen as German and, more broadly, to the interaction between the occupier and the occupied. The latter still calls for a fuller analysis than it has hitherto received.[8] Discussion of whether the lessons from the past, variously defined, were learned by the Allies and German politicians in 1948/9 frequently referred back to 1919. In 1919 the directly elected National Assembly formulated a constitution for Germany, which, although it had lost territory, was still a sovereign state. The National Assembly was able to draft a constitution without interference from the victors of the First World War, although the Allies did put pressure on Germany to sign a peace treaty during the assembly's deliberations. In

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[7] For example, independent *Nordsee Zeitung* (US zone), 6 November 1948, liberal *Rheinisch-Pfälzische Rundschau* (French zone) or CDU-leaning *Hannoversche Neueste Nachrichten* (British zone), 9 November 1948.

[8] Cf. S. Lee, '"Erziehung zur Demokratie". Post-war German Reconstruction in Biographical and Historical Writing', in *German History* 18/3 (2000), pp. 364-374 (p. 369); and A. Birke, *Bundesrepublik Deutschland: Verfassung, Parlament und Parteien*, vol. 41, *Enzyklopädie deutscher Geschichte* edited by L. Gall (Munich, 1997), p. 61.

1948/9 both the Allies and the indirectly elected Parliamentary Council sought to ensure that the Basic Law was and was seen to be, though perhaps for different reasons, a German product.[9] This can be linked to the fear of the constitution being seen to be an Allied *Diktat* by sections of the German population – that is of the stigma 'Allied' being attached to the Basic Law, and to the fear of the Council's delegates of being labelled as collaborators. Both these fears indicate a longer-term awareness and perspective of the perception of the Allied role. Fear of the collaborationist label suggests that the Western Allies' occupation and the Western German state being established were not considered final and can be linked to the fear of the westward movement of Communism and the perceived ambitions of the Soviets west of the River Elbe. Fear of an Allied stigma is indicative of how much leading Germans and Allies were marked by the experiences of the inter-war period and the need to learn from the past.

It is interesting to consider the extent to which the perception of the Allied role corresponded with the reality of Allied involvement. However, the focus will very much be on the perception rather than on the reality. The reality has already been discussed elsewhere, whilst the perception shaped by the press, though touched upon, has not been adequately explored. To give but a few examples: Heinrich Wilms, in his key study of the Allied influence on the Federal Republic's constitution, examined the Basic Law very much from the perspective of legal constitutional history.[10] Frank Pfetsch examined the influence of Britain, France and the United States on the process of the formulation of the various *Länder* constitutions as well as the Basic Law. He identified the Allied role as catalytic in this process, but did not investigate the extent to which this identification was made at the time nor how the Allied role was perceived by contemporaries.[11]

Whilst Rudolf Morsey refers to the press coverage of the Parliamentary Council's activities, his focus is very much on the interaction between the assembly's

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[9] See chapter I on election of members of Parliamentary Council, p. 13.
[10] H. Wilms, *Ausländische Einwirkungen auf die Entstehung des Grundgesetzes* (Stuttgart, 1999).
[11] F.R. Pfetsch, *Ursprünge der Zweiten Republik: Prozesse der Verfassungsgebung in den Westzonen und in der Bundesrepublik* (Opladen, 1990), especially pp. 153-244.

delegates and Allied officials.[12] He does not consider the role of the media coverage in shaping the perception of the Allied-German exchange outside the Parliamentary Council. In a similar fashion, Spevack concentrates on reconstructing the MdPR's contact with Allied ideas and personnel prior to and during the constitutional deliberations.[13] Occasionally he refers to the press coverage of the Allied-German exchange, but does not analyse it, which leads him subsequently to underestimate the public's response to the formulation of the Basic Law.[14] The perception of the role of the Western Allies in the drafting of the Basic Law is barely touched upon in the introduction to the volume of documents setting out the framework within which the Parliamentary Council operated nor in the introduction to the collection of documents on the relations between the Military Governments and the Parliamentary Council.[15] References to newspapers are made, generally with quotations, but newspapers are not examined for the overall picture of the Allied role they give and how this contributed to the wider perception of the Allied role.

The beginning of the Parliamentary Council's deliberations in September 1948 and the completion of the Basic Law's formulation in May 1949 were occasions on which the press took positions on the Allied role and are obvious points for investigation. So too are the occasions on which the Allies outlined in greater detail their requirements for the German constitution to the Bonn assembly, culminating in two memoranda on 22 November 1948 and 2 March 1949 and two communiqués from the Foreign Ministers on 5 and 22 April. The discussion in the press of the concurrent formulation of the Basic Law and the occupation statute illuminate attitudes towards the occupiers and how their role was perceived. A fuller picture of the perception of the Western Allied role will be gained by examination of the

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[12] R. Morsey, 'Der politische Aufstieg Konrad Adenauers 1945-1949', in R. Morsey and K. Repgen (eds.), *Adenauer-Studien I* (Mainz, 1971), pp. 20-57; R. Morsey, 'Die letzte Krise im Parlamentarischen Rat und ihre Bewältigung (März/April 1949)', in *Staat, Kirche, Wissenschaft und Gesellschaft. Festschrift zum 65. Geburtstag von Paul Mikat* edited by D. Schwab *et al.* (Berlin, 1989), pp. 393-410; R. Morsey, 'Verfassungsschöpfung unter Besatzungsherrschaft: Die Entstehung des Grundgesetzes im Parlamentarischen Rat', in *Die Öffentliche Verwaltung* 11 (1989), pp. 471-482.

[13] E. Spevack, *Allied Control and German Freedom. American Political and Ideological Influences on the Framing of the West German Basic Law (Grundgesetz)* (Münster, 2001), pp. 357-455.

[14] Ibid., pp. 509-510.

[15] *PR. A&P*, I, *Vorgeschichte* edited by J.V. Wagner (Boppard, 1975), pp. xi-lxxxi, and *PR. A&P*, VIII, *Die Beziehungen des Parlamentarischen Rates zu den Militärregierungen* edited by M. Feldkamp (Boppard, 1995), pp. vii-lxv.

comparisons made with developments in the Soviet zone of occupation and the constitutional process taking place there.

The beginning of the Parliamentary Council's deliberations and the perception of the Allied role

> "Compared with Weimar, Bonn is heavily handicapped. The National Assembly of 1919 could count on an intact state sovereignty and an undivided Germany. To complain about the disadvantage of the current situation is pointless, since we cannot change it; rather we must strive to make the best of it in order to win a basis for full sovereignty and thus for a peace settlement."

Thus opined the Z-leaning *Rhein-Ruhr Zeitung* at the beginning of the Parliamentary Council's deliberations in Bonn on 1 September 1948.[16] It was not alone in these sentiments. The article is illustrative of the strongly felt awareness that the Basic Law was being drafted under occupation in conditions not determined by the Germans. Ultimate German responsibility for the situation, through having launched World War II, was frequently, although not invariably, passed over by the German press.[17] The CDU-leaning *Westfalenpost* began its review of the beginning of the assembly's deliberations

> "it is not the fault of the German people if three years after the conclusion of hostilities the path from Potsdam has not led to a general German national assembly but rather only to the West German assembly, the Parliamentary Council, in Bonn."[18]

The cause was seen to be the failure of the British, French, American and Soviet Foreign Ministers to reach agreement on their policy for the future of Germany at the Moscow Council of Foreign Ministers in December 1947. This failure dealt the final blow to four-power cooperation and paved the way for the decision of the Western Allies to proceed openly and rapidly with the setting up of a West German state. The Z-leaning *Rhein-Ruhr-Zeitung* formulated this succinctly a month later;

> "We know that the source of generosity we have to thank for letting West Germany participate in a European community is only a recognition of necessity."[19]

Despite this awareness of the Allied determination of the framework, newspapers insisted on the need for Germans to determine the content of their constitution. For this reason, the DP-leaning *Deutsche Volkszeitung* welcomed the

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[16] 1 September 1948.
[17] See, for example, the *Tagesspiegel*, published in US sector of Berlin, 20 November 1948. See below, p. 110.
[18] 2 September 1948.
[19] 4 October 1948.

exercise of restraint by the Military Governments and commended the Military Governors for their decision to be represented by civilians at the opening ceremony.[20] In fact, they had been advised not to attend the opening ceremony by the American Foreign Minister to avoid antagonizing the Russians in the talks underway to end the Berlin Blockade. Instead the Governors sent their regional commissioners and political advisers.[21] Their absence helped reinforce the idea that the formulation of the Basic Law was a German, not an Allied undertaking. Ignorant of the real reasons, the Governors' decision not to attend the opening ceremony was taken by some to reflect their sensitivity to the public perception of events in Bonn.[22]

The *Rhein-Ruhr Zeitung* believed that the Parliamentary Council's deliberations had to form the basis for an improvement in Germany's situation - an expectation articulated in the belief that German sovereignty could be regained if Germans made the right moves. This position was shared by newspapers across the political spectrum. The SPD-leaning *Freie Presse* observed,

> "... one thing is certain: from this new parliamentary construct impulses should go out, which could take all of Germany an important step further!"[23]

The CDU-leaning *Rheinischer Merkur*'s report on the opening ceremony implied that such a step was already taken in the setting up of the Parliamentary Council in the Pedagogical Academy, which it regarded as "a demonstration of the German will to arrive at a workable rebuilding of the German state at long last."[24] The article concluded by citing Dr. Konrad Adenauer (CDU), President of the assembly, who, it believed, "summed up all of Germany's concerns and hopes" by stating that a start had now been made. An opinion piece in the liberal *Rheinisch-Pfälzische Rundschau* expressed the hope that the German constitutional drafting would be followed by a step from the Western Allies, namely "to permit the [German] people to exercise its sovereign rights, as the logic of events demands."[25]

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[20] 4 September 1948.
[21] *PR. A&P*, I, p. 410; Robert Murphy, US political adviser, to Clay, 2 September 1948, in J.E. Smith, *The Papers of General Lucius D. Clay. Germany 1945-1949* (Bloomington, 1974) p. 810.
[22] H.-P. Schwarz, *Adenauer*, vol. I, *Der Aufstieg 1876-1952* (Munich, 1994), pp. 589-590.
[23] 4 September 1948.
[24] 4 September 1948.
[25] 11 September 1948.

The KPD-leaning press very much took the line that the Parliamentary Council was set up by the Western Allies and that it had no mandate from the German people.[26] The implied comparison was with the *Volksrat* or People's Congress charged with the formulation of a constitution in the Soviet zone of occupation, the name of which, with its emphasis on the people (*Volk*), already distinguished it from the Parliamentary Council. Occasionally the People's Congress was held up directly as a model.[27] The Communist press often called for the dissolution of the Bonn assembly, holding it responsible for the deepening division of Germany. The *Niedersächsische Volksstimme*, for example, labelled the Bonn assembly the "grave-digger of German unity".[28] The two KPD MdPR, Heinz Renner (1892-1964) and Max Reimann (1898-1977), both from North Rhine Westphalia, frequently questioned the Parliamentary Council's mandate.[29] At the opening ceremony on 1 September, for example, Reimann called for the Parliamentary Council to be dissolved, since it contravened the four-power agreements reached in Yalta and Potsdam to set up a unified democratic Germany and it had no mandate from the German people.[30] His call was rejected by all the other parties.[31] Commenting on the opening ceremony, the *Volksstimme* declared that the only mention of a new 'people's democracy' (*Volksdemokratie*) beyond the old-style formal democracy was made in the dismissal of the idea by Prof. Carlo Schmid (SPD).[32] Newspapers from across the political spectrum criticized the work of the Parliamentary Council on occasion. Yet the Communist press was the exception with its openly and consistently hostile attitude to the work of the Bonn assembly.

In September, the British, French and American Military Governments posted Allied liaison officers in Bonn.[33] The appendix of Frankfurt Document III stipulated

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[26] For example, *Freiheit* or *Hamburger Volkszeitung*, 3 and 6 September 1948 respectively.
[27] For example, *Neue Volkszeitung*, 15 December 1948.
[28] 6 October 1948.
[29] Renner replaced Hugo Paul (1905-1962), also from NRW, as MdPR on 6 October 1948.
[30] *PR. A&P*, IX, pp. 7-8.
[31] Ibid., p. 11.
[32] 10 September 1948.
[33] Information on liaison officers, including brief biographical notes on most important ones, in *PR. A&P*, VIII, pp. xvi-xix; in Schwarz, p. 591; and in Morsey, 'Verfassungsschöpfung unter Besatzungsherrschaft', p. 473. For personal account of an American liaison officer, see H. Simons, 'The Bonn Constitution and its Government', in H. Morgenthau (ed.), *Germany and the Future of Europe* (Chicago, 1951), pp. 114-130. British liaison officer's portrayal of Council delegates and their interaction with the liaison officers, in R. Pommerin, 'Die Mitglieder des Parlamentarischen Rates.

that the liaison officers were responsible for advising and assisting the Ministers President and the constituent assembly.[34] Civilian members of the Military Governments, they reported on the activities of the assembly to their Military Governments, as well as transmitting the views of the Military Governors to the Germans and vice versa. The American Military Government had gained valuable practice in the employment of liaison officers during the formulation of the Bavarian constitution.[35] Whilst limited overall, the press coverage given to the activities of the British ("*Englisch*", however, was more often used to describe the British liaison officers), French, and American liaison officers in Bonn makes clear that the press knew of their work. The DP-leaning *Deutsche Volkszeitung*, for example, observed,

> "the English and American Allied liaison officers try to establish connections between the parties, which are so necessary for the success of the work; a very laborious but commendable activity. The French pursued another path: they sent the well-known Parisian ballet of Master Roland Petit."[36]

In mid October, the FDP-leaning *Westdeutsche Rundschau* judged that the Allies were not influencing the work in Bonn, "since there are only Allied liaison officers in Bonn, who follow the deliberations as observers."[37] As if to reassure its readers, it added,

> "all the delegates are aware that they must draft the constitution according to the best German knowledge and belief and not have their eye on Allied wishes and 'recommendations'."

The Berlin-based, LDP leaning *Morgen*, in contrast, commented,

> "It is nevertheless thought here that they [the liaison officers] will seek to inform the individual delegates of the views of the Western powers in an indirect manner."[38]

In the initial weeks of the Parliamentary Council's deliberations, several newspapers listed the half dozen invitations given to delegates by the liaison officers.[39] Once the novelty of such invitations had worn off and regular contact between German politicians and Allied officials had come increasingly to be regarded as normal, such invitations featured much less in reports on the deliberations.

Portraitskizzen des britischen Verbindungsoffiziers Chaput de Saintonge', in *VfZ* 36 (1988), pp. 557-588. Chaput de Saintonge's full document, in PRO, FO, 371/76660, and in BA, Kl. E. 792/3.

[34] *Documents on Germany under Occupation*, p. 318.

[35] Fait, (1998), pp. 501-504.

[36] 19 October 1948. Cf. *Niederdeutsche Volkszeitung*, 21 October 1948.

[37] 16 October 1948. Cf. US-zone *Süddeutsche Zeitung*, 6 November 1948.

[38] 16 September 1948.

[39] For example, US-zone *Süddeutsche Zeitung* and *Nouvelles de France*, published by the French Military Government, 25 September 1948.

In October, the above-party *Südkurier* explained to its readership that there were two parallel methods of work in Bonn.[40] On the one hand, there was

> "the programmatic method whereby deliberations take place in the committees based on the draft of Herrenchiemsee, paragraph by paragraph, and by consulting other proposals, and with questioning of the most competent experts, from the historian to the man of finance; and on the other, the non-programmatic method of initial personal contact in meetings, receptions and confidential visits to prepare the way for compromises, to speed up and warn or to strengthen one or other opinion through German or foreign ministers, through the party chairs and the liaison officers."

This was an accurate description of the proceedings. The liaison officers frequently sat in on committee meetings and met with delegates to discuss the assembly's work. The liaison officers were the most visible but not the only means by which the Military Governors informed themselves of the activities of the Parliamentary Council. The Governors received copies of the minutes of Council meetings. Members of the Military Governments or indeed the Allied governments also observed the Council in person or met with the delegates.[41] What was almost certainly not known and was certainly not reported was the fact that the Allies also tapped the telephones of the CDU/CSU and SPD MdPR.[42]

Little direct reference was made to the Western Allies at the opening of the Parliamentary Council by the press, facilitated by the prominent absence of the three Military Governors themselves. Similarly, the activities of the Allied liaison officers in the first few weeks of the Council's deliberations were not given much press coverage. This suited the Allies, who were only too keen not to appear predominant. Instead, and significantly, the start of work on the formulation of a constitution for the new West German state was regarded as more important by the press. It was portrayed as a new beginning and a significant step on the path to the recovery of German sovereignty.

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[40] 13/14 October 1948.
[41] For example, visit of Sir Christopher Mayhew, Undersecretary of State at the Foreign Office, to Plenum of PR, 20 October 1948, in *PR. A&P*, IX, pp. 176-216. Cf. CDU-leaning *Westfalen Zeitung*'s report on Mayhew's visit, 23 October 1948.
[42] PRO, FO, 1030/87, and in BA, Kl. Erw. 792/7, pp. 100, 103, and 104.

Occupation statute

Discussion of the Allies and the Basic Law often led on from or on to a discussion of the occupation statute.[43] German politicians had called for an occupation statute to regulate the relationship between occupier and occupied since at least 1946.[44] Schmid was particularly vocal in making this call and it was largely at his instigation that the Parliamentary Council set up an Occupation Statute Committee. In Frankfurt Document III the victors agreed to introduce an occupation statute to regulate the relationship between the West German government and the Allied authorities when the new West German state came into being.[45] The document provided for an exchange of views on the broad principles of the statute between the Military Governors and the constituent assembly, to provide the assembly with a guide to the statute's content whilst formulating the Basic Law. The publication of the statute was set for the date upon which the Governors approved the constitution for submission to the states, so that "the people of the states may understand that they accept the constitution within the framework of this occupation statute."[46]

German politicians and journalists expected that such a statute would be presented to the Parliamentary Council in the course of its deliberations so that the constitution could be formulated in the knowledge of its provisions.[47] A trizonal occupation statute was necessary for the conclusion of the work in Bonn argued the above-party *Westdeutsche Zeitung*.[48] It favoured the German authorities being given too much rather than too little room for manoeuvre, since in the last three years of the occupation

> "not only has a steadily increasing ill-humour towards the occupation powers developed in broad circles of the population, but a steadily increasing aversion to responsibility amongst German politicians has also manifested itself, which can only be attributed to the excessive amount of interventions in [German] civilian life by the occupation powers."

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[43] Cf. "Bonn is talked of usually in connection with the occupation statute. It is appreciated that a West German government and the occupation statute must, necessarily, coincide and it is hoped that the latter will make clear what are the commitments of the Länder in the Western zones", in Control Commission for Germany and Austria: CCG (British Element), Public Safety, Monthly Report on Public Morale and Public Opinion, Hansestadt Hamburg, from Hamburg Public Safety Branch to Regional Commissioner, October 1948, in PRO, FO 1014/39.
[44] *PR. A&P*, IV, pp. vii-xi.
[45] 1 July 1948, in *Documents on Germany under Occupation 1945-1954*, pp. 316-318.
[46] Ibid., p. 317.
[47] Work of Occupation Statute Committee, in *PR. A&P*, IV.
[48] 8 October 1948.

The occupation forces should restrict themselves to securing peace, the article concluded.

The independent *Lüneburger Landeszeitung* linked what it regarded as the limited interest of the Germans in the constitutional deliberations to the lack of an occupation statute.[49] It asked

> "who in all the world will take it amiss if we do not give the constitutional work all that much attention when the main thing, namely the occupation statute, is still missing?"

The above-party *Westdeutsche Allgemeine* commented that it had always been difficult to interest the masses in constitutional questions.[50] In 1948, it was particularly difficult in light of Germany's special political situation, in which

> "the way of thinking of a Russian or French Governor could mean more to the individual citizen than the German constitutional work."

But it viewed Bonn as a phase in the process of regaining German sovereignty, and concluded optimistically that the lively discussions in the Council could increase the interest of the public. In a similar but more critical fashion, the KPD-leaning Saarland-based *Neue Zeit* remarked,

> "the more the men of Bonn threw their weight around and reassured the public that it was impossible to draft a constitution without knowledge of the occupation statute, the clearer the voice of their masters became, which refused that which was requested in Bonn."[51]

It concluded,

> "the Generals will probably continue to stay silent, and Bonn will adopt its constitution without knowing what the real fate of West Germany will be."

The SPD-leaning *Hamburger Echo* argued that the exhortation to the Germans to speed up the formulation of the Basic Law must be extended to the Allies: to hurry up with the formulation of the occupation statute, since

> "the occupation statute creates the preconditions, which are meant to give the Basic Law the reality of constitutional life."[52]

In the *Süddeutsche Zeitung*, published in the American zone, Konrad Mommsen commented that, in a certain fashion, the Parliamentary Council was in a race with the three Western occupation powers.[53] Whilst the former were trying to complete the

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[49] 15 October 1948. Cf. FDP-leaning *Hamburger Freie Presse*, 12 October 1948.
[50] 23 October 1948.
[51] 4 November 1948.
[52] 21 October 1948.
[53] 6 November 1949, in BA, Z5/181.

Basic Law as quickly as possible, he explained, the Allies were seeking to agree on the occupation statute so that it would be ready at the same time as the Basic Law.

The press frequently linked the question of the occupation statute to Germany's recovery of sovereignty and to the pace of the Parliamentary Council's deliberations. For example, the SPD-leaning *Neue Ruhr Zeitung* argued that the assembly could not be accused of deliberating insufficiently swiftly since the Allies had still not arrived at an agreement on the occupation statute. Furthermore, the article continued, it was not the Basic Law which would determine the degree of German sovereignty anyway, as some claimed, rather it was the occupation statute that would do this in the form of a *Diktat*.[54] The *Tagesspiegel*, published in the US sector of Berlin, brusquely observed in November that the American Military Government's statement that the Basic Law would certainly be subordinate to the provisions of the occupation statute had only surprised those who believed that the extent of German sovereignty was only up to the discretion of German authorities.[55] The paper argued,

> "paradoxical as it might sound, the significant limits on German sovereignty, which we have to expect according to the spokesman of the American Military Government, will in fact provoke us gradually to overcome them, since the Basic Law has in the meantime laid down aim and content of this sovereignty."

The initial inability of the Military Governors to agree meant that the timetable for drafting the occupation statute became an extended one. Eventually the British, French and American Foreign Ministers produced the final draft in Washington (6-8 April 1949), and its contents were made known to the Parliamentary Council before it concluded its work on the Basic Law. (See below, p. 140.) The occupation statute was promulgated on 12 May and came into effect on 21 September.[56]

Public perception of Allied intervention in the autumn of 1948

The first official intervention by the Western Allies into the Parliamentary Council's work, once deliberations had begun, took place on 20 October 1948. France sought to guarantee its security by weakening Germany through limiting the central authority of the *Bund*. In October, French apprehension about the *Bund* being given too much power in the financial sphere, prompted the Military Governors to question

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[54] 12 February 1949. Cf. *Tagesspiegel*, published in US sector of Berlin, 8 October 1948, above-party *Westdeutsche Allgemeine*, 17 November 1948, and SPD-leaning *Aachener Nachrichten*, 23 April 1949.
[55] 6 November 1948. No further reference to American Military Government's statement.
[56] *PR. A&P*, IV, pp. 54-61.

whether the decisions taken by the Finance Committee still met the requirements of a federal constitution. The Military Governors set out their concern in a statement, which the liaison officers delivered orally to Adolf Schönfelder (SPD), Vice President of the Parliamentary Council, in the absence of Adenauer, its President, on 20 October.[57] The liaison officers informed Schönfelder that

> "the powers of the federal government in the field of public finance should be limited to the raising of revenues and the disposal of monies for purposes for which the federal government is responsible under the constitution."[58]

Schönfelder did not pass this information on to the Plenum of the Parliamentary Council because he did not attach special significance to the incident, since the statement was read out at the meeting and no written document was handed over. There has been criticism that Schönfelder was not up to the task.[59] Only Dr. Hermann Höpker-Aschoff (FDP), the Council's financial expert, learned of its contents when Schönfelder asked Prof. Hans Simons, the American liaison officer, to repeat the contents of the memo to him.[60] Adenauer and the assembly's Committee of Elders only learned officially of this statement on 9 November 1948.[61] This delay explains the press coverage of the statement shortly after this date and not sooner.

The independent *Flensburger Tageblatt* was one of the first to report on the "Allied 'aide-mémoire' for Bonn".[62] The above-party *Kurier*'s headline read "Suggestion not interference. The letter to the Parliamentary Council: too little federalism", and reported that the letter was meant to give "certain suggestions", a phrase taken up by many of the reports.[63] The phrase itself is not to be found in the Allied statement, which instead spoke of a "contribution to the discussion".[64] Some papers reported on an Allied declaration that the Allied move was more demonstrative in nature than a true intervention in the work of the assembly.[65] The CDU-leaning *Allgemeine Kölnische Rundschau*, amongst others, reported on Schmid's attitude, taken in the Main Committee in response to the Allied step, that it would be left to the Allies to comment on the final product but that it was unhelpful "to intervene in the

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[57] Statement and meeting, in *PR. A&P*, VIII, pp. 18-20 and pp. 21-23 respectively.
[58] Ibid., p. 20; American and British liaison officers' versions of events, ibid., p. 21, footnotes 1 and 2.
[59] Feldkamp, in ibid., p. xxx.
[60] Ibid., p. 23, footnote 6.
[61] Ibid., pp. xxx-xxxi, and p. 27.
[62] 11 November 1948.
[63] 11 November 1948.
[64] *PR. A&P*, VIII, pp. 18-20.
[65] For example, above-party *Der Kurier* or independent *Flensburger Tageblatt*, 12 November 1948.

work, whether in the form of advice or warning".[66] The SPD repeated this view on numerous occasions over the course of the Parliamentary Council's deliberations and it recurs throughout the coverage of the exchanges between the Germans and the Allies. Thus the press became an effective medium for the SPD message that the formulation of the Basic Law was a German affair.

The SPD-leaning *Nordwestdeutsche Rundschau* commented upon the October incident in a report entitled "Mistrust and theatre".[67] Perhaps the desire partially to exculpate Schönfelder of the SPD played a role in the decision to devote considerable space to the exchange between Schönfelder and the liaison officers. After noting the general official restraint exercised by the occupation powers, apart from the guidelines set out in the Frankfurt Documents, the *Nordwestdeutsche Rundschau* remarked on the "embarrassing aftertaste" left by the so-called 'diplomatic move' of the liaison officers on 20 October. The article recounted how a fortnight after Schönfelder's meeting with the liaison officers, the incident became public.

> "Then, suddenly, the liaison officers' statements appeared in the press and thus gained the character of an official move. The formulation, however, had been done on the German side and was leaked to the press, presumably because it came to the help of the political conceptions of certain circles."

This interpretation reflects the SPD-orientation of the *Nordwestdeutsche Rundschau*. The Allied position on the nature of the federal structure seemed to many to tie in more with the views of "certain circles", with which the article alluded to the CDU/CSU. The article continued,

> "Heinz Renner (KPD) of course did not miss the opportunity to describe the event as 'an order from the occupation powers'",

an illustration of the sensitivity of many in the West to possible Communist criticism. "Such incidents", the *Nordwestdeutsche Rundschau* remarked, "did not really contribute to the creation of an atmosphere of trust." In its view, the atmosphere was already filled with mistrust and it concluded,

> "if it is not possible to overcome this mistrust, to observe the creation of the Basic Law as a German matter and to leave to the occupation powers the option of accepting or rejecting the constitution in its entirety at its conclusion, then all the laborious work undertaken in Bonn so far may well turn out to have been for nothing in the end."

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[66] 12 November 1948. Schmid's statement, 11 November 1948, in *Parlamentarischer Rat. Verhandlungen des Hauptausschusses. Bonn 1948-1949* (Bonn, [1950]), p. 2.
[67] 13 November 1948.

"Grave reservations in Bonn" declared the headline of the *Kasseler Zeitung*, without a political affiliation and published in the US zone.[68] The article was one of several that reported on the delegates' reactions to the Allied 'suggestions', observing,

> "The Allied indication is very awkward for the federalists in the Parliamentary Council, since the impression could too easily arise that the deliberations in Bonn are taking place under pressure. ... From the unitarist side too is to be heard that the idea of democracy, which could only flourish in full freedom to be real democracy, is being disparaged by every Allied intervention."[69]

Very similar sentiments were articulated in an editorial by the Christian *Schwarzwälder Post*, published in the French zone, which argued that every Allied intervention gave the Communists propaganda material.[70]

The *Tagesspiegel*, published in the US sector of Berlin, in a characteristically perceptive and outspoken editorial on the activities of the Parliamentary Council, was critical of the delegates' reaction to the Allied comments.[71] In a possible 'power struggle' with the Allies, it remarked,

> "the Bonn delegates will be the losers from the outset. They could, of course, sweeten their defeat with the cheap phrase that they had not acted against their conscience nor against the interests of the German people. But in what has the German people an interest? It would seem only in the current interim state of affairs giving way to a solution, which makes equal partners of the Allied occupation authorities on the one hand and of the German government and representative organs on the other."

The rejection of the Bonn Basic Law by the Military Governments, it continued,

> "would extend the current situation indefinitely, and the guardians of the so-called national feeling would certainly direct their main anger against those in Bonn who neglected to end the interim state of affairs with a decisive act. They will not care in the least that the Bonn parliamentarians did not do this precisely out of consideration for them. Whatever the decision taken in Bonn, those circles, which do not want to recognize that Germany is to blame for the war and defeat, will, exactly as in 1918, make responsible for the situation caused by their actions those who are busy trying to remedy the situation. The London Recommendations determine the framework, within which there are sufficient possibilities for asserting the German point of view. The interest of West Germany and the example that the West has to set the East demand adhesion to this framework and that the work towards political stabilization is concluded most speedily."

This criticism of the reactions to the Allied comments was also an exhortation to learn from the past and reflected the widespread expectation that the formulation of the Basic Law be rapid. The *Tagesspiegel* underlined the role of the West as an example for the East, arguably an especial reflection of its Berlin base.

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[68] 18 November 1948.
[69] Cf. *West Echo*, published in the French zone, or *Tagesspiegel*, published in the US sector of Berlin, 18 and 19 November 1948 respectively.
[70] 19 November 1948.
[71] 20 November 1948.

On 18 November the British Military Governor, General Sir Brian Robertson, and his political adviser, Sir Christopher Steel, met Adenauer in Bad Homburg.[72] This was reported upon by the Z-leaning *Neuer Westfälischer Kurier* in an article entitled "Parliamentary Council too slow. Letter from Allies to be expected. Frankfurt unhappy", based upon a bulletin of the Deutscher Pressedienst. Frankfurt was the seat of the American Military Government. The first two statements made in the headline nicely summed up the essential points of the meeting and prepared the readers of this newspaper for an Allied memorandum. Similar pieces about the meeting between Robertson and Adenauer were published by other papers. The *Süddeutsche Zeitung*, published in the American zone, reported that leading MdPR were reserved about the intended step of the Allies, since they felt, on the whole, that it would not create a good impression.[73] Adenauer, on the other hand, was reported as having told the British Military Government

> "it could only be advantageous if the Allies made known their reservations in good time to avoid a hardening of fronts."

Perhaps because the October statement was not acted upon in the desired fashion, the British, French and American Military Governors resolved to present the Parliamentary Council with a memorandum in November. It was to impart details to the Germans about the demand made in Frankfurt Document I for "a governmental structure of federal type".[74] The Western Allies had agreed on the key characteristics of "a governmental structure of federal type" at the Six-Powers Conference in the spring of 1948 and set these out in Annex H of Document III. Annex H was not, however, released to the Germans in Frankfurt on 1 July.[75] Instead, the contents of Annex H were divulged to the Bonn assembly in a memorandum dated 22 November 1948.[76] The memorandum called for a bicameral legislative system, in which one chamber safeguarded the *Länder*'s interests; for limits on the power of the executive; for the powers of the *Bund* to be limited to those expressly enumerated in the constitution and to exclude education, cultural and religious affairs, local government and public health; for the powers of the *Bund* to be limited in the field of public

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[72] *PR. A&P*, VIII, pp. 32-36.
[73] 20 November 1948.
[74] 1 July 1948, in *Documents on Germany under Occupation*, pp. 315-316.
[75] Annex H, in *Foreign Relations of the United States. Diplomatic Papers. 1948*, vol. II, *Germany and Austria* (Washington, DC, 1973), pp. 442-443.
[76] *PR. A&P*, VIII, pp. 37-42.

finance; for an independent judiciary; for the powers of the *Bund* to establish federal agencies to be limited to those fields in which it was clear that state implementation was impracticable; and for the depoliticization of the civil service. With hindsight, Simons, the leading American liaison officer, described the failure to inform the Germans of the contents of Annex H *before* the Parliamentary Council began to formulate the constitution, as "one of the major blunders of our [Allied] policy".[77] He implies that had the Allies informed the Germans sooner, the need for Allied interventions would have been reduced.

Preparing for the meeting with the Military Governors, Adenauer went to considerable lengths to avoid the impression being given that the Parliamentary Council was being influenced by the Allies in its deliberations. In light of the impending elections to the City Council in Berlin (5 December), he did not want to give the Communists propaganda material. In a preparatory meeting with the British Military Governor, it was agreed that the memo would not be handed over but be read out sufficiently slowly for a German stenographer to note it down.[78] When subsequently at the meeting in Bonn on 21 November the Allied liaison officers wanted to hand over the memo (which was dated 22 November) after it had been read out aloud, Adenauer refused to accept the text. It was only upon the urging of Simons and in reaction to the declaration by the Allies of their intention to publish the memo in the press the following day that Adenauer relented. The Allies duly released the memo to the press on 22 November and a copy was also circulated by the Council's secretariat.[79] Adenauer's strategy bore only limited fruit: the November memorandum was taken to be an Allied intervention in the formulation of the German constitution by the majority of newspapers, although the papers differed in their assessment of the degree to which the Allies were seeking to shape the formulation to their own design. Adenauer's concern over possible Communist instrumentalization of the Allied recommendations, however, was partially vindicated by the KPD-leaning *Niedersächsische Volksstimme*. A few days after the handing over of the Allied memo, it remarked,

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[77] Simons, p. 115.
[78] 18 November 1948, in *PR. A&P*, VIII, pp. 32-36 (p. 35).
[79] *PR. A&P*, VIII, p. 48; *Sekretariatsumdruck* 1, in BA, Z5/202. Unclear, however, how soon this was circulated, in *PR. A&P*, X, p. liii.

> "the Western Military Governors have intervened decisively in the work of the 'Parliamentary Council'. A communication from the Allied side was given to the President of the Council, Dr. Adenauer, in which in seven points the three Western Military Governors make known their views about the West German *Separatverfassung*, the deliberations for which on the German side are close to conclusion."[80]

The *Darmstädter Echo*, published in the US zone, was one of the first to report on the memorandum when it was eventually handed over to the Parliamentary Council on 22 November.[81] In its essence, the paper saw the memorandum as a definition of the London agreement and as largely corresponding in content with the previously strictly confidential annex of the London agreement. Many other papers carried similar reports, some of which singled out one or two of the provisions for special mention. For example, the Z-leaning *Neuer Westfälischer Kurier* noted the emphasis on federalism, with the Allied insistence on the *Länder* having fiscal sovereignty, as well as the demands for the depoliticization of the civil service and the far-reaching self-administration at the local level.[82] The headline of the *Welt*, published by the British Military Government, summarized its verdict, "Document of federalism".[83] The non-partisan *Südkurier* commented that, with the handing over of the Allied memo, "for the third time now [first, Frankfurt Documents, second, October statement], and emphatically, the Allies have made clear their views on a governmental system of a federal type."[84]

The newspapers' subsequent characterization of the parties' positions on the Allied memo was frequently coloured by their own political orientation. The CDU-leaning *Allgemeine Kölnische Rundschau*, for example, believed that the memo had not surprised the CDU but meant

> "for the SPD, which was originally unitarist and centralist in outlook, the situation has now become a bit more difficult."[85]

The opposite was the case according to the above-party *Frankfurter Neue Presse*, whose headline read "Reaction to the Allied memo. SPD: More harmless than

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[80] 26 November 1948.
[81] 23 November 1948.
[82] 23 November 1948.
[83] 23 November 1948.
[84] 25 November 1948.
[85] 24 November 1948.

expected".[86] The actual SPD position was given by the SPD-leaning *Neue Ruhr Zeitung*, which cited Fritz Heine of the SPD executive that

> "the SPD was not of the opinion that an 'Allied intervention' had sought to influence German decisions, since naturally under such circumstances [were the Allies to intervene] not even a provisional constitution was conceivable."[87]

In a longer editorial, the same paper linked the Allied memo to differences between Britain and the United States on the one hand and France on the other, arguing,

> "de Gaulle is messing up the Anglo-Saxon idea for Western Europe, without even being in power yet. Washington and London are submitting to his *Diktat*. The members of the Parliamentary Council do not, however, intend to do so."

This last sentence signalled the SPD determination to arrive at a German formulation of the Basic Law and not to let the Allies, either together or in part, exercise what it regarded as undue influence.

The publication by a number of newspapers, such as the *Tagesspiegel*, published in the US sector of Berlin, of the text of the Allied memo on 25 November dismayed several of the Parliamentary Council's delegates, who had not yet received a written version themselves.[88] An official printed version was in fact only given to them in January.[89] The *Süddeutsche Zeitung*, published in the US zone, observed that the Western Allies had not given instructions but an interpretation, albeit somewhat delayed, of the concept 'constitution of a federal type', given in Document I.[90] "It would certainly have been nicer," the *Süddeutsche Zeitung* continued,

> "if the nature of the content of a federal constitution had been understood without this extra help but, on the other hand, it is not a tragedy that it became necessary, though one could argue about whether the moment was particularly well chosen."

The SPD *Hamburger Echo*, however, found it "positively humiliating" that certain Germans needed "words of encouragement" from the occupation powers.[91] In its view,

> "Germany – West Germany initially, since the East is paralysed – needs a government organ able to act; but it almost seems as if the news of developments all around us has not reached Bonn. The CDU-faction in particular is still undecided on important questions."

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[86] 24 November 1948.
[87] 24 November 1948.
[88] Cf. remarks of Dr. Paul Binder (CDU), in *PR. A&P*, VIII, p. xxxiii, footnote 199.
[89] Ibid., p. xxxiv.
[90] 25 November 1948.
[91] 26 November 1948.

On the following day, much of the press reported on the assembly's intention, at Schmid's instigation, to acknowledge receipt of the Allied memo and to press on with the assembly's work.[92] The North Rhine Westphalian, SPD-leaning *Rhein Echo* quoted the opinion of one of the leading NRW MdPR, Dr. Walter Menzel (SPD), that the memo was not an Allied interference in the work of the Council.[93] This was a theme taken up by several papers. The *Welt*, published by the British Military Government, and the US-zone *Weser Kurier* both ran headlines emphasizing that no interference had taken place and that the constitutional deliberations were continuing unabated: "Debate on Federal President. Allied Document does not impede constitutional work" and

> "No pressure on the work in Bonn. The decision-making freedom of the Parliamentary Council not infringed",

respectively.[94]

The above-party *Badische Zeitung*, published in the French zone, printed a longer commentary on the Allied memo, under the headline "Advice for Bonn. Theoretical and practical necessities of a federal structure".[95] It concluded,

> "certainly the Allies are well aware that it would not do the federal idea much good in Germany, if it were incorporated into the constitution as a *Diktat* from outside."

The Freiburg newspaper then reminded its own occupation power, the French, that

> "Not all Allied countries are in the position of legitimising their advice through their own experience, since some of them themselves have a strictly centralized state set-up."

Instead, the *Badische Zeitung* argued that only a Basic Law which grew out of German ideas and needs would endure. It was a theme to which the *Badische Zeitung* returned again a week later, arguing,

> "a healthy state cannot live with a constitution, which meets the biased wishes of one or other of the occupation powers, that has been imposed upon it."[96]

This was recognized by leading Germans and they therefore insisted that the Allied memo not be characterized as an Allied intervention. Likewise, the Allies preferred that their views be regarded as recommendations rather than as orders. In November,

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[92] For example, above-party *Der Kurier* or Z *Neuer Westfälischer Kurier*, 26 November 1948.
[93] 27 November 1948.
[94] Both 27 November 1948.
[95] 27/28 November 1948.
[96] 7 December 1948.

for example, Adenauer commented that the Allies "wanted to avoid the impression that any sort of pressure was being exercised on the Parliamentary Council".[97]

This fear of the constitution not being seen to be German by the people was articulated by the CDU-leaning *Rheinische Post.*[98] It observed,

> "even if one admits that the deliberations in Bonn have often not exactly given the impression of great parliamentary practice (whence should the delegates have the experience?), the seven points of the Allies could actually provoke the development of scepticism about whether the Bonn result really will at a later date be accepted by all Germans as a German constitution."

The SPD-leaning *Rheinische Zeitung*, amongst others, linked the Allied memorandum with the seemingly limited engagement of the West Germans with the constitutional deliberations:

> "It has to be said from the very beginning that the German people has not been especially interested in its democratic institutions thus far. This is simply because everyone instinctively has the impression that everything which is decided by the Germans about these institutions is only half the story, since ultimately it is the Military Governments which will determine what will and will not happen."[99]

No doubt intentionally touching the same nerve, the Communist-leaning *Nord-deutsches Echo*, divided the Bonn delegates into three groups:

> "Some of them read the Allies' every wish in their eyes, others amongst them need to be convinced by indications, and the third group says 'no' because they have the courage to act according to their conviction. This third group is only represented by the two KPD delegates in Bonn."[100]

Such remarks imply that the memo had given the Communists propaganda material as some of the assembly's delegates had feared. The impact was limited, however, if the first federal election results are taken as a guide: the KPD won only 5.7% of the vote compared with the more than 70% won by the SPD, CDU/CSU and FDP.[101]

Once the agitation surrounding the Allied memorandum in November had died down somewhat, strong feelings were again aroused by a meeting between the Military Governors and a delegation of leading MdPR on 16/17 December in Frankfurt, at which the occupation statute and the Basic Law were discussed.[102] The delegation from Bonn included Adenauer as President of the assembly, Dr. Anton

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[97] 18 November 1948, in *PR. A&P*, VIII, p. 35.
[98] 27 November 1948.
[99] 27 November 1948.
[100] 7 December 1948.
[101] C. Kleßmann, *Die doppelte Staatsgründung: Deutsche Geschichte 1945-1955*, fifth edition (Bonn, 1991), p. 437.
[102] *PR. A&P*, VIII, pp. 61-75.

Pfeiffer and Dr. Robert Lehr from the CDU/CSU, Schmid and Menzel from the SPD, Höpker-Aschoff (FDP) and Dr. Hans-Christoph Seebohm (DP). The Allied liaison officers, as well as other Allied officials, were also present. There was a great deal of coverage of the meeting and its aftermath. The coverage reveals as much about the newspapers' attitudes to political parties and to different political persuasions as it does about the newspapers' perception of the Allied role. This was because unlike in November, the December meeting between the Allies and the Germans did not involve the same explicit statement of Allied views. Instead, the December meeting discloses more about how the parties themselves (of course, transmitted through the press) thought the exchange of views should take place with the occupation powers, no doubt partly shaped by the lessons the parties felt they could learn from the October incident. This, in turn, indicates the nature of the parties' concerns about the public's perception of the exchange between the Allies and the Germans, and about the extent to which the Allies were perceived to be playing a role in the formulation of the constitution for the West German state.

Most papers noted the scheduled meeting between leading MdPR and the Military Governors on Thursday 16 December in Frankfurt.[103] The above-party *Westdeutsche Zeitung* prepared its readers for the meeting by outlining the differences between the British and American Military Governors on the one hand and the French Military Governor on the other, in an article headed "Trizone seriously jeopardized after all: French special wishes threaten trizonal occupation statute."[104] The inability of the Military Governors to resolve these differences and their decision to pass the matter on to their governments was duly reported by the papers a day later.[105] "Occupation statute not yet ready. Military Governors of the Western Zones could not agree" was the headline of the US-zone *Hessische Nachrichten*.[106] Similarly, the papers reported that the Governors and the delegates would meet a second time on the Friday to discuss the constitutional set-up. The atmosphere at the meeting was described as "cool" by the above-party *Kurier*, which, amongst other papers, also

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[103] For example, US-zone *Hessische Nachrichten*, above-party *Kurier* or KPD-leaning *Volksstimme*, 15 December 1948.
[104] 15 December 1948.
[105] Cf. 17 December 1948 press communiqué about meeting of MdPR with Military Governors in Frankfurt/M. on 16 December 1948, in PA, Ordner II.
[106] 16 December 1948.

reported that the delegates were not encouraged by the course of Thursday's meeting and that Adenauer had posed questions.[107]

The press devoted considerable attention to the Frankfurt meeting and Adenauer's questions on the second chamber, fiscal administration, and the ratification of the Basic Law in the following days. The SPD and FDP accused Adenauer of seeking to elicit statements from the Military Governors in favour of the CDU/CSU positions on two of the most contentious topics, namely the second chamber and financial administration. Consequently, Adenauer was informed that he no longer enjoyed the SPD's confidence as speaker of the German delegation.[108] Both the SPD and Adenauer gave their versions of events in press conferences on 18 December. Adenauer refuted the SPD and FDP's allegations, protesting that he had solely wanted to ask the Military Governors their opinion about the Basic Law.[109] The differing interpretations of events led to bitter recriminations in the partisan press. On this occasion, the views expressed by the newspapers invariably reflected their political orientation, and contributed to a hardening of fronts in the Council.[110]

The SPD-leaning press attacked Adenauer for the questions he had put to the Governors and mistrusted his intentions in making these enquiries. The *Hannoversche Presse*'s headline declared angrily

> "Dr. Adenauer acted without instructions. Federalist party politics in the conference with the Military Governors."[111]

The paper reported the assumption held in SPD circles that Adenauer had sought

> "to secure the help of the Military Governors for a most far-reaching federalist set-up of the Federal Republic in order to be able to bring to bear the pressure of the occupation powers".

It also noted the realization of the delegates that Adenauer had been responsible for the holding of the meeting rather than the Allies, as had been thought. Adenauer had in fact written to the Governors on behalf of the Committee of Elders on 2 December 1948 to request a meeting.[112] However, this was not clear to Menzel and Schmid.[113] The *Hamburger Echo* added that Adenauer's questions were on the contentious

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[107] 17 December 1948.
[108] *PR. A&P*, VIII, p. 80, footnote 8.
[109] Ibid., pp. 76-88 (p. 79).
[110] Cf. Morsey (1971), p. 40.
[111] 18 December 1948.
[112] *PR. A&P*, VIII, pp. 54-56.
[113] Ibid., pp. 65-67 (p. 66).

subjects of the second chamber and financial administration, on which the CDU/CSU's wishes had not been satisfied in the Main Committee.[114] The *Aachener Nachrichten* remarked that in Bonn, "one had silently agreed to regard the constitutional work as a German affair", but by posing questions on the second chamber, the fiscal administration, and the ratification of the Basic Law, Adenauer had broken this agreement and "asked, so to speak, for [Allied] interference."[115] It was a matter of "fundamental principles", according to the *Aachener Nachrichten* that all parties work towards creating a German Basic Law, and it criticized the CDU for no longer adhering to these principles.

The CDU-leaning press responded a day or two later. The *Hamburger Allgemeine Zeitung* loudly condemned the SPD criticism in its headline,

> "Irresponsible smear manoeuvre by the SPD. Marxists prevent unanimity on national reconstruction. Sad theatre in front of eyes of whole world."[116]

The *Westdeutsche Allgemeine* quoted Adenauer's view, expressed at his press conference in Bonn, that talking to the Military Governors was better than drinking cocktails with the liaison officers and allowing oneself to be questioned on such occasions on the course of the deliberations.[117] The *Rheinische Post* argued that one could be of a different opinion as to whether Adenauer should have posed the three questions in Frankfurt but

> "it is unacceptable and also insulting for the Bonn faction of the SPD to attribute wrong motives to Dr. Adenauer's conduct and to accuse him and the entire CDU/CSU of national unreliability."[118]

Such behaviour, the paper concluded,

> "served the reputation of the Parliamentary Council as little as it has served the necessary objective (*sachlich*) work and understanding."

Several newspapers, not all of them CDU-leaning, spoke of the SPD's efforts to slur the CDU with references to "nationalen Verrat".[119]

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[114] 18 December 1948.
[115] 21 December 1948.
[116] 20 December 1948.
[117] 21 December 1948. Press conference, 18 December 1948, in *PR. A&P*, VIII, pp. 76-88 (p. 83).
[118] 21 December 1948.
[119] For example, CDU-leaning *Hamburger Allgemeine Zeitung*, US-zone *Hessische Nachrichten* or US-zone *Kasseler Zeitung*, 20 December 1948.

Many newspapers observed that the Parliamentary Council was entering its Christmas recess with the differences that had arisen in Frankfurt unresolved. The above-party *Kurier* tried to explain the roots of the crisis, which it attributed to the different conceptions of Schmid and Adenauer of the tasks of the Bonn assembly. The article claimed that the former

> "jealously guards the legislative autonomy of the Parliamentary Council and wants to risk having the future Basic Law accepted or rejected by the Military Governors."

Adenauer, on the other hand, the article continued,

> "hopes that the work can be made easier through diplomatic talks with the occupation powers, even at the risk of putting the autonomy of the Bonn Council at stake in the eyes of the critics."[120]

The independent *Nordsee Zeitung* was more outspoken in its identification of the cause of the disagreement,

> "Bonn observers comment on the SPD attitude that it had become irreconcilable and aggressive on the day that Schumacher [Dr. Kurt Schumacher, leader of the SPD] had actively intervened again in politics."[121]

Towards the end of December, Communist papers signalled their scorn for the other factions in the Parliamentary Council by noting that although the SPD and CDU/CSU disagreed now, they would soon recommence talking, since both had the same aim, namely the formulation of a constitution for West Germany.[122] Several Communist newspapers remarked on the assembly's rejection of the KPD's call for Adenauer's resignation as President of the Parliamentary Council in light of his actions in Frankfurt.[123] Reporting on this, the CDU-leaning *Kieler Nachrichten*'s headline, "The laughing Communist in Bonn. Who is the beneficiary of the conflict hatched by the SPD?", echoed concerns expressed in November about the benefit the Communists might draw from an adverse portrayal of the exchange between the Germans and Allies.[124] There was clearly great concern about how the Allied-German exchange would be perceived outside the Parliamentary Council. This concern manifested itself not only when the Allies made a deliberate public intervention in the

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[120] 20 December 1948. Cf. above-party *Westdeutsche Zeitung* and *Welt*, published by the British Military Government, 20 and 21 December 1948 respectively.
[121] 20 December 1948. Cf. above-party *Badische Zeitung* and above-party *Südkurier*, 21 December 1948.
[122] For example, *Volksstimme* or *Neue Volkszeitung*, 24 and 29 December 1948 respectively.
[123] For example, *Neue Volkszeitung* or *Volksstimme*, 20 December 1948.
[124] 21 December 1948.

form of a memorandum, as in November, but came to shape the interaction between the political parties themselves in December.

Public perception of Allied intervention in the spring of 1949

Deliberations on the Basic Law resumed in the New Year. The failure of the factions to reach agreement in the Main Committee led to the creation of an interfactional 5-Person Committee, comprising Dr. Heinrich von Brentano (CDU), Theophil Kaufmann (CDU), Schmid (SPD), Menzel (SPD) and Dr. Hermann Schäfer (FDP) (who alternated with his party colleagues, Dr. Thomas Dehler, Prof. Theodor Heuss, and Höpker-Aschoff), with Adenauer as President of the Council in the chair, at the end of January.[125] (The committee expanded to form a 7-Person Committee in February by including Seebohm (DP) and Johannes Brockmann (Z).) For the first time since the assembly began its deliberations, Dr. Hans-Joachim Kausch, a member of the Parliamentary Council's secretariat, observed in the *Welt*, nothing had been leaked about this committee's discussions.[126] By focussing on the constitution as a whole, working together closely, and refusing to part until agreement had been reached, this committee succeeded in drawing up a proposal for the Basic Law upon which all the major German political parties could agree. This draft passed through its third reading in the Main Committee on 8-10 February.[127]

On 9 February, Simons, Dr. Roland Chaput de Saintonge and Jean Laloy, the American, British, and French liaison officers respectively, met to discuss the formulation of a "joint paper" to be given to the Parliamentary Council upon the conclusion of the Main Committee's third reading, stating that the Basic Law still did not meet the stipulations of the 22 November memorandum.[128] Presumably as a reaction to the objections voiced by the liaison officers, the 5-Person Committee, on behalf of all the factions, underlined the federal character of the Basic Law in a memorandum, which was given to the liaison officers on 11 February.[129] Nonetheless, the Military Governors did not accept that the proposed Basic Law met the

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[125] *PR. A&P*, XI, p. xvi.
[126] 1 February 1949. Cf. *PR. A&P*, X, p. liv.
[127] *Parlamentarischer Rat. Verhandlungen des Hauptausschusses*, pp. 611-685. Basic Law as passed in third reading of Main Committee, in *PR. A&P*, VII, pp. 396-442. Cf. *PR. A&P*, VIII, pp. xli-lvii. Cf. Morsey on final months of deliberations, in 'Die letzte Krise'; and H.-J. Grabbe, 'Die deutsch-alliierte Kontroverse um den Grundgesetzentwurf', in *VfZ* 26 (1978), pp. 393-418.
[128] *PR. A&P*, VIII, p. xlii.
[129] Ibid., pp. 101-105.

requirements for a governmental structure of federal type laid down in the London Recommendations at their monthly meeting in Frankfurt on 16/17 February.[130] They instructed their liaison officers to inform Adenauer that they wished to check the Basic Law as it had been passed in the third reading in the Main Committee more thoroughly and that the three of them would meet to discuss it again on 1/2 March.

The *Tagesspiegel*, published in the US sector of Berlin, was one of the first to report on the Allied position on the Basic Law after its third reading in the Main Committee.[131] It noted that the liaison officers had informed the leaders of the assembly's factions that the draft did not meet the requirements of the November recommendations and that, therefore, some changes would be necessary. A few papers, including the above-party *Allgemeine Zeitung*, referred to the memorandum that the Parliamentary Council had sent to the Military Governors on 11 February.[132] Based on a bulletin from DENA, the US-zone *Hessische Nachrichten*, amongst others, referred to criticism of the proposal voiced by a spokesman for the US Military Government, according to whom certain aspects "are already at the current stage in blatant contradiction of the Allied recommendations", and that members of the Military Governments

> "were extraordinarily disappointed that 'the Germans had rejected out of hand the experiences of the older Western democracies'."[133]

The article quoted the spokesman almost verbatim that

> "the Parliamentary Council had deviated from the Allied recommendations partly out of party political considerations, partly out of national expediency, but also partly on purpose."

The Council's deviation on the question of the Federal Government finances was given as an example. Other papers, often from the American zone, carried similar stories about the American Military Government's concerns, yet it is unclear whether this was the result of influence exerted by the Military Government.[134] The *Tagesspiegel*, published in the US sector of Berlin, questioned whether the US Military Government spokesman's comments were official or not, and noted that the British Military Government would only comment after comparison of the proposal

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[130] *Foreign Relations of the United States. Diplomatic Papers. 1949*, vol. III, *Germany and Austria* (Washington, DC, 1974), pp. 199-204 and pp. 217-220.
[131] 11 February 1949.
[132] 12/13 February 1949.
[133] 14 February 1949.
[134] For example, CDU-leaning *Frankfurter Neue Presse*, *Neue Zeitung*, published by the American Military Government, or the *Süddeutsche Zeitung*, published in the US zone, 15 February 1949.

with the London Recommendations.[135] A day earlier, the *Tagesspiegel*, had argued that if the current Allied objections were compared with those expressed in November, then the progress made by the Parliamentary Council in its deliberations in the interim became clear.[136] Quite accurately, the *Tagesspiegel* contended that aside from the question of the *Bund*'s financial power, no more fundamental differences separated the Allies and the Parliamentary Council.

Whilst greater attention was given to the American Military Government's concerns within the American zone than in the other zones, it was often critical. Several newspapers focussed on the nature of democracy and the difficulties of establishing it under occupation.[137] The *Süddeutsche Zeitung*, published in the American zone, criticized the American spokesman, arguing that his comments were

> "neither suited in tone nor content particularly to encourage the gentlemen in Bonn to complete their already unenviable task; furthermore, they disparage ever more the reputation of the preparatory, government-like institutions in Bonn in the eyes of the German population."[138]

The article continued,

> "if there is no scope for free decisions, ... then it is far better indeed to go over undaunted to giving orders. Democracy cannot then be charged with the repercussions of such orders, since they have nothing to do with democracy. A democratic 'freedom', of which one can only speak in inverted commas, interspersed with orders is poison for our people even when the word 'order' is replaced by the word 'recommendation'."

In a similar vein, the CSU-leaning *Münchner Merkur* objected to the US Military Government spokesman's comments, which it characterized as "*Rechnungen ohne den Wirt*".[139] "A constitution only makes sense", the editorial stated,

> "if it is tailored to the peculiarities of the particular country and is recognized by the majority of the people and then filled with life. The constitution is therefore a matter for the people itself and is not an article for import or export. Every rash Allied criticism of the far from complete German constitutional work must therefore not only have unpleasant psychological effects but also weaken the position of those Germans, who have a clear and fruitful idea of a set-up for the German state from their own knowledge and experience."

Such sentiments had already been forcefully articulated by Dr. Ernst Friedlaender in the independent *Zeit*, published in the British zone, two months earlier.[140] He commented then,

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[135] 17 February 1949.
[136] 16 February 1949.
[137] Cf. discussion of introduction of democracy under Military Government, in C.J. Friedrich, 'Military Government and Dictatorship', in *The Annals of the American Academy of Political and Social Science* 267 (1949), pp. 1-7.
[138] 15 February 1949.
[139] 16 February 1949.

> "The Germans are tired of propaganda. One cannot democratize us with words, only by plausible example through object lessons."

The Allies, he argued, needed to lead by democratic example.

On 19 February the *Süddeutsche Zeitung* again published an article on the subject. Werner Friedmann, one of the newspaper's licence holders, sharply criticized the Allied practice of intervening in the formulation of legislation in German democratic bodies.[141] The above-party *Badische Zeitung* did much the same two days later, albeit in a comparison with developments in the Soviet zone of occupation.[142] Friedmann's article was prompted by Allied legislation on the German civil service, but it is clear that it was also written with the Allied-German exchange on the Basic Law in mind. Friedmann's conclusion is a percipient analysis of the form the exchange should take in the interests of the successful establishment of democracy in Germany. It indicates that the perception of the Allied role did matter very much in this process. He wrote,

> "it would be unwise not to draw on the experience of outstanding foreign experts when building a difficult bridge. Yet, even with the best will in the world, one cannot expect respect for one's own bridge builder if the foreign experts straight away, in their impatience and without giving advance notice, bring with them a fully constructed bridge and say apologetically 'You could certainly not have built such a good bridge!' There are two methods for making laws: a parliamentary one, by which as many as experts as possible are heard, and a military one, for which only a printing-works is necessary. If the latter is chosen, it is imprudent to speak of democracy simultaneously."

This was a recurring theme. Three weeks later, for example, the independent *Flensburger Tageblatt*, published in the British zone, arrived at a similar verdict after the Allies had handed their newest memo over to the Parliamentary Council.[143] It argued,

> "Every sincerely democratically-minded German must desire that we finally emerge from this fictitious democracy. This will not happen nor will we ever arrive at a democracy that enjoys the respect and recognition of our people on the route taken by the Allies."

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[140] 30 December 1948, in N. Frei, and F. Friedlaender, *Ernst Friedlaender: Klärung für Deutschland. Leitartikel für* Die Zeit *1946-1950* (Munich, 1982), pp. 123-127 (p. 123). Dr. Ernst Friedlaender (1885-1973), businessman and journalist, 1946- journalist for *Die Zeit*. See N. Frei, 'Ernst Friedlaender – eine biographisch-publizistische Skizze', in ibid., pp. 7-33.

[141] 19 February 1949. Werner Friedmann (1909-1969), journalist, 1933-1940 translator in Berlin, 1940-1945 soldier, including briefly British P.O.W., 1946- local correspondent and licence-holder for *Süddeutsche Zeitung*, in P. Hoser, 'Vom provinziellen Lizenzblatt zur "New York Times von Bayern". Die Anfänge der *Süddeutschen Zeitung*', in L. Hachmeister and F. Siering (eds.), *Die Herren Journalisten. Die Elite der deutschen Presse nach 1945* (Munich, 2002), pp. 121-145 (pp. 126-127).

[142] 22 February 1949.

[143] 5 March 1949.

In mid-March, the *Flensburger Tageblatt* again stated that it was wrong to accept Allied wishes only to arrive at a West German government as quickly as possible.[144] It was adamant that

> "Only on the basis of a constitution, which corresponds with German ideas in its crucial concepts and is felt to be a German constitutional work, can a government be formed that will have the necessary inner authority for having an impact abroad."

The Military Governors' rejection of the constitutional draft in Frankfurt on 16 February was covered by much of the press. The *Hessische Nachrichten*, published in the US zone, noted that the French spokesman had stated that the proposal did not meet the requirements of the London Recommendations, whilst the US had the strongest objections this time, in particular believing that the *Länder* did not have enough powers.[145] The *Darmstädter Echo*, published in the American zone, summarized Clay's position on the Basic Law: the Parliamentary Council could either proceed to the reading in the Plenum or let the Military Governors examine the constitutional proposal first, and Clay hoped that the assembly would pursue the latter course.[146] The CDU-leaning *Allgemeine Kölnische Rundschau*, amongst others, was more optimistic, running its article under the headline

> "Western government already on 1 May? Clay was very confident about the Bonn work. Military Governors want to check first."[147]

The DVP-leaning *Schwabenecho*, on the other hand, citing the French news agency AFP, reported that Clay had said he would not agree to the proposal as it stood.[148] The SPD-leaning *Das Volk* spoke of the "Allied dilemma": should the Allies accept the Basic Law as it stood, although it did not meet the London Recommendations, or should they reject it, undoing German and Allied work so far.[149]

The Z-leaning *Rhein-Ruhr-Zeitung* differentiated between the positions of the Western powers.[150] The paper observed that the USA and France desired that the Basic Law meet the London Recommendations, whilst Britain did not want to endanger the German cross-party compromise. What the *Rhein-Ruhr-Zeitung* had identified was in fact the beginning of a pattern of positions adopted by the Allies.

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[144] 15 March 1949.
[145] 17 February 1949.
[146] 18 February 1949.
[147] 19 February 1949.
[148] 19 February 1949.
[149] 19 February 1949.
[150] 21 February 1949.

France and the United States pushed for a more federal structure for the West German state, whilst Britain placed greater weight on German cross-party agreement on the content of the Basic Law.[151] This pattern was to characterize the Allied-German constitutional dialogue almost until the conclusion of the Basic Law itself.

On 2 March 1949 the Military Governors met a delegation from the Parliamentary Council, comprising Adenauer as President of the assembly, von Brentano and Kaufmann for the CDU and Menzel and Schmid for the SPD, in Frankfurt.[152] They set out their views in a memorandum which they handed over to the delegation from the Parliamentary Council in Frankfurt on the same day.[153] Most significant was the Governors' concern over the extent to which the proposed finance provisions departed from the criteria agreed upon in London in July 1948, and which, they felt, would result in the *Länder* being left without adequate independent sources of revenue for the conduct of their affairs. They also criticized that the powers of the *Bund* were defined insufficiently clearly "adequately to safeguard the position of the states in a federal system" and advised the Council that the provisions of the Basic Law which applied to Berlin had to be suspended "in view of the existing situation", presumably a reference to the continuing Soviet blockade of Berlin. Most newspapers reported on this meeting and on the memo which was given to the Bonn delegation. The CDU-leaning *Hamburger Allgemeine Zeitung* characterized General Robertson's decision to read out the memo in German in Frankfurt was "a gesture of obliging politeness".[154] Previously it had been different, the paper continued, and therefore

> "the German representatives were pleasantly touched by the friendly atmosphere at this discussion. Study of the text shows that the German public does not need to worry about the suggestions given to the Parliamentary Council, perhaps with the exception of the statement on Berlin. But no part of this new advice had an humiliating effect."

This portrayal of the meeting and the contents of the memo was coloured by the paper's political orientation, since the memo's provisions did not contradict CDU wishes in the same way that they ran counter to the SPD position.

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[151] Cf. A. Birke, *Britain's Influence on the West German Constitution* (London, 1995), pp. 29-30.
[152] *PR. A&P*, VIII, pp. 120-130.
[153] Ibid., pp. 131-144. Cf. *Sekretariatsumdruck* 3, in BA, Z5/202. Unclear, however, how soon this was circulated, in *PR. A&P*, X, p. liii.
[154] 4 March 1949.

Many papers summarized or reproduced in full the contents of the memorandum. Whilst the CDU-leaning *Allgemeine Kölnische Rundschau* characterized the memo as "polite but firm", the Z-leaning *Rhein-Ruhr-Zeitung*'s headline was "Bonn has been corrected".[155] The *Welt*, published by the British Military Government, listed the Governors' main points of criticism: the status of Berlin, the fiscal administration, and priority legislation (*Vorrangsgesetzgebung*).[156] Several papers reported on the response of the Bonn delegates. The above-party *Allgemeine Zeitung* gave the first reaction, namely that further clarification from the Allies was needed to understand the memo fully.[157] A day later, the same paper cited Adenauer and Schmid briefly on the subject of the memo, in the process giving the essence of the CDU and SPD positions on the memo.[158] The CDU intended to try and combine the Allied with the German points of view. The SPD, on the other hand, was not prepared to accept the Allied limitation of the legislative powers of the *Bund*. Many papers empathized with the disappointment of the Berliners at their exclusion from the West German state to be established.

Numerous newspapers devoted an editorial or longer opinion-based piece to a discussion of the memorandum and its possible implications. The *Mannheimer Morgen*, published in the US zone, commented that although the memo spoke only of Allied suggestions, it was clear that were the Germans not to heed them, the Military Governors' consent to the Basic Law would be "very problematic".[159] The above-party *Trierische Volkszeitung*, published in the French zone, characterized the situation following the memo as one

> "holding its own tensions, though one cannot under any circumstances speak of a crisis at the moment."[160]

Only a fortnight later, the situation was described as a 'crisis' by the press. (See below, p. 130.) The *Neue Zeitung*, published by the American Military Government, believed that the "German mistrust and fears had been premature and unnecessary".[161] In fact, it continued,

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[155] Both 4 March 1949.
[156] 3 March 1949.
[157] 4 March 1949.
[158] 5/6 March 1949.
[159] 4 March 1949.
[160] 9 March 1949.
[161] 5 March 1949.

> "A larger number of deviations from the Allied recommendations were identified in the Basic Law, but the Allies only took exception on certain key issues. Which these key issues were, was foreseeable. The Allies have never left any doubt about their insistence on a federal state."

The different line taken by the *Neue Zeitung* in its commentary on the memo and the German reactions it had called forth betrayed the nature of its publication as an American-army newspaper.

According to the *Weser Kurier*, published in the US zone, the memo made clear that the Military Governors

> "had given considerable thought in advance to the extent to which the two large parties can still give way without losing face in front of their voters."[162]

The independent Socialist *Telegraf*, published in the British sector of Berlin, was much more critical.[163] It believed that the memo's recommendations were "grist to the federal mill of the Bavarian Minister President [Dr. Hans Ehard]." Whilst, "it is Ehard's right to represent Bavaria's position with vigour", the paper continued,

> "Bavaria should not seek to derive advantage for its conception of the state from the fact that limits have been set on our [German] freedom."

The *Telegraf* was not alone, although more outspoken than others, in its criticism of Ehard's activities. In contrast, the DP-leaning *Deutsche Volkszeitung* commended Bavaria for its "deutsche Gesinnung".[164]

The KPD-leaning *Niedersächsische Volksstimme* seized the opportunity presented by the memo to accuse the Bonn assembly of working at Allied behest.[165] It declared,

> "Bonn Council under Allied direction. *Separatverfassung* is being 'adapted' to the London Recommendations. Confusion in the Parliamentary Council"

Furthermore, in what was certainly another example of the Communist instrumentalization of Allied statements feared by West German politicians, the paper quoted the SED news agency's claim that the Soviet occupation force refrained from any interference in the constitutional work of the German People's Congress.

The 7-Person Committee's examination of the Allied memo during the first week of March was covered by several newspapers.[166] The DP-leaning *Deutsche*

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[162] 7 March 1949.
[163] 8 March 1949.
[164] 10 March 1949.
[165] 5 March 1949.

Volkszeitung, identified the crux of the problem confronting the Parliamentary Council in its efforts to reach a new compromise with the Allies.[167] The Allied insistence on the *Länder* rather than the *Bund* being responsible for the fiscal administration, meant, the article explained, that the SPD was the "victim", which

> "paid highly for the *Bund*'s fiscal sovereignty in the compromise negotiations and which was now being deprived of the reward."

This was a reference to the SPD's agreement in the autumn to a *Bundesrat* rather than a Senate as second chamber in return for the *Bund* having fiscal sovereignty. (See chapter IV, pp. 166-188.) This was indeed the problem: the CDU/CSU stood to benefit more from the Allied recommendations, since they tied in more closely with its own constitutional goals. Yet there were two sides to the coin. Ten days earlier, Mommsen had observed in the *Süddeutsche Zeitung*, published in the US zone, that

> "it had certainly made the position of the small federal minority in Bonn much harder that its demands had – by chance – coincided with most of the points in the Allied recommendations. This minority regrets having to recognize at the end of the [constitutional] work that it was defeated on some key points. It cannot, however, welcome it if these points now have to be changed at non-German wish."[168]

This comment clearly illustrates the concern held about a particular German position being seen to be identified too closely with that of the Allies.

The Allied memorandum formed the basis for discussions between the Allied liaison officers and the 7-Person Committee on 9 March.[169] The discussions were covered by most newspapers.[170] Particular attention was paid by the press to the discussion on the financial set-up of the new West German state, during which experts were also consulted.[171] The Germans sought to persuade the Allies to look more at the whole package of the constitutional proposal rather than to concentrate on particular articles. Agreement was not reached in these discussions nor in further exchanges in the following weeks.

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[166] See, for example, CDU-leaning *Westfalenpost*, 5 March 1949. Interfactional discussions of memo, 3 March 1949, in *PR. A&P*, XI, pp. 105-108; discussion of memo in 7-Person Committee, 3/4 March 1949, in ibid., pp. 109-117.
[167] 10 March 1949.
[168] 1 March 1949.
[169] *PR. A&P*, VIII, pp. 150-196.
[170] For example, CSU-leaning *Münchner Merkur* or independent Socialist *Telegraf*, 11 March 1949.
[171] Meetings of Allied financial experts, liaison officers and Parliamentary Council delegates, in *PR. A&P*, VIII, pp. 158-186.

The American Military Government's warning to the Bonn assembly that it should not reject the memo but work with the Allies to achieve a federal constitution, to which the German Ministers President and the Parliamentary Council had committed themselves in the previous summer, was cited by several newspapers.[172] The CDU-leaning *Frankfurter Neue Presse*, amongst others, cited American reservations about the German counter-arguments on the financial organization of the future state, and reported the American belief that opposition to the Allied recommendations was based more on party political interests than anything else.[173]

The SPD executive's discussions as well as the party's position on the memo were the subject of reports in several papers.[174] Similarly, the FDP executive's discussion of the memo was noted.[175] The *Süddeutsche Zeitung*, published in the American zone, acknowledged the difficulty for the SPD, namely that its views were those being criticized by the Allies.[176] In contrast, the headline of the *Neue Zeitung*, published by the American Military Government, proclaimed

> "Parties aggravate Bonn crisis. SPD and FDP insist on fiscal administration by *Bund*. Communists reject memo"

Responsibility for the standstill in the formulation of the Basic Law was placed squarely on the shoulders of the German parties, in particular the SPD and FDP. The article continued,

> "political observers in Bonn believe that one can already speak of an aggravation of the crisis and that the attitude of the parties could perhaps make completion of the Basic Law impossible."[177]

The *Neue Zeitung* was one of the first actually to speak of the situation as a 'crisis'.[178] Others, including Council delegates, already judged the situation to be critical. A fortnight later, Chaput de Saintonge, the British liaison officer, reported that "the situation in Bonn has reached a new crisis".[179] Identification of the current difficult situation as a 'crisis' by the press was both cause and effect of the difficulties, and

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[172] For example, identical articles in CDU-leaning *Frankfurter Neue Presse* and *Neue Zeitung*, published by American Military Government, 10 and 12 March 1949 respectively.
[173] 14 March 1949.
[174] For example, SPD-leaning *Hannoversche Presse* or US-zone *Mannheimer Morgen*, 12 March 1949.
[175] For example, US-zone *Mannheimer Morgen* or *Tagesspiegel*, published in the US sector of Berlin, 12 and 13 March 1949 respectively.
[176] 15 March 1949.
[177] 15 March 1949.
[178] *PR. A&P*, p. xliv, does not make reference to use of term 'crisis' by the press.
[179] 2 April 1949, in PRO, FO, 1030/87, and in BA, Kl. Erw. 792/7, p. 230.

aggravated the situation.[180] Whilst the parties were responsible for how they reacted to the memo, the press' portrayal of events contributed to a hardening of fronts, which in turn made it harder for the parties to modify their reactions in the search for a compromise. Potentially damaging as the evaluation of the situation as a 'crisis' was, it was accurate and signals a wider awareness of the difficulties of the Allied-German exchange on the formulation of the constitution.

The above-party *Trierische Volkszeitung*, published in the French zone, linked the parties' attitudes to the memo with the quest for *Sachlichkeit* in the Parliamentary Council's deliberations.[181] The article spoke primarily of the SPD and the FDP. It distinguished between the representatives of the parties in Bonn and party members not part of the assembly, who, according to the article, had different views on how to proceed. The former were more conciliatory and ready to compromise with the Allies, whilst the latter were inclined to reject the Allied views out of hand. This difference was seen to arise from "the objective (*sachlich*) work on the one side and the party executive's effort to win votes and the masses on the other." Several papers raised the differences between the party factions in the Parliamentary Council and the party executives on the route to be taken following the Allied rejection of the German reformulation at the end of March.[182]

"Suggestions for changes – not *Diktat*" was General Clay's opinion on the Allied memo at a press conference in mid-March, according to a headline of the *Neue Zeitung*, published by the American Military Government.[183] Much as the earlier warning delivered by the American Military Government had done (and which had also been publicized by the *Neue Zeitung*), Clay urged the Bonn assembly to keep to its side of the agreement to set up a federal West German state. This would not be achieved if the Basic Law were not to be changed according to the Allied suggestions. The above-party *Allgemeine Zeitung* countered, however, that if the Basic Law was to last, then

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[180] Morsey, 'Die letzte Krise', p. 399.
[181] 25 March 1949.
[182] For example, liberal *Rheinisch-Pfälzische Rundschau* or US-zone *Süddeutsche Zeitung*, 31 March 1949.
[183] 17 March 1949.

> "the legal framework of our state life must somehow correspond with our needs and not with those of foreign powers.... Is therefore the hope not justified that the Allies meet the Germans halfway, on the lines indicated by the new German answer?"[184]

The 'new German answer' was a reference to the reworking of certain articles by Höpker-Aschoff and Kaufmann, which maintained the sovereignty of the *Bund* in the financial sphere. It was intended to meet Allied requirements as far as possible whilst still maintaining the ultimate fiscal sovereignty of the *Bund*.[185] The presentation of the new draft to the liaison officers on 18 March was covered by almost all the papers. According to the US-zone *Mannheimer Morgen* the move led to "subdued optimism" in the Parliamentary Council.[186]

The Allied liaison officers rejected the German reformulation on 25 March.[187] This produced a standstill in the formulation of the constitution. The rejection and the Parliamentary Council's reaction were the subject of considerable press coverage in the ensuing days, much of it based on the press communiqué issued on 25 March.[188] Various explanations were offered. The US-zone *Frankfurter Rundschau*, for example, ascribed the current crisis to the lack of clarity on what the Allies had actually meant by 'federal' in the London Recommendations.[189] Traditional national differences in the understanding of federalism - the centre legislating and the states administering laws (German) versus the centre and the states each legislating and administering their own laws in parallel (American) - contributed to the confusion. (See chapter IV, p. 159.)

Newspapers published in the British zone attributed the rejection primarily to France. For the CDU-leaning *Hannoversche Neueste Nachrichten*, the Allied rejection of the German reformulation was "without doubt directed primarily at calming French objections."[190] The CDU-leaning *Rheinische Post* claimed the French people did not want a strong Germany, whilst the SPD-leaning *Neue Ruhr Zeitung* claimed that the

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[184] 19 March 1949.
[185] 17 March 1949, Reproduction of Parliamentary Council's Secretariat No. 105, in BA, Z5/203.
[186] 19 March 1949. Cf. *PR. A&P*, VIII, p. xlvii.
[187] Ibid., pp. 211-215.
[188] *Sekretariatsumdruck* 21, in BA, Z5/202. Unclear, however, how soon this was circulated, in *PR. A&P*, X, p. liii.
[189] 21 March 1949.
[190] 26 March 1949.

French had got wind of differences between the State Department and Clay.[191] In the opinion of the State Department, Clay was being too dogmatic on the nature of the federal set-up, which meant, the article continued, that Clay might depart before the conclusion of the constitutional deliberations. This, the *Neue Ruhr Zeitung* conceded, would be a loss for France, since Clay more than Robertson supported the French position. France was insistent that the London Recommendations be met now. It is clear that the French advocacy of an extreme federal set-up for West Germany was recognized by the press.

At the end of March, after the Allied rejection of the German reformulation, many newspapers called for the Allies and the Germans to reach a compromise again. The Christian *Schwarzwälder Post*, published in the French zone, argued that a compromise had been found amongst the German parties and amongst the Western Allies and that now the two needed to be combined to find a third.[192] The parties in the Parliamentary Council had to decide whether to continue on the basis of the existing compromise or whether to look for a new formula, the article concluded. The KPD-leaning *Neue Volkszeitung* proclaimed,

> "Basic Law - a stillbirth? Situation in Bonn is 'delicate'. Compromise of compromises is sought".[193]

('Delicate' was the adjective used by Adenauer.[194]) The CDU-leaning *Rheinische Post* remarked on the Allied rejection of the German reformulation, "this was to be expected. True compromises can only be reached between equals."[195] This observation nicely identifies why the Allied rejection chafed so much with the Germans. The rejection underlined Germany's lack of full sovereignty and its subjugation to the will of the occupation powers. A constitutional settlement was desired precisely because it would be a step on the path to the recovery of full sovereignty.[196]

The CDU/CSU came to believe that the 7-Person Committee's proposal should be modified to take account of the Allied demands, which meant breaking the

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[191] Both 26 March 1949.
[192] 26 March 1949.
[193] 27/28 March 1949.
[194] Cf. *West Echo*, published in the French zone, 27/28 March 1949.
[195] 26 March 1949.
[196] Cf. commentary by Ernst Müller-Hermann, in US-zone *Weser Kurier*, 28 March 1949.

compromise reached with the SPD and FDP.[197] The SPD, on the other hand, was unwilling to accept the Allied demands and ready to risk the rejection of the Basic Law in its entirety by the Military Governors. The FDP argued that the Basic Law must not be allowed to fail and that it would not fail with a Federal fiscal administration. The difficult situation was summarized by the US-zone *Mannheimer Morgen* in its headline:

> "No further Allied interference in Bonn for the time being. Contradictory views of parties on whether to continue with work on Basic Law".[198]

Many papers took up this theme. The FDP-leaning *Westdeutsche Rundschau* argued that it was now up to the parties to decide upon their next move.[199] It was one of the first papers to identify the different party positions, which were to form the basis for the positions taken during the following month until the resolution of the 'crisis'. Newspapers elaborated upon the different party positions, with the emphasis given corresponding to their own political orientation.

Whichever course the political parties decided to pursue, the SPD-leaning *Nordwestdeutsche Rundschau* argued, the Parliamentary Council had

> "[to] get out of the distorted situation into which it has got itself now, if it does not want to lose all its standing with the German population. Above all, it seems impossible always to search for new formulations, to present them to the Governors and always to begin from the beginning again when objections are raised. The role of pupil, who lets his exercises be corrected, is gradually becoming ridiculous and degrading."[200]

The SPD-leaning *Das Volk* voiced similar concerns about the damaging impact of the crisis on the acceptance of the Basic Law by the West German population.[201] It remarked that the greatest danger in the present situation was that

> "for the population of a federal territory with a constitution influenced by Allied interventions, the type of state will be discredited which is meant to form its base, namely democracy. One did not understand how to win the German people for the idea of democracy after the First World War either. This fact and the risk of the rejection of the Basic Law by the occupation powers, with which the chance, perhaps the only one for a long time, to set up a unified German representation might be missed, confronts the Parliamentary Council with a difficult decision. It must be taken in the next few days."

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[197] Schumacher's famous reference to Adenauer in the first *Bundestag* as the "Chancellor of the Allies" in part referred back to the stance taken by the CDU in March/April 1949, in 1. Deutscher Bundestag – 18. Sitzung, 24/25 November 1949, in *Verhandlungen des Deutschen Bundestages*, vol. I (Bonn, 1950) p. 525.
[198] 30 March 1949.
[199] 29 March 1949.
[200] 31 March 1949.
[201] 31 March 1949.

How best to proceed was indeed the dilemma confronting the Bonn assembly. The US-zone *Darmstädter Echo* put it to the Allies that the realities of the situation in the Western zones of occupation should lead them to reconsider their insistence on the denial of fiscal sovereignty to the *Bund*.[202] It commented,

> "If West Germany is to live and work with Europe and the rest of the Western world, it needs the sensible balancing out of its finances through a solid government. Both can only be achieved in the long term in view of the German condition by two methods. The first method is called: *Diktat* from the occupation powers; the second is called balancing out through a democratic German body. The second method should be the more appealing to the Germans as well as to the occupation powers."

The vehemence with which sections of the press argued that the Basic Law had to be seen to be German illustrates the importance attached to the public's perception of the Allied role in the constitution-drafting process. Whilst the press was obliged to report on the Allied-German exchange as it took place, it did not miss an opportunity to remind the Allies that the constitution had to be seen to be German to be accepted fully. Newspapers agreed that this was best achieved by reaching a compromise with the Parliamentary Council on the Basic Law's content.

At the turn of the month, various indications emerged that the Allied position was perhaps not as fixed as had been assumed. The press cited the remarks of a senior British official in Berlin that if the Allied recommendations were not to be incorporated into the Basic Law, then the German proposal would be sent to the British, French and American governments with a note to this effect.[203] It was up to the Parliamentary Council to determine the shape of the Basic Law now, the official was quoted as saying. Consequently, the US-zone *Frankfurter Rundschau* proclaimed "Allied Governments to decide about Bonn Basic Law" in its headline.[204] The independent *Flensburger Tageblatt* reported on a conversation held by Adenauer, Schmid, and the British and American liaison officers.[205] Whilst the Allied memo was final and no further suggestions would be forthcoming, the British liaison office was reported to have intimated to the SPD that

> "a Basic Law passed by both large parties of the Parliamentary Council would also be approved by the British occupation power. One also speaks of similar American statements in Bonn."

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[202] 1 April 1949.
[203] No other reference to this official's remarks.
[204] 30 March 1949.
[205] 2 April 1949. Cf. SPD-leaning *Neue Ruhr Zeitung*, 2 April 1949. No reference to this meeting in *PR. A&P*, VIII.

Such reports led Adenauer to call for clarification from the Allies, something covered by several papers. Adenauer despatched his personal assistant, Herbert Blankenhorn, to speak to the liaison officers. Whilst Simons did not confirm this impression of the American position, Chaput de Saintonge spelled out the British attitude by declaring that a Basic Law passed without the support of both parties would be "a Pyrrhic victory".[206]

The SPD-leaning *Neue Ruhr Zeitung* reported, as did some other papers, the American Military Government's belief that the British Labour party was supporting the SPD and that the British Foreign Minister was planning to persuade his American counterpart in Washington of the importance of cross-party German agreement on the Basic Law.[207] Various newspapers, including the *Welt am Sonntag*, published by the British Military Government, however, quoted a denial of such support from Labour for the SPD.[208] Various rumours about support by one of the Western powers for one of the German political parties circulated in April, none of which the press could substantiate at the time. It is clear, however, that the British felt an all-party German compromise to be more important than an insistence of federalism in every article of the constitution, which led them to sympathize with the SPD's decision in April to adhere to the 7-Person Committee's compromise. Conversely, Clay's insistence on wide-reaching powers for the *Länder* tied in with CDU/CSU demands and Clay regarded the CDU/CSU's efforts to arrive at a more federal solution in line with the Allied memoranda favourably.[209]

The lack of clarity about the Allied position, led the CDU-leaning *Allgemeine Kölnische Rundschau*, amongst others, to criticize the "politics with rumours" pursued by the SPD.[210] The paper castigated the SPD for spreading

> "all sorts of rumours [about the Military Governors' attitude should the Parliamentary Council adhere to its decision taken in the third reading of the Main Committee] with the purpose of stirring public opinion up in favour of certain solutions."

The CDU, on the other hand, was

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[206] 3 and 8 March 1949 respectively, in *PR. A&P*, VIII, p. 217 and 223.
[207] 2 April 1949. Cf. CDU-leaning *Rheinische Post* or US-zone *Süddeutsche Zeitung*, 2 April 1949. Cf. Grabbe, p. 411.
[208] 3 April 1949.
[209] Grabbe, p.403, p. 411, and p. 415.
[210] 1 April 1949.

> "of the opinion that such rumours are totally unsuited to being the basis for decision-making and the submission of a draft resolution, and that it is only acting politically properly if one sticks to the official documents in front of the Council."

In a further article on the same day, the newspaper suggested that the SPD was trying to increase its popularity by arousing "national" passions over the Allied stance on the German compromise. The *Tagesspiegel*, published in the US sector of Berlin, thought the SPD policy was

> "nothing but the opinion of a man, who lets the bird in hand fly away because he hopes for two in the bush."[211]

From the opposite perspective, the willingness of the CDU to abandon the 7-Person Committee compromise to meet Allied demands was criticized by the SPD-leaning press. For example, the *Hamburger Echo* announced in its headline,

> "CDU is torpedoing West Germany. Foreign Ministers' Conference a German chance. Does CDU want to cause Bonn to fail?"[212]

The above-party *Westdeutsche Zeitung*, however, commented astutely that the parties' different assessment of the likely Allied reaction to German adherence to the 7-Person Committee compromise, without acceding to the latest Allied demands, was itself part of the disagreement on how to proceed.[213] It was a disagreement in which the SPD's assessment that the Western Allies would accept the German proposal eventually was largely vindicated by the release of the second Foreign Ministers' communiqué on 22 April.[214]

In light of the Military Governors' inability to agree amongst themselves on how to proceed and in view of their already scheduled meeting, the British, French and American Foreign Ministers took up the matter of the West German constitution in Washington D.C. in early April. In principle, they decided to accept the 7-Person Committee's proposal with some modifications. Agreement on the Basic Law was the result of agreement on the Atlantic Treaty. By tying Britain, France and the United States into a defensive pact, France's security fears were assuaged. It no longer needed to insist on weakening Germany through its constitution for security reasons. The Foreign Ministers conveyed their position to the Bonn assembly in two

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[211] 2 April 1949. Cf. CDU-leaning *Aachener Volkszeitung*, 11 April 1949.
[212] 2 April 1949.
[213] 1 April 1949.
[214] Morsey, 'Die letzte Krise', p. 403.

communiqués.[215] The first communiqué was released on 5 April. It did not make their change of position clear, however, instead telling the Parliamentary Council to "give due consideration" to the Military Governors' recommendations.[216]

The communiqué was the subject of considerable press coverage. The CDU-leaning *Allgemeine Kölnische Rundschau* observed that it corresponded with the London Recommendations and that the 7-Person Committee has now "for the sixth time been shown the limits of its options".[217] The above-party *Allgemeine Zeitung* believed that the communiqué had aggravated the situation in Bonn and wondered how the parties would react.[218] The above-party *Westdeutsche Allgemeine*'s headline read, "Bonn situation has once again stiffened up. Allies expect Germans to give way. SPD for resistance."[219] The SPD-leaning *Rhein Echo* took a different line and returned to the crucial question of responsibility for the content of the Basic Law.[220] It argued that in light of the Allied memo and the Allied rejection of the 7-Person Committee compromise, it was clear that

> "the intervention of the Foreign Ministers is hard to take. But are these [the Allied provisions] on the other hand what Germany needs? That – and nothing else – is in truth the question!"

In contrast, the headline of the KPD-leaning *Volksecho* read, "They [the Allies] want submission", but, its article continued, the capitulation of Bonn would never be the capitulation of the German people.[221]

The Main Committee met to discuss the communiqué on 6 April.[222] Only the KPD delegate Renner referred to the media coverage; the other parties concentrated on giving their assessment of the communiqué. Clearly this was where their priority lay at that moment but the concern that the Basic Law be seen to be German in formulation by the West German population influenced the response of the factions, especially the SPD. Menzel rejected the Allied recommendations on behalf of the SPD. He argued that the compromise reached in the 7-Person Committee was the limit to the concessions the Germans could make without putting German legal and

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[215] 5 and 22 April 1949, in *PR. A&P*, VIII, pp. 218-220 and pp. 244-246 respectively.
[216] Ibid., p. 220.
[217] 6 April 1949.
[218] 6 April 1949.
[219] 7 April 1949.
[220] 7 April 1949.
[221] 6 April 1949.
[222] *Parlamentarischer Rat. Verhandlungen des Hauptausschusses*, pp. 731-737.

economic unity in danger. Speaking for the CDU, Lehr disagreed. He believed a new compromise could be found. Heuss then proposed that the 7-Person Committee's February compromise be handed over to the Finance Committee and 7-Person Committee again to work out a means by which the Allied demands could be met. His proposal was passed with 12 votes to 9.[223] The SPD understood this as a departure from the February compromise, and consequently no longer felt bound to it. Unlike the CDU/CSU and FDP, the SPD was not prepared to give in to Allied pressure.

Most newspapers reported on these developments and offered a commentary on the party positions. The independent *Flensburger Tageblatt* quoted "informed Allied sources in Bonn" that a Basic Law passed with only a narrow margin was unlikely to receive Allied consent.[224] The KPD-leaning *Freies Volk* was, as always, ready with advice for the Parliamentary Council on how to proceed.[225] "Come clean!" was its headline and it argued that the Council should admit that it was working at Allied behest.

Once again, the question of how best to proceed in order to secure acceptance of the Basic Law by the Allies but also, and more crucially for many, by the German population, preoccupied the press in the following days. In its editorial, the SPD-leaning *Neue Ruhr Zeitung* equated agreement to the Allied demands on the question of the financial organization with giving up.[226] Furthermore, agreement would

> "burden the representatives of German democracy with the odium of weakness of character from which the German reputation has suffered enough as it is. ... a weak government, incapable of meaningful and fruitful functioning, would be the best propaganda for the Communists. ... Is it not really up to them [the Allies] to think things through again?"

The US-zone *Hessische Nachrichten* likewise made the link between the establishment of democracy and the path to be pursued by the Parliamentary Council.[227] Its remarks also contained an implicit criticism of Allied policy and its consequences.

> "German signatures will be at the bottom of the Basic Law and Germans will have to carry the responsibility for whether their decision will make possible a viable Germany in the West at first. ... No one would understand if Germans made a German law with Allied content. If one is serious about realizing the democratic idea in Germany, then one must tackle today the daily apparent contradiction that German democracy is said and Allied decree is meant. Nobody will

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[223] Ibid., p. 737.
[224] 8 April 1949.
[225] 8 April 1949.
[226] 9 April 1949.
[227] 9 April 1949.

> be converted to democracy or even kept to it if one does not finally begin to be honest in this respect."

Writing in the independent *Zeit* later in the month, Dr. Marion Countess Dönhoff, concurred.[228] She argued that there were in effect two options: either the Western powers dictate a Basic Law or they leave it to the Germans to draft their own constitution within certain guidelines.

> "The third solution, to force the Parliamentary Council, as it were, to accept of its own accord that which has been imposed upon it, is not a solution."

Dönhoff questioned whether the Allied view that the German Basic Law did not meet the guidelines set out in the London agreement was actually accurate. In her view, the federal organization received more emphasis in the Basic Law than in the constitutions of other federal states worldwide.

Agreement on the occupation statute was also reached in Washington on 6-8 April by the British, French and American Foreign Ministers. In the statute, Britain, France and the USA reserved the right to exercise full power again and control of foreign policy, foreign trade and exchange, the demilitarisation of the Ruhr, reparations and restitutions, National Socialist criminals, and matters concerning refugees and displaced persons.[229] This was reported upon by many papers, some commenting that if the Allies could reach agreement then the Germans ought to be able to do so too.[230] The above-party *Westdeutsche Zeitung* suggested that the approach taken to the occupation statute – lengthy deliberations, followed by the Foreign Ministers meeting, seeing the bigger picture, and thus reaching agreement – could be emulated in Bonn.[231] The US-zone *Weser Kurier* correctly believed that it was the agreement on the Atlantic Treaty that marked the turning point, since it allowed France to agree to a simplified statute.[232]

The press reported that the SPD had postponed making a final decision on how to proceed with the formulation of the constitution until 20 April when a full party conference was scheduled. The CDU's condemnation of this delay in the

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[228] 21 April 1949.
[229] Dated on date of hand-over to Parliamentary Council, 10 April 1949, in *PR. A&P*, IV, pp. 54-61.
[230] For example, CDU-leaning *Frankfurter Neue Presse*, 11 April 1949.
[231] 11 April 1949.
[232] 11 April 1949.

decision-making on the Basic Law was also reported.[233] The delay led to a lull in the constitutional deliberations and hence their coverage in the press. At the meeting of the Finance Committee on 7 April, SPD members took part only as observers.[234] The Committee discussed how the Allied recommendations threatened the legal and economic unity of Germany, as Menzel had claimed in the Main Committee a day earlier, but did not take any decisions.

The proposed occupation statute was discussed at a meeting between delegates from Bonn and the Military Governors on 14 April.[235] This discussion was the subject of considerable press coverage. So too was the prospect of a further meeting between the Germans and Allies on 25 April. Writing about the first of these meetings, the *Welt*, published by the British Military Government, and the *Nordsee Zeitung*, published in the US zone, were unusual in noting that immediately after the meeting Menzel and Schmid had a "longer conversation" with Robertson in his office.[236] No information, however, was made public about the subject of the conversation, the *Welt* stated. At this meeting, Robertson informed Schmid and Menzel of the contents of the second communiqué from the Military Governors, which had not yet been delivered to the Germans.[237] Robertson thus hoped to strengthen the position of the moderate wing of the SPD in its efforts to find a compromise with the other parties on the Allied recommendations.

The SPD-leaning *Aachener Nachrichten* recorded the increasing amount of thought being given to the options should the SPD reject the Basic Law.[238] The article remarked on the persistent rumours that the British were supporting the SPD's position and cited an assertion by an American Military Government spokesman that only a British intervention two weeks ago had prevented the SPD from revising its position then. However, it went on, the head of the American Civil Administration had denied any differences existed amongst the three Allies. Furthermore, Clay had indicated that the Allies might give way on certain points if the SPD and CDU

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[233] CDU condemnation, 12 April 1949, in *Die CDU/CSU im Parlamentarischen Rat: Sitzungsprotokolle der Unionsfraktion* introduced and edited by R. Salzmann (Stuttgart, 1981), pp. 482-492.
[234] *PR. A&P*, XII, pp. 534-562.
[235] *PR. A&P*, IV, pp. 112-139.
[236] 16 and 17/18 April 1949 respectively.
[237] Birke (1995), p. 43.
[238] 20 April 1949.

reached agreement. A similar report was carried by the CDU-leaning *Rheinische Post.*[239] Clay, of course, already had knowledge of the second Foreign Ministers' communiqué.

Just before the SPD party conference on 20 April, the CSU-leaning *Tagespost*, Augsburg, gave an interesting explanation for the SPD stance.[240] In its opinion, the SPD's position was motivated by the search for an alibi as a consequence of the lesson learned from 1919. One of the first acts of the new government in 1919 had been to sign the Treaty of Versailles, which had been imposed by the victorious Allies, thus establishing the link between the existence of post-war democracy and Allied imposition in the 1920s. Hence, "the oppressing worry about a tangible proof of 'national reliability'", which in 1949, the *Tagespost* argued,

> "the SPD believes it owes to world history, the German people and last but not least the German nationalists of tomorrow - the proof of 'always having been against it' then [1949] in Bonn."

Just after the SPD conference on 20 April, the journalist Rudolf Junges offered a different explanation for the SPD stance.[241] In a discussion with members of the CDU/CSU faction, he suggested that the SPD conference had been staged

> "to cover up ... the loss of prestige, which it was feared would result from the minor retreat on the question of the financial organization".

Both his and the *Tagespost*'s observations were pointed but astute. Throughout the assembly's deliberations the SPD had been at great pains to ensure that the formulation of the Basic Law was perceived to be German. Anxious to avoid giving the impression that it had succumbed to Allied pressure, the party conference in April was another example of this effort, transmitted by the press to the very people the SPD sought to persuade. The press was both target and medium for the message being delivered by the SPD.

At the party conference on 19/20 April, the SPD opted for a simplified Basic Law, a proposal reduced to the bare minimum necessary for an interim arrangement.[242] In the financial sphere, the SPD partially accommodated Allied

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[239] 20 April 1949.
[240] 19 April 1949.
[241] *Die CDU/CSU im Parlamentarischen Rat*, p. 491.
[242] *PR. A&P*, VII, pp. 462-496; party conference, in K. Klotzbach, *Der Weg zur Staatspartei. Programmatik, praktische Politik und Organisation der deutschen Sozialdemokratie 1945-1965* (Berlin, Bonn, 1982), pp. 169-170.

wishes, whilst continuing to insist on the *Bund* having the necessary power to ensure German economic and legal unity, but it had struck all religious and cultural rights from its proposal. This was reported and commented upon by the press. The party conference was followed by a large press conference.[243] Much as in December, some newspapers suggested that the SPD needed to ask itself who would be the beneficiary, "the laughing third party", if agreement were not reached on the Basic Law.[244] This was an implicit reference to the Communists, again demonstrating the worry about giving the Communists propaganda material. The US-zone *Frankfurter Rundschau* was concerned about the impact of the SPD decision on the other parties in Bonn, since

> "all the other German parties ... have almost been manoeuvred into the role of collaborators by the tendentiously sharp formulations of the SPD."[245]

The SPD-leaning *Rheinische Zeitung*, however, argued that the SPD decision was a reminder to the Allies that whilst they had the power to say what the Germans should do, they did not have the power

> "or the right to say what the Germans should think nor to demand that the Germans sign what they do not believe to be right. Therein does not lie a lack of respect for the occupation powers nor has it been forgotten that Germany lost the war – but rather the beginning of a growing self-respect, without which neither the individual nor the people can live and act healthily."[246]

On 22 April the second communiqué from the Allied Foreign Ministers was delivered to the Parliamentary Council.[247] In it, they implied that they were willing to accept a constitution which did not adhere strictly to the March memorandum's requirements, so long as "financial independence and adequate strength for both the *Länder* and federal governments in operating in their respective fields" was secured. The State Department had come to share the British view that a compromise supported by all major parties was more important than individual articles of the constitution. The Foreign Ministers had composed the second communiqué on 8 April in Washington but had left it to the Military Governors in Germany to decide upon when to give it to the Parliamentary Council. Clay and Robertson had disagreed: Clay, who did not share the State Department's opinion, had sought to delay the communiqué's release to the Parliamentary Council; Robertson had wanted to deliver

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[243] See report by two journalists, Rudolf Junges and Heinrich Spieker, on press conference, in *Die CDU/CSU im Parlamentarischen Rat*, p. 490-494.
[244] For example, above-party *Badische Zeitung*, 23 April 1949.
[245] 23 April 1949.
[246] 23 April 1949.
[247] *PR. A&P*, VIII, pp. 244-246.

it as soon as possible.[248] Eventually, prompted by Ernest Bevin, the British Foreign Minister, who was concerned that the German political parties were moving further apart, the State Department instructed Clay to deliver the communiqué in time for it to have an impact before the meeting between the Military Governors and a delegation from Bonn on 25 April. Once released, the communiqué paved the way for the successful resolution of the crisis.

The second communiqué was the subject of much coverage and commentary in newspapers across the political spectrum.[249] Whilst all welcomed the communiqué, they differed in their identification of what had induced the Allies to hand it over. The above-party *Allgemeine Zeitung* believed that "this time a willingness to cooperate was shown, which had not been seen before", which meant that "a shimmer of hope" was now visible.[250] The above-party *Nordsee Zeitung* took a different line:[251]

> "Western powers offer Bonn a way out. Foreign Ministers' letter extends competence of *Bund*. SPD: solution without loss of prestige possible?"

In contrast, the SPD-leaning *Hannoversche Presse* proclaimed,

> "Western Allies reduce pressure on Bonn. New Allied memorandum. Consequence of SPD decisions?"[252]

The above-party *Trierische Volkszeitung* clearly thought this to be the case.[253] It commented,

> "it will remain an historical tragicomedy that the SPD's 'no' [in response to Allied memo], which had in principle been directed against Allied interference, had in fact provoked a new, this time decisive interference. The form of the interference was more elastic than before, however, and showed that the Allies too did not want to repeat any mistakes from the past."

In the days following the handing over of the second communiqué, the papers reported on the resumption of interfactional talks in Bonn at the weekend (23/24 April) and outlined the agreement reached on the nature of the Basic Law.[254] Essentially, the powers of the *Bundesrat* were reduced in line with SPD and FDP demands, whilst the SPD and FDP agreed to split the fiscal administration between the *Bund* and the *Länder*. The timing of the handing over of the communiqué and

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[248] Birke (1995), pp. 42-45.
[249] Its text was circulated in *Sekretariatsumdrucke* 44a-c, in BA, Z5/202. Unclear, however, how soon they were circulated, in *PR. A&P*, X, p. liii.
[250] 23 April 1949.
[251] 23 April 1949.
[252] 23 April 1949.
[253] 27 April 1949.
[254] *PR. A&P*, XI, pp. 144-192.

whether the SPD had had knowledge of its contents beforehand continued to preoccupy sections of the press, predominantly CDU-leaning newspapers. This reflected the grievance which was felt by CDU sympathizers that the SPD might have had prior knowledge of the communiqué's contents.[255] The CDU-leaning *Allgemeine Kölnische Rundschau*, for example, entitled an article "Was the SPD informed?"[256] The same paper assured its readers that this question would be the subject of continued discussion in the coming weeks.[257]

On 25 April an 18-person delegation made up of leading MdPR from each faction, excluding the KPD, as well as Jakob Kaiser (CDU) and Otto Suhr (SPD) from Berlin, met the Military Governors and their advisers, Steel (GB), Jean-Victor Sauvagnargues (France) and Robert Murphy (USA), in Frankfurt to discuss the formulation of the Basic Law.[258] The Military Governors accepted the Parliamentary Council's draft in essence and remaining differences were resolved at the meeting. Both sides agreed that the aim was to secure legal and economic unity, in order to promote the economic interests of the Federation, and to ensure reasonable equality of economic opportunity to all persons, but the Military Governors insisted that what was to become article 72 of the Basic Law be formulated as specifically as possible, in order to prevent the *Bund* from exercising too much power. Most papers covered the meeting, which led to "Full agreement on the West German state" as the above-party *Allgemeine Zeitung* proclaimed in its headline the next day.[259] Writing in the above-party *Westdeutsche Allgemeine*, Stampfel attributed the compromise reached at the weekend to "the nod from the Western powers".[260] The SPD-leaning *Neue Ruhr Zeitung* was reassured that "one does not want to sacrifice the West German state on the altar of an understanding with the East."[261] This relief that the Western Allies

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[255] Feldkamp argues that the real question is the extent to which Adenauer and the CDU/CSU knew of the second communiqué's contents before its release. He concludes that even if not fully informed, Adenauer could have anticipated that the Allies would soon give up their uncompromising stand, in *PR. A&P*, VIII, p. lvi. One such possible indication was Chaput's statement to Blankenhorn, that a Basic Law passed without the support of both parties would be a "Pyrrhic victory". (See above, p. 136.)
[256] 25 April 1949.
[257] 27 April 1949.
[258] *PR. A&P*, VIII, pp. 248-259.
[259] 26 April 1949.
[260] 26 April 1949.
[261] 27 April 1949.

wanted to see agreement on the Basic Law before entering into new talks with the USSR on the ending of the Berlin Blockade was expressed in several papers.

On 23 April Schumacher contended that the SPD stance had led the Allies to give way on the Basic Law in an interview for the dpd.[262] This provoked a swift reaction in Bonn. All the Parliamentary Council's factions, with the exception of the KPD, declared publicly that their deliberations had been free from foreign influence.

> "The members of the CDU/CSU, SPD, FDP, DP, and Z factions of the Parliamentary Council assembled at an interfactional meeting, have arrived at the conviction in the course of working together over several months that they were solely guided in their decisions by German considerations and were free from foreign influences. They are willing to work together loyally to bring to a good conclusion in the best interests of the German people the task set to them by fate."[263]

Several newspapers reproduced and commented upon the declaration. The delegates' concern about whether there would be seen to have been any foreign influence on the Basic Law is evident in their swift and emphatic rebuttal of Schumacher's claim. Clearly, what was broadcast on the radio or written in the press on this subject mattered very much to them. Not only did they rebut Schumacher's claim, they also sought to pre-empt possible future accusations of collaboration from having a damaging effect upon the domestic political order. Indeed, the CDU-leaning *Südwest-deutsche Volkszeitung* commented that it was only the respect for one another shown in the declaration

> "that creates the possibility of a domestic political order, which will radiate outwards to the West as well as to the East like a strong magnet."[264]

Thus the declaration was another example of the effort to learn the lessons from the past.[265] The Council's delegates wanted to avoid the Basic Law being seen to be an Allied imposition. Strictly speaking, this accusation had not been levelled at the Weimar constitution; however, the association was frequently made between the democratic government set up by the constitution and the Treaty of Versailles. (See above, p. 142.)

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[262] *PR. A&P*, XI, pp. 154-155, footnote 3.
[263] 24 April 1949, Drucksache S49 of Parliamentary Council, in BA, Z5/202.
[264] 4 May 1949.
[265] A similar declaration was made at the conclusion of the formulation of the Bavarian constitution in 1946, in Fait, (1998), p. 529.

Public perception of the Allied role during the conclusion of the Parliamentary Council's deliberations

After agreement on the Basic Law had been reached in Frankfurt on 25 April, the parties returned to Bonn to conclude their work. The Basic Law had to be passed in the Main Committee again before being put to the Plenum.[266] It was passed in the third reading in the Plenum on the fourth anniversary of Germany's capitulation on 8 May. Two days later the provisional constitution was forwarded to the Military Governors for their approval.[267] Once again the papers noted the formal role the Governors still had to play.[268] The extensive discussion in the press of the Basic Law following the third reading in the Plenum but before the Military Governors had given their approval, however, made little mention of the Allied role in the formulation process itself. Most articles paid more attention to the final reading, which parties accepted and which rejected the draft, and the reasons for these positions, as well as studying and evaluating the overall nature of the constitution.

Many newspapers commented on the opportunity the Basic Law presented for the German people to take a step on the path to regaining full sovereignty. Some papers recognized explicitly that the West German constitution would have looked different had the circumstances been different, particularly had Germany been able to determine the timing and framework within which the constitution was drafted. The FDP-leaning *Westdeutsches Tageblatt* was sure that the Basic Law would have looked different had the Germans drafted it on their own.[269] It described the constitution as

> "the walking stick, with which the victorious powers intend that German democracy should make its first attempts at walking alone."

The *Welt am Sonntag*, published by the British Military Government, called the Basic Law "a concentrate of compromises: compromises towards the Allies and amongst the political parties themselves."[270]

On 12 May 1949 the Military Governors met a 15-person delegation from the Parliamentary Council, again including leading MdPR from each faction, with the

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[266] 5-6 May 1949, in *Parlamentarischer Rat. Verhandlungen des Hauptausschusses*, pp. 743-768.
[267] For events leading up to promulgation, see *PR. A&P*, VIII, pp. lvii-lxi.
[268] For example, CDU-leaning *Allgemeine Kölnische Rundschau*, 10 May 1949.
[269] 11 May 1949.
[270] 15 May 1949.

exception of the KPD, as well as Suhr and Kaiser, and the Ministers President of all the *Länder* of the Western zones, with the exception of Württemberg-Baden, which was represented by its Minister of Justice, in Frankfurt. There the Military Governors gave their approval to the Basic Law in two letters, one addressed to the Parliamentary Council and one to the Ministers President.[271] In their opinion, the Military Governors wrote in their letter to the Bonn assembly, the Basic Law

> "happily combines German democratic tradition with the concepts of representative democracy and a rule of law which the world has come to recognize as requisite to the life of a free people."[272]

This frank acknowledgment of the existence of a German democratic tradition was remarkable.[273] The letter declared that the Basic Law was subject to the occupation statute, that the Allies retained control of the police, that Berlin would not be part of the Federal Republic, and that the borders of the *Länder*, with the exception of those of Württemberg-Baden and Hohenzollern, could not be changed. At the same time, the letter served also to promulgate the occupation statute, which came into effect on 21 September with the establishment of the first federal government.[274] The Ministers President received a copy of the letter to the Parliamentary Council and were authorized to put the Basic Law to their *Landtage* for ratification. They were also informed that they would soon be asked to consider the electoral law formulated by the Parliamentary Council, which, however, the Military Governors were themselves still checking. The meeting and the letters received substantial coverage in the press.[275] The following headline was typical.

> "Parliamentary Council dissolved. Allies approve Basic Law. Four objections of Military Governors. Ministers President to assume transitional authority" [276]

On 23 May 1949 the Basic Law was promulgated in a ceremony in Bonn. Much as in the coverage of the opening ceremony, the newspapers hardly remarked upon the presence of members of the Allied Military Governments.[277] Solely, the

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[271] Meeting, in *PR. A&P*, VIII, pp. 264-272, and in *Akten zur Vorgeschichte der Bundesrepublik 1945-1949*, edited by the Bundesarchiv and the Institut für Zeitgeschichte, 5 volumes (Munich, 1976-1983), V, *Januar-September 1949*, pp. 423-428; letter to Parliamentary Council, in *PR. A&P*, VIII, pp. 273-278; letter to Ministers President, ibid., p. 265, footnote 6.
[272] *PR. A&P*, VIII, pp. 275.
[273] C.J. Friedrich, 'Rebuilding the German Constitution', in *The American Political Science Review* 43/4 (1949), pp. 704-720 (p. 705).
[274] *PR. A&P*, VIII, pp. 276.
[275] Texts of both letters were released by Council's secretariat in *Sekretariatsumdrucke* 70-72, in BA, Z5/203. Unclear, however, how soon they were circulated, in *PR. A&P*, X, p. liii.
[276] US-zone *Süddeutsche Zeitung*, 14 May 1949.
[277] For example, US-zone *Darmstädter Echo* or US-zone *Weser Kurier*, 24 May 1949.

Neue Zeitung, published by the American Military Government, reported that the Military Governors themselves were absent, since they were attending the Foreign Ministers' conference in Paris, but that their representatives, General George Hays, Deputy US Military Governor, General Charles Noiret, Deputy French Military Governor, and General McClane, on behalf of the British Military Governor, were present.[278]

The newspapers devoted much space to reproducing, sometimes verbatim, the contents of the constitution and commenting upon its provisions both immediately before and after the constitution's promulgation. The role of the Allies was addressed less frequently and less directly. It is difficult to establish whether this was intentional on the part of the press. Perhaps the press sought to encourage the impression that the Basic Law was a German product rather than an Allied *Diktat*. Alternatively, the role of the Allies was simply not addressed because it was not regarded as meriting much attention, or was seen as less significant than the fact that West Germany now had its own constitution. It was probably a mixture of all three, with the latter playing the greatest role at the time. The successful conclusion of the formulation of the Basic Law outweighed any other considerations and was celebrated by the press.

Press comparison with developments in the Soviet Zone of Occupation

Some comparisons were made with what was happening in the Soviet zone of occupation by the press, usually in contradistinction with the conditions in which the Basic Law was being formulated in Western Germany.[279] Such comparisons were used to remind the inhabitants of the three Western zones of what were generally regarded as the more favourable conditions for formulating a constitution prevailing in the West. Exceptions to this rule were rare. On one occasion, provoked by the handing over of the Allied memorandum on 22 November 1948, Friedlaender made a very explicit and unfavourable comparison of developments in the three Western

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[278] 24 May 1949. Cf. Report that the three Deputy Military Governors and the NRW Regional Commissioner attended, in *Keesing's Contemporary Archives*, vol. VII, *1948-1950*, p. 10167.

[279] In comparison, for example, 40-50 references were made to the Soviet zone by MdPR in the Basic Questions Committee, in *PR. A&P*, V/I, p. xxv; *c.* 20 references made in Plenum, in *PR. A&P*, IX; and 7 made in interfactional discussions, in *PR. A&P*, XI.

zones with those in the Soviet zone of occupation in the independent *Zeit*.[280] The Russians, he argued,

> "make every effort to keep secret the actual total enslavement of the 'People's Congress'. The Western powers make every effort to render the actually far-reaching existing independence of the Parliamentary Council into a seeming enslavement."

In September, the FDP-leaning *Hamburger Freie Presse* used the developments in the Soviet zone to spur on the delegates in Bonn.[281] It argued that West Germany should not hesitate to draw up a constitution for Germany, since it comprised two thirds of Germans and represented many of those in the East. In particular, such a step should be taken in light of the SED's constitutional proposal for a "German Democratic Republic",[282] on which it observed,

> "Success belongs to the speedier: if the Parliamentary Council does not do it, the SED will proclaim the German Reich."

The *Neue Zeitung*, published by the American Military Government, compared the constitutional work of the People's Congress with that of the Parliamentary Council.[283] According to the *Neue Zeitung*, the articles drawn up by the People's Congress on the basis, nature, and extent of the power of the state

> "show signs, which really cancel out the *democratic* [*sic.*] character of the statute in certain key areas."

With explicit reference to developments in Eastern Germany, the *Tagesspiegel*, published in the US sector of Berlin, compared the situation in the Soviet zone with that in the three Western zones.[284] It condemned Eastern criticism of the deliberations in Bonn, since

> "in the 'sovietized' East Germany and in the so-called German People's Congress, the ruling party has identified itself with the occupation power to such an extent that it is no longer possible to distinguish between what the one and what the other wants. In Bonn this is fortunately not the case. Here [in Bonn] a constitution is being fought for, whilst in the East every comma and every letter of the so-called constitution are being fixed from the beginning by the occupation power and its Communist henchmen."

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[280] 2 December 1948.
[281] 28 September 1948.
[282] J. Laufer, 'Die Verfassung in der SBZ 1946-1949', in *Aus Politik und Zeitgeschichte* B32-33/98 (1998), pp. 29-41 (pp. 38-40).
[283] 23 October 1948.
[284] 23 October 1948.

A week later, the *Tagesspiegel* again addressed the differences between the nature of the People's Congress' and the Parliamentary Council's deliberations.[285] In its view,

> "... the interest in the toing and froing of opinions proves more than anything else the extent of the political and intellectual lead the Parliamentary Council has gained over the marionette of the so-called People's Congress in Berlin."

The same description of the members of the People's Congress as 'marionettes', whose strings were implicitly pulled by the Soviet occupation power, was employed by the CDU-leaning *Frankfurter Neue Presse* six months later. In a commentary on the Allied memorandum handed over to the Parliamentary Council on 2 March 1949, the *Frankfurter Neue Presse* observed,

> "how great the difference between absolute rule by an occupation power and German marionettes on the one hand, and the willingness of the Western powers to grant a German government maximum governmental and administrative authority on the other hand, is shown in mercilessly clear light by the developments in Eastern Germany. The Military Governors' criticism is based not on the effort to restrict German authority further but simply on the wish to see the new democratic constitution constructed in such a way that it is viable."[286]

Casting the members of the People's Congress as 'marionettes' allowed these newspapers to emphasize the freedom within which the Parliamentary Council's representatives worked. However, the relative nature of such freedom was recognized. Writing after Clay had expressed strong reservations about the nature of the Basic Law in mid February, the above-party *Badische Zeitung*, for example, remarked,

> "... it is foreseeable, of course, that even then there will be people, who will try to make great capital out of small corrections. The constitution, which the 'German People's Congress' has drawn up in the Eastern zone, will presumably not be corrected by the occupation power, since the appropriate 'guidelines' have been adhered to from the beginning." [287]

Conclusion

Perception will always be subjective, though it can be compared with the facts, some of which are certainly easier to identify with hindsight than at the time. In this chapter, the perception of the Allied role has been taken to be as important as the facts, since it tells us about how the facts (those which were known) were perceived at

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[285] 30 October 1948.
[286] 10 March 1949. The SED publication, *Neues Deutschland* (5 March 1948), took a different view. The proposed Basic Law, it wrote, "had not given the Constitutional Committee [of the People's Congress] any ideas, especially since it is not a piece of German law-making but rather legislation commissioned (*Auftragsgesetzgebung*) by the Western occupation powers.... In comparison, the constitutional proposal of the German People's Congress has been drafted without any influence from the occupation power and in free public discussion as the joint work of the representatives of all parties and organizations with a knowledge of the subject." Quoted in J. Laufer, 'Die Verfassung in der SBZ 1946-1949', in *Aus Politik und Zeitgeschichte* B32-33/98 (1998), pp. 29-41 (p. 40).
[287] 22 February 1949.

the time by the German people, including journalists. Journalists had privileged access to the facts but were also responsible for transmitting them to the wider public. The press performed two roles in its coverage of the Allied-German exchange on the formulation of the Basic Law. First, it tried to present the Allied position to the German population, making clear to the Germans that they were largely responsible for the situation in which they now found themselves, namely, under occupation with limited freedom of action. Second, the press sought to make clear to the Allies that it was in their own interests to ensure that the Basic Law was seen to be substantially German in content. In short, the press presented the views of one side to the other.

The press, of course, also participated in the debate, through the transmission process itself, from the factual reporting of the events, which could be manipulated, to the commentary on the events. The geographical base of a newspaper affected its focus. The Berlin-based press could observe both the Western Allies and the Soviet Union directly and at first-hand. Consequently, newspapers, such as the *Tagesspiegel*, published in the US sector of Berlin, referred more than most to the activities of the Western Allies in contradistinction to the USSR and its policies in the Soviet zone of occupied Germany.

The nature and, to a lesser degree, the extent of the coverage of the Allied-German exchange on the constitutional set-up were partly, sometimes largely, determined by the newspaper's political orientation. This was particularly evident upon the handing over of the Allied memoranda on 22 November and 2 March. Both in the presentation and interpretation of events, the CDU-leaning and the SPD-leaning newspapers demonstrated that their loyalties lay with their party. The KPD-leaning press was clearly the most hostile towards the work of the Parliamentary Council. Yet the lack of unconsidered and radical nationalist objections to the assembly's deliberations at the other end of the political spectrum is noteworthy. This was in contrast to 1919, when Deutsch-Nationale Volkspartei (DNVP) members of the National Assembly and their supporters in the press, especially the *Deutsche Zeitung*, rejected the constitution at its conclusion.[288]

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[288] T. Mergel, *Parlamentarische Kultur in der Weimarer Republik. Politische Kommunikation, symbolische Politik und Öffentlichkeit im Reichstag* (Düsseldorf, 2002), pp. 72-73.

Coverage of the Allied-German exchange in the constitutional debate was wide-ranging but not exclusive. Other topics, such as *Elternrecht* or German ideas on the constitutional set-up, also received a lot of coverage. This needs emphasis. Naturally the perception of the Allied role varied over the course of the Parliamentary Council's deliberations, shaping reactions to the Basic Law when it was eventually promulgated on 23 May 1949. The perception of the Allied role, as well as of the roles of the individual powers, in the constitutional debates was also influenced by other factors anterior or external to the actual constitutional debate September 1948-May 1949, such as personal contact with the occupation forces, or the perception of the Allied influence on the drafting of the *Länder* constitutions, even if very little reference was made to these factors. Interestingly, very few comparisons indeed were made with the policies of the Allies in other occupied countries in articles on the formulation of the Basic Law.

Pfetsch identified the Western Allies' role in the constitution-drafting process in Western Germany immediately after the Second World War as catalytic.[289] Study of the German press coverage of the deliberations of the Parliamentary Council supports this analysis. An awareness of the Allied determination of the timing and framework in which the deliberations took place is evident. The Allies were perceived to be influencing the process of drafting the constitution more than its content. However, this perception was not held throughout the deliberations, although it eventually prevailed. In particular, the nature of the Allied role was questioned vigorously upon the handing over of the Allied memoranda in November 1948 and March 1949 and upon presentation of the first communiqué from the Foreign Ministers in April. Not only does the changing perception of the Allied role indicate the extent to which the Germans were aware of the current constellations of power, it suggests that lessons were learned and seen to have been learned from the past. The Allies and German politicians sought to persuade West Germans that the Basic Law was German in content. Journalists held them to their ambition. The discussion of how a constitution should be formulated under occupation contributed to the democratization process already underway. The press saw itself as crucial to this process. The parties recognized the importance of the press in conveying the

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[289] Pfetsch, p. 244.

impression that the formulation of the Basic Law was a German affair and that collaboration with the Allies was being kept to the bare minimum, as is evident, for example, from Adenauer's December press conference or the SPD party conference in April.

The role of the press in the Allied-German exchange was touched upon, rather unusually, by the independent *Flensburger Tageblatt* in March 1949.[290] Its analysis of the role of the press in the Allied-German exchange, and hence in the shaping of the perception of the Allied role, is very pertinent and can be applied *mutatis mutandis* to the debate as a whole. It wrote,

> "one cannot deny that these Bonn thoughts [reference is to the positions taken by the Allies and the Germans in Bonn in the debate surrounding the 2 March memo] are based on a sense of responsibility. The same is true of the thoughts of the public, the trustee of which is the press, and true therefore also of the pressure exercised by our people, with which the Bonn delegates are to be persuaded to adopt an attitude full of guts. The obviously honest German struggle on the attitude to the future constitutional work has just as obviously resulted in an Allied struggle on the new position to be adopted on the original proposal, so that a revision of the memorandum seems possible. On the German side, there is the right, the right of every people, to live according to its own Basic Law. With all respect for the efforts of the Bonn delegates, it appears as if the Allies have not been made sufficiently aware of this right. On the Allies' side, there is only the power to force their own will on the vanquished. At a later date perhaps, one will regard the sharply negative attitude of the responsible section of the German press to the Allied memorandum and the simultaneous willingness to negotiate in Bonn as a happy synthesis, only the existence of which made possible a bearable compromise, useful for the consolidation of Europe and at the same time expedient for Germany."

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[290] 22 March 1949.

Chapter IV - The second chamber and the press

Different views on a 'governmental structure of federal type'

One of the most crucial Allied interventions in the formulation of the Basic Law was their insistence on the establishment of a state organized along federal lines.[1] Thus Document I, handed to the Ministers President in Frankfurt on 1 July 1948, stipulated that the West Germans formulate

> "... a democratic constitution which will establish for the participating states a governmental structure of federal type which is best adapted to the eventual re-establishment of German unity at present disrupted, and which will protect the rights of the participating states, [and] provide adequate authority...."[2]

The form this "governmental structure of federal type" was to take was, according to Professor Carlo Schmid (SPD), the "most explosive subject" faced by the Parliamentary Council, both from the perspective of its relations with the occupying powers and from the perspective of inner-German relations.[3] The subject was addressed at great length by the Bonn assembly but also featured in the public debate outside the Council. It did not rouse the press and the public to voice their opinions in the same fashion as on *Elternrecht* or full equality for women. Nevertheless, the question of the governmental structure of federal type forced the press and the public to address themselves to Germany's past and therefore merits closer attention. Even if comparisons were made with other countries, proposals for the future constitutional structure of the new West German state had to be made with reference to earlier German constitutional arrangements, either through the emulation or adaptation of an earlier arrangement or the constructive rejection of previous structures.[4]

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[1] In the following, 'federal' is employed in the German (rather than the American) sense to mean a type of organization in which the *Länder* retain more power than is given to the *Bund*. A 'federalist' is therefore someone who is an advocate of *Länder* rights, and who wants the *Länder* to have more power than the *Bund*. Cf. Prof. Theodor Heuss, "Let us see for a moment ... what sort of misunderstanding arises if one speaks to an American about the concept of federalism. At the beginning of American history is Alexander Hamilton, the leader of the 'Federalists', and he was in favour of strengthening the central authority. Here [in Germany], however, it has become customary to think of federalism as meaning strengthening the member states at the expense of the central authority." 9 September 1948, in *PR. A&P*, IX, p. 108. Cf. glossary, p. vii.

[2] *Documents on Germany under Occupation 1945-1954* edited by B. Ruhm von Oppen (London, 1955), pp. 315-316.

[3] C. Schmid, *Erinnerungen* (Bern, Munich, Vienna, 1979), p. 376.

[4] See, for example, discussion of Swiss and US Senate models, in above-party *Badische Zeitung*, 26 October 1948.

The question of the relationship of the German states to one another and to a possible central authority was a perennial one in German history: the Holy Roman Empire and subsequent *Deutscher Bund* or German Confederation (1815-1871) were early solutions.[5] Although it did not come into effect, the constitution formulated in Frankfurt in 1848/9 provided for a federation of German states with an emperor at its head. Article 5 of the constitution stipulated that the individual German states retained their independence in so far as it was not limited by the Reich and ensured that the states kept all the rights of sovereignty in so far as these had not been explicitly transferred to the Reich authority.[6] Versions of this article were subsequently incorporated into the 1871, 1919 and 1949 constitutions. Following the Prusso-Austrian War in 1866, the North German states united to form the North German Federation. Its constitution formed the basis for the Reich constitution introduced by Bismarck in 1871, when the Southern German states, with the exception of Austria, joined the federation. Important for subsequent discussions of the federal structure was the *Bundesrat* introduced by Bismarck, which consisted of the representatives of the members of the Federation, and was the executive organ of the Reich. The states were represented by members of their governments in the *Bundesrat*. It has been argued that in 1871 federalism, and the consequent introduction of the *Bundesrat* as counterpart to the popularly and directly elected *Reichstag*, was conceived of as a counterweight to the power of the elected parliament by the architects of the constitution.[7] In 1919 the National Assembly preserved the federal structure in article 2, but the Reich was given greater powers than in 1871. The possibility of abolishing Prussia was mooted by Hugo Preuß, author of the draft debated by the assembly, but was rejected by the National Assembly.[8]

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[5] For good brief introduction to debate, see M. Umbach, 'Introduction: German Federalism in Historical Perspective', in M. Umbach (ed.), *German Federalism: Past, Present, Future* (Basingstoke, 2002), pp. 1-14.

[6] E.M. Hucko (ed.), *The Democratic Tradition: Four German Constitutions* (Leamington Spa, 1987), p. 80.

[7] D. Langewiesche, *Nation, Nationalismus, Nationalstaat in Deutschland und Europa* (Munich, 2000), pp. 63-64; and M. Rauh, Föderalismus und Parlamentarismus im Wilhelminischen Reich (Düsseldorf, 1973), p. 348.

[8] E.R. Huber, *Deutsche Verfassungsgeschichte seit 1789*, vol. V, *Weltkrieg, Revolution und Reichserneuerung 1914-1919* (Stuttgart, 1978), pp. 1178-1197.

Within a month of coming to power, Adolf Hitler reduced the power of the *Länder* through the 'Law for the Protection of the People and State' (28 February 1933).[9] Paragraph 2 declared,

> "if a state fails to take the necessary steps for the restoration of public safety and order, then the Reich Government is empowered to take over the relevant powers of the highest state authority."

This made possible the arbitrary interference in *Land* government. Unsatisfied with this arrangement, Hitler abolished the sovereignty of the *Länder* and the *Länder* governments were put under the supervision of the Reich government a year later through the 'Law for the Reconstruction of the Reich' (30 January 1934).[10]

The conclusion of hostilities in 1945, Allied occupation and the division of Germany into four zones imposed a new geographical order upon the debate. Some National Socialist decisions, such as the creation of Greater Hamburg in 1937, were not reversed by the British Military Government after 1945. The victors' unilateral decision to reorganize German territory, including Prussia's former provinces, into new *Länder* after Germany's defeat led to Prussia's *de facto* dissolution in May 1945. On 25 February 1947 Prussia was finally and formally abolished by Allied decree.[11] With the exception of the state of Bremen, this resulted in states more equal in size and a more even distribution of power throughout Germany. In the Western zones, only the city-states, Hamburg and Bremen, and Bavaria remained intact *Länder* from before 1945. By redrawing the *Länder* boundaries, the Allies removed the greatest threat to the effective functioning of a future German federation, namely the hegemony of one state over other member states due to its size alone. Just as significant was the Allied decision to permit political activity to resume at the *Länder* level before it could do so on a national level. (See chapter I, pp. 6-10.) When deliberations on the Basic Law began, the *Länder* governments were already well-established and therefore less willing to cede power to a central authority. The Western powers' insistence on a 'government of federal type' in 1948 ensured that they would maintain their strong position.

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[9] *Reichsgesetzblatt* I (1933) , p. 25.
[10] *Reichsgesetzblatt* I (1934) , p. 20.
[11] Control Council Law No. 46: Abolition of the State of Prussia, in *Documents on Germany under Occupation 1945-1954* edited by B. Ruhm von Oppen (London, 1955), pp. 210-211.

The drafters of the *Länder* constitutions had to grapple with the nature of the constitutional structure of the future German state as they drew up their constitutions in the American and French zones of occupation 1946/7.[12] It impinged upon questions as diverse as the inclusion of the death penalty or the appellation of the future German state in the state constitutions.[13] (See chapter II, pp. 88-94, on latter.) The situation in the British zone of occupation, in which only interim constitutions were drafted before the formulation of the federal constitution, can itself be taken as a reflection of the debate about the future German state's structure and indeed as a contribution to it. The *Landtage* of the British zone preferred to wait until the *Bund*'s constitution had been written before commencing work on their own constitutions, suggesting the greater status accorded to the *Bund* than to the *Länder* in their thinking. Of course, the occupying power played a considerable, if not the determining role in deciding upon the timing of the formulation of the *Länder* constitutions. The Americans and French insisted upon the drafting of constitutions in the *Länder* of their zones in 1946/7, whilst the British did not. (See chapter I, pp. 6-10.) Experience of and with the interim zonal and bizonal institutional arrangements such as the Zonal Advisory Council of the British zone or the *Länderrat* of the American zone, followed by the bizonal Economic Council in Frankfurt, also helped shape the debate on the federal structure of the future West German state.[14]

Although it is likely that each actor in the constitutional debate had a different understanding of federalism after the Second World War, two main strands of thinking predominated amongst the Germans. Some favoured the continuation of the process of greater centralization of power in Germany, albeit without going so far as to emulate the National Socialists' abolition of the sovereignty of the *Länder*, and others advocated some sort of basic federation of German states along the lines of the 1871 or earlier constitutions. Broadly speaking, those on the left of the political

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[12] Cf. F.R. Pfetsch, *Ursprünge der Zweiten Republik: Prozesse der Verfassungsgebung in den West-zonen und in der Bundesrepublik* (Opladen, 1990).

[13] For example of former debate, see F. Wittreck, 'Die Todesstrafe in den deutschen Länderverfassungen', in *Jahrbuch des Öffentlichen Rechts der Gegenwart* 49 (2001), pp. 158-214.

[14] See, for example, G. Stüber, 'Zonales Provisorium und demokratisches Experiment: Der Zonenbeirat der britischen Besatzungszone 1946-1948', in *Geschichte im Westen* 5/1 (1990), pp. 162-187, and part II in *Geschichte im Westen* 6/1 (1991), pp. 30-61; H. Troeger, *Interregnum: Tagebuch des General-sekretärs des Länderrats der Bizone 1947-1949* edited by W. Benz and C. Goschler (Munich, 1985); and J.K. Pollock, *Besatzung und Staatsaufbau nach 1945: Occupation Diary and Private Correspondence* edited by I. Krüger-Bulcke (Munich, 1994).

spectrum and those from Northern Germany tended to adhere to the former way of thinking and those on the right and Southern Germans to the latter.[15] The Germans had a different understanding of federalism from the Americans, British and French, although the Western Allies also differed amongst themselves. (For some indication of the debate between the Germans and the Allies and amongst the Allies themselves, see chapter III, pp. 95-154.) The German understanding of the concept is employed in this chapter, that is what traditionally has been termed 'horizontal federalism', in which the centre legislates and the states administer, in contrast with what has traditionally been seen as American 'vertical federalism', in which both centre and states legislate and administer their own laws in parallel. This long-standing difference in conception led to misunderstandings, especially between the Americans and the Germans in the spring of 1949. This difference featured in the constitutional debate throughout the year but primarily within the Parliamentary Council and between German and Allied constitutional experts, less so in the press and public debate.[16] Of the three Western victors, only the USA had direct experience of a federated structure; the British could only claim some indirect experience through their dominions, Canada and Australia. The French believed a centralized state to be stronger than a federally organized one, partly as a consequence of their own experience in France and partly as a result of their interpretation of Germany's recent history, which, in their view, showed that the greater the degree of centralization in Germany, the greater the threat to its neighbours. Consequently the French pushed for as little power as possible to be given to the *Bund* in 1948/9 in order to weaken a resurgent Germany. Whilst they differed over the degree of federalism to be introduced in Germany in 1948, Frankfurt Document I demonstrated that the three Western powers all agreed that Germany should be organized along federal lines.

Not only was the nature of the federal structure a difficult question *per se*, it impinged directly on almost all the other questions facing the assembly. In a federal state executive power is divided between the federation and the member states so that neither possesses it entirely and at least an approximate balance exists between the

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[15] Cf. Adolf Schönfelder, Vice-President of the Parliamentary Council, 18 February 1960, interview with Lüth, in HHStA, NL Familie Schönfelder, p. 56.

[16] Contemporary exploration of differing German and American understanding of concept of federalism, written by one of German-born American constitutional experts, in C.J. Friedrich, 'Rebuilding the German Constitution', in *The American Political Science Review* 43/3 (1949), pp. 461-482 and part II in 43/4 (1949), pp. 704-720, especially pp. 715-716, on 'horizontal federalism'.

two. Both the member state and the federation exercise sovereignty within the territory of a member state. Consequently, the Parliamentary Council had to determine who exercised which rights of sovereignty, that is the division of competence between the *Bund* and the *Länder*, in particular in the financial sphere This determined the relations between the *Bund* and the *Länder* and amongst the *Länder* themselves. Assembly members had to agree on how the member states were to be represented in the federation and therefore to decide upon the second chamber's composition (how its members were to be elected) and status (its power compared with that of the first chamber). The question of the second chamber was intimately linked to the concept of democracy.

Two different concepts of democracy predominated in post-war Germany: '*soziale Mehrheitsdemokratie*' and '*konstitutionelle Demokratie*'.[17] Adherents of the former viewed parliament as the only legitimate representative and executive organ of the will of the people. This view was held by the SPD and KPD and a similar view was shared by the Z. Adherents of a '*konstitutionelle Demokratie*' believed in the incorporation of checks and balances in the constitution, and consequently advocated limiting the power of parliament. This view, held by members of the CDU/CSU, FDP and DP, was based on a fear of 'the masses'. The possibility that the SPD and KPD might gain an absolute majority compounded this fear and led them to call for a second chamber to act as a brake on the powers of the directly elected first chamber.[18] It was precisely the creation of this brake, which might thwart efforts to introduce radical social and economic reforms, that the SPD sought to avoid by demanding a second chamber lesser in status than the first.

In order to check the power of the first chamber, advocates of a '*konstitutionelle Demokratie*' favoured the introduction of a second chamber equal in status with the *Bundestag*. Advocates of this way of thinking from Southern and South-western Germany tended to opt for a *Bundesrat*, through which the *Länder* could act as a check on the *Bund*. CDU members from Northern and North-western

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[17] K. Niclauß, *Der Weg zum Grundgesetz* (Paderborn, 1998), pp. 27-72 and pp. 73-108 respectively. Cf. chapter II, pp. 66-67.

[18] Cf. Adenauer on need for second chamber to balance out the popularly elected parliament, 28 October 1948, in *Die CDU/CSU im Parlamentarischen Rat: Sitzungsprotokolle der Unionsfraktion* introduced and edited by R. Salzmann (Stuttgart, 1981), pp. 92-93.

Germany often preferred a Senate, in which experienced, older politicians rather than representatives of the *Länder* act as a brake on the first chamber, since for historical and economic reasons they were less federalist in outlook. If forced to accept a second chamber, the adherents of the concept of a '*soziale Mehrheitsdemokratie*', most of whom came from Northern and North-western Germany, preferred a Senate, since this gave less power to the *Länder*. The KPD, however, rejected and condemned any second chamber and the separation of powers as reactionary. For this reason, the *Volksrat* or People's Congress in the Soviet zone of occupation provided only for one popularly elected chamber in its constitutional draft.[19] The position taken by the People's Congress was in turn explicitly condemned by the adherents of a '*konstitutionelle Demokratie*'.[20]

During the formulation of the *Länder* constitutions in 1946/7, some politicians, especially CDU/CSU ones from Southern and Western Germany, wanted to (re-)introduce a second chamber to represent municipalities and professional interests, both to strengthen the federal element in the *Länder* but also to act as a check on the popularly elected first chamber.[21] However, only in Bavaria did the constitution drawn up in 1946 actually provide for a second chamber in the form of a Senate.[22] A second chamber was not new in Bavaria, which had already had one between 1818-1918. When constitutional experts met in Herrenchiemsee at the instigation of the Ministers President to draw up a constitutional draft (10-23 August 1948), the question of the federal structure of the future West German state again figured prominently.[23]

At Herrenchiemsee it was agreed that the fiscal administration should be divided between the *Bund* and *Länder* and that two chambers should be set up, although opinions differed considerably on the composition and status of the second

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[19] J. Laufer, 'Die Verfassung in der SBZ 1946-1949', in *Aus Politik und Zeitgeschichte* B32-33/98 (1998), pp. 29-41 (p. 33 and pp. 38-39). Cf. constitution of German Democratic Republic, 7 October 1949, in *Gesetzblatt der Deutschen Demokratischen Republik* (1949), pp. 4-16.
[20] See, for example, Dr. Josef Schwalber (CSU), 9 September 1948, and Dr. Robert Lehr (CDU), 8 May 1949, in *PR. A&P*, IX, p. 93 and p. 518 respectively.
[21] Pfetsch, pp. 298-313.
[22] B. Fait, *Demokratische Erneuerung unter dem Sternenbanner: Amerikanische Kontrolle und Verfassunggebung in Bayern 1946* (Düsseldorf, 1998), pp. 256-287.
[23] *PR. A & P*, II, especially pp. 505-630.

chamber.[24] A *Bundesrat*, made up of members of the governments of the *Länder*, and a Senate, in which each member represented 1.5m inhabitants of a *Land*, were eventually proposed as alternatives in the Herrenchiemsee constitutional draft.[25] In terms of status and function, again both a *Bundesrat* and a Senate were proposed, as well as a watered-down *Bundesrat*.[26] The draft had a mixed reception. In Hamburg, the British Military Government observed that the few people,

> "who are interested in this [Herrenchiemsee] convent at all expressed their disappointment that Germany is to become a "Bund deutscher Länder" and that she will thus start again where she was about a hundred years ago. The whole world, it was pointed out, is trying to unite as much as possible, the British Commonwealth, the Benelux states, the USA, the UNO, etc. Only Germany is not allowed to do so, although she has been one nation throughout the last century."[27]

This reception was typical for Northern Germany; in Southern and Western Germany reactions were often more favourable. The CDU-leaning *Rheinischer Merkur*, published in Koblenz, for example, regarded the Herrenchiemsee proposal as a good basis for debate in the Parliamentary Council.[28]

A bicameral system is not synonymous with a federal state structure. On 21 October 1948 Dr. Robert Lehr (CDU) reminded his colleagues in the Plenum that a parliamentary system with two chambers can exist in a centralized or a federated state.[29] Yet with the exception of the two KPD members, the Parliamentary Council decided that two chambers were necessary to meet the Allied requirement laid down in Frankfurt Document I. By opting for two chambers, the Parliamentary Council complied with Allied pressure to protect the rights of the *Länder*. Now its members had to agree on the composition and status of this second chamber, and therefore to reconcile the different strands of thinking outlined above. This was a major undertaking which had to be achieved in such a fashion that the eventual Basic Law would be accepted by a majority both within the Bonn assembly and subsequently by at least two thirds of the *Länder*. (See chapter I, p. 11.) Outside the Parliamentary Council, it was really only in contradistinction to the one-chamber system proposed by the People's Congress, that some West German newspapers addressed the need for

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[24] Ibid., pp. 533-536 and pp. 539-546 respectively.
[25] Ibid., pp. 592-594.
[26] Ibid., pp. 601-605.
[27] Control Commission for Germany and Austria: CCG (British Element); German Morale. Public Opinion Research Office, Morale Report, 13-24 August 1948, in PRO, FO 1014/121.
[28] 28 August 1948, in HHStA, Staatliche Pressestelle V, I c II a 6. Cf. E. Spevack, *Allied Control and German Freedom. American Political and Ideological Influences on the Framing of the West German Basic Law (Grundgesetz)* (Münster, 2001), p. 353.
[29] *PR. A & P*, IX, p. 219.

two chambers, but generally it was not in the form of an investigation of alternatives. True to their party orientation, Communist newspapers, on the other hand, decried the proposed bicameral constitutional set-up for Western Germany, in which the second chamber was to represent the *Länder*, as reactionary.[30]

The 65 members of the Parliamentary Council were chosen by the *Landtage* of the eleven *Länder* of the three Western zones on the basis of the last election results, with one seat for every 750,000 inhabitants. 32 MdPR came from the British zone, with 17 representing the largest *Land*, NRW. 25 represented the *Länder* of the American zone, of whom 13 were Bavarian delegates. The French zone sent 8 men to Bonn. The SPD and CDU/CSU factions each counted 27 members, 5 MdPR belonged to the FDP, and 2 each to the DP, Z and KPD. In accordance with Allied demands, West Berlin's five representatives were given only observer status.[31] When the Parliamentary Council began its work, the formulation of the different sections of the constitution was divided between various specialist committees. The Organization Committee focussed on the nature and status of the second chamber, whilst the Competence Committee determined the legislative rights of the *Bund* and *Länder* and the Finance Committee dealt with the financial organization. Subsequently, the second chamber and financial organization were debated in the Main Committee and then in the Plenum.

Particular attention will be paid in this chapter to the press coverage of what might be called the 'first compromise', which was reached between the SPD and CDU/CSU on the composition and status of the second chamber in the autumn of 1948. In a 'second compromise' in February 1949, members of the Bonn assembly agreed on the financial organization, itself essentially related to the relationship between the *Bund* and *Länder*. The articles on the financial organization of the future West German state were only finally settled, however, in a 'third compromise' reached between the Allies and the Germans in April 1949. This third compromise is discussed in so far as the federal structure was the subject of press coverage.

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[30] See, for example, KPD-leaning *Volksstimme*, 20 October 1948, quoted below, p. 177.
[31] The Western powers wished to emphasize that Berlin's status was undecided and that the city was still technically under four-power control.

As on other topics under discussion in Bonn, journalists learned about the course of the Council's debates on the federal organization from press conferences, press releases and conversations with MdPR. (See chapter I, pp. 16-18.) The specialist committees did not admit the press to their deliberations.[32] Press conferences ensured that the press was informed about the committees' work. Nonetheless in early October Adolf Schönfelder (SPD) thought more ought to be done to satisfy the journalists, in order to avoid them turning to the Communists when they sought information.[33] On this occasion, the Organization Committee agreed that Löwenthal should speak to the press, which he duly did.[34] Yet, overall, the reception of the debate on the various aspects of the federal organization in the press was not discussed by the Organization Committee nor were frequent references made to public opinion.

Few letters of submission were written on the question of the federal organization, and even fewer had an impact upon the Council's deliberations.[35] The treatment of the letters received was discussed in the Organization Committee, chaired by Lehr (CDU) towards the end of October.[36]

> "Several letters of submission have arrived again. ... They are generally voices from the public, [whose interest has been] aroused by publications made in the meantime by the press. They testify first to a highly desirable and commendable interest. Some of them, however, deal with points which we discussed and settled a long time ago, and there are also those, which are well meant but do not testify to much expertise. In such cases, I [Lehr] have told them briefly about our work and sent a polite letter to the sender, in which I thank them for their interest and otherwise refer them to the publications in the daily press. Some of the letters, however, have to be taken seriously."

Several letters fell into the first category and were dismissed by the Committee.[37] In contrast, however, the Committee took the call from the Union of German Civil Servants for the regulation of the civil service to fall within the competence of the *Bund* seriously.[38] Its response corresponded to the assembly's practice of paying more attention to letters from well-known authors and organisations than letters from unknown individuals. No newsreels and few radio programmes, it seems, addressed

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[32] Article 21, Standing Orders, 22 September 1948, in *PR. A&P*, X, p. 193.
[33] 8 October 1948, in *PR. A&P*, XIII/I, p. 495.
[34] Ibid., p. 495.
[35] Ibid., p. xlvi, states that 43 letters relevant to its remit were sent to the Organization Committee. Cf. BA, Z5/116-117.
[36] 27 October 1948, in ibid., p. 660.
[37] See, for example, treatment of letters on 27 October 1948, in ibid., pp. 661-662.
[38] 29 October 1948, EN253, in BA, Z5/108 and 116. Cf. Drucksache PR.11.48-286. Organization Committee, 24 November 1948, in *PR. A&P*, XIII/II, p. 805. Cf. Sörgel, pp. 120-133 (p. 127).

the question of the federal structure. The Allies did not conduct opinion polls on the subject.

Occasionally a German newspaper asked its readers for their views on the future West Germany's federal structure. The FDP-leaning *Hamburger Freie Presse*, for example, asked its Hamburg readers,

> "Should a future German government have as much power as possible, neither too much nor too little power, or as little power as possible compared with the individual *Länder*?"[39]

To which 55% replied as much as possible, 17% favoured neither too much nor too little, and 3% preferred as little as possible, whilst 25% had no opinion. If the responses of those with no opinion were discounted, the newspaper continued, ¾ of those asked advocated the German government having as much power as possible. Whilst the *Hamburger Freie Presse* did not comment explicitly upon the replies, its remark, "it will be left to the politicians for the moment to draw conclusions [from the results]", suggests that it thought their message in favour of a strong federation sufficiently explicit to require no elaboration. Three months later, the *Spiegel*, published in Hanover, put a similar question to its readers.[40] They were asked, amongst many other questions, whether West Germany should be (i) "a unitary state, in which the current *Länder* are only provinces", (ii) "a unitary state, in which the *Länder* do not have their own governments but do have independent administrations", or (iii) "a federal state, in which the *Länder* alone decide about finances, education, taxes and police". To which 60% (i), 26% (ii), and 14% (iii) replied in the affirmative respectively. After summarizing the general opinion as "the hotchpotch of offices of the Ministers President only makes us poorer", the *Spiegel* commented,

> "Everyone can therefore work out without effort how much love and respect the Germans would give to a Bonn constitution which had been forcibly federally enriched by the Western Allies."

It is likely that these responses reflected the provenance of the *Hamburger Freie Presse* and the *Spiegel*, since North Germans tended to favour a more centralized state structure than their Southern counterparts. The *Spiegel*'s comment, however, made very explicit the desire for German determination of the future state's structure free from Allied influence.

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[39] 24 December 1948.
[40] *Spiegel* 3/10 (5 March 1949).

Historiography

Numerous scholars have addressed the question of the federal structure in the Basic Law and analysed the different understandings of the concept of democracy prevalent amongst the delegates to the Parliamentary Council. Karlheinz Niclauß, for example, discussed how those whom he identified as adherents of the concept of a '*soziale Mehrheitsdemokratie*' tended to advocate the introduction of a Senate, whilst adherents of the concept of a '*konstitutionelle Demokratie*' were more likely to prefer a *Bundesrat*.[41] Niclauß refers to some press articles to illustrate his thesis but does not analyse the public debate *per se*. Whether the different understandings of the concept of federalism held within the Parliamentary Council had any resonance outside the assembly, however, has not yet been explored fully. The public debate, particularly the debate in the press, on the question of the federal structure remains to be investigated. This applies in particular to the most celebrated deal struck during the deliberations on the federal structure, the so-called "legendary breakfast" at which Dr. Walter Menzel (SPD), NRW Minister of the Interior and MdPR, and Dr. Hans Ehard (CSU), Minister President of Bavaria, agreed on a *Bundesrat* as second chamber on 26 October 1948.[42] (See below, pp. 179-180.) Both Niclauß and Dieter Düding leave open the public reactions to, particularly the press reception of, the deal struck between Menzel and Ehard. Werner Sörgel, on the other hand, did not include advocates of *Länder* rights amongst the interest groups he studied. However, he did include towns and municipalities, which lobbied the Parliamentary Council to safeguard their rights because they feared the centralizing tendencies of the *Land* authorities.[43]

The first compromise: the composition and status of the second chamber

When the Parliamentary Council began its deliberations, it was particularly journalists writing in newspapers based in Southern, South-western or Western

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[41] Niclauß, pp. 212- 231.
[42] Quotation from Theodor Heuss, 8 May 1949, in *PR. A&P*, IX, pp. 532. Cf. Niclauß, pp. 224-225; D. Düding, 'Ehard, Menzel und die Staatsform: der Kompromiß über den Föderalismus', in *Geschichte im Westen* 4 (1989), pp. 135-144; and R. Morsey, 'Föderalismus im Bundesstaat: Die Rolle des bayerischen Ministerpräsidenten Hans Ehard in der Vor- und Frühgeschichte der Bundesrepublik Deutschland', in *Historisches Jahrbuch* 108 (1988), pp. 430-447 (pp. 438-440).
[43] W. Sörgel, *Konsensus und Interessen: Eine Studie zur Entstehung des Grundgesetzes* (Opladen, 1985), pp. 158-166.

Germany, who regarded the formulation of a constitution for a new West German state as an opportunity to introduce a federal structure, in which the *Länder* had more power than the *Bund*. Introduce is perhaps the wrong word, since for many of these papers it was a reversion to a federal set-up, which was believed to have existed in the past. Noting that a start had finally been made, the CDU-leaning *Rheinischer Merkur* remarked on 4 September that during the last 400 years the German state had gone through several transformations.[44] Each time, the article emphasized,

> "an element of the old federal (*bündisch*) constitution was thrown overboard until eventually the total dictatorship of the Third Reich plunged the German people and Reich into the abyss."

This was an implicit argument against the centralization of power in the future West German state by the paper's editor, Paul Wilhelm Wenger.[45] The DVP-leaning *Schwabenecho* similarly attributed Germany's earlier downfall to excessive centralization.[46] "Already once", it was argued,

> "this state system [centralism] has wreaked much havoc; it would be very wrong were we to forget today that in 1932-1933 it was the North and Northeast of the Reich which outvoted the West and South of the Reich. We have little desire to forgo those democratic rights today or in the future, which we already have or will soon get."

This reversion to an older, supposedly better, federal past was a theme taken up repeatedly by certain sections of the press. It was raised whenever it was feared that an insufficiently federal structure was being agreed upon in Bonn, generally by those of a conservative persuasion and frequently by those from Southern Germany, who had traditionally been hostile towards Prussia. There were, however, also adherents of this thinking in Northern Germany, particularly in the DP in Lower Saxony, and these sentiments were voiced in the DP-leaning newspapers. (See examples below, p. 169.) Initially licensed as the Niedersächsische Landespartei in 1946 but renamed in 1947, the DP drew on Hanoverian history. Protestant and federalist, it verged on the particularistic in outlook. Dr. Hans-Christoph Seebohm and Wilhelm Heile, both from Lower Saxony, represented the DP in Bonn.

The question of Bavaria was another theme which preoccupied the press throughout the Council's deliberations. Barely three weeks into the assembly's deliberations, the US-zone *Stuttgarter Zeitung* argued that it was necessary to make

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[44] 4 September 1948.
[45] Paul Wilhelm Wenger (1912-1983). 1945-1948 judge in Landgericht Tübingen, co-founder of CDU in South Baden in 1945, 1948- Bonn correspondent and political editor of *Rheinischer Merkur*.
[46] 4 September 1948.

some concessions to the Bavarians, such as a *Bundesrat*, to ensure that Bavaria accepted the constitution freely and was not forced to accept it by a majority of two thirds of the other *Länder*.[47] This was because, as the above-party *Allgemeine Zeitung* formulated it in May of the following year, the thought that

> "any German *Land*, but in particular the second largest, should be forced into the new *Bund* only with reluctance goes against the grain."[48]

The US-zone *Süddeutsche Zeitung* on several occasions cited Bavaria's preference for a *Bundesrat* equal in power with the first chamber.[49] Indeed, an opinion piece published by the *Süddeutsche Zeitung* posited,

> "only the true *Bundesrat* solution comes into consideration for the federalist, not a senate, which runs the risk of duplicating shadow-like the party constellation of the parliament and losing itself in idle motion, or of becoming a veto machine like the old *Reichsrat* ... or an appeasing chamber of privy councillors like the *Bundesrat* of Bismarckian practice...."[50]

The *Tagesspiegel*, published in the US sector of Berlin, however, was more critical of Bavaria's efforts, arguing that whilst nothing was more natural than to expect that the strongest impulses for a federal structure would come from Bavaria,

> "the inflexible Bavarian doctrine of the absolute fiscal sovereignty of the *Länder* has in fact proved itself to be a damaging principle for federalism."[51]

This it explained with reference to Bavaria's financially weak status and the large number of refugees in Bavaria, which taken together meant Bavaria would benefit from contributions from other *Länder*, unless it wished to weaken its economy further, which would make federalism itself unpopular.

At the beginning of the Parliamentary Council's deliberations in September 1948, the press hardly commented on the nature of the federal structure to be created. One or two newspapers outlined the differences between those favouring a more federal solution and those who preferred a more centralized structure.[52] The "two totally different understandings of the nature of federalism" confronting each other in the Parliamentary Council were discussed in the US-zone *Süddeutsche Zeitung*.[53] Whilst emphasizing that federalism was necessary to assuage the fears of Germany's

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[47] 27 September 1948. Cf. *West-Ausgabe. Nouvelles de France*, published by the French Military Government, 26/27 September 1948.
[48] 3 May 1949. Cf. article in same paper, 23 May 1949.
[49] For example, 28 September and 2 October 1948.
[50] 2 October 1948.
[51] 6 October 1948.
[52] For example, CDU-leaning *Allgemeine Kölnische Rundschau*, 17 September 1948.
[53] 14 September 1948.

neighbours, the most interesting argument it raised in favour of a more federal solution was ease of accession for the Soviet zone to the future German state.

> "With its totally different political and social development, the admission of the Eastern zone into a federal state that is really borne by the *Länder* will be much easier than admission into a unitary state, which, with the ever-increasing divergence, will be more and more incapable of bridging the growing divide."

This advocacy of a more federal structure with reference to eventual re-unification with the East was an argument rarely used. It implied a longer division of Germany than many were willing to contemplate and was therefore unpopular.

Unlike most other papers, the DP-leaning *Deutsche Volkszeitung* and the *Niederdeutsche Zeitung*, both published in Lower Saxony, reported on the debate within the Parliamentary Council in mid September on the extent to which the *Länder* should be involved in the constitutional deliberations in Bonn.[54] The *Deutsche Zeitung* held the SPD's "inflexible attitude" responsible for the lack of agreement on the degree of participation by the *Länder*.[55] The article continued,

> "the federalists stand by a true *Bundesrat* made up of government representatives [from the *Länder*] as it corresponds with German constitutional tradition."[56]

The DP-leaning newspapers reiterated their party's demand for a pure *Bundesrat* in October.[57] Under the headline, "Little hope for federalists", the Düsseldorf-based, above-party *Westdeutsche Zeitung* noted that agreement on the Council's rules of procedure had only been reached by following the suggestion of Dr. Konrad Adenauer (CDU), President of the Parliamentary Council, to leave out the question of the participation by the *Länder* in the Bonn assembly's deliberations.[58] This, the article argued, was a decision of great political consequence. It meant that the Southern German advocates of an especially federal state structure have "suffered a defeat" and showed that several in the CDU agreed to a strong central government. The *Westdeutsche Zeitung* was clearly wary about the *Bund* being given too much power, perhaps because it feared that this would give the political parties greater influence.

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[54] Both 21 September 1948. Cf. *PR. A&P*, X, pp. xli-xlvii.
[55] 25 September 1948.
[56] Cf. article by Seebohm (DP), in *Deutsche Volkszeitung*, 4 September 1948.
[57] For example, *Deutsche Volkszeitung* or *Niederdeutsche Zeitung*, 8 and 9 October 1948 respectively.
[58] 24 September 1948; Standing Orders Committee, 22 September 1948, in *PR. A&P*, X, pp. 180-182.

Several newspapers listed the financial relationship between the *Bund* and the *Länder* as one of the three key issues to be resolved by the Parliamentary Council; the other two were the organization of the state and the electoral system.[59] (See below, pp. 188-200, for discussion of financial organization.) Heinz Medefind, writing in the *Neue Zeitung*, published by the American Military Government, regarded the question of the composition of the second chamber as "the most difficult".[60] Under the headline "No mock democracy", the *Schwarzwälder Zeitung*, published in the French zone, argued that the Germans had to avoid excessive centralization, since it was well known that this led to domestic and foreign political temptations.[61] In an article on the real and artificial problems that the Parliamentary Council had directly or indirectly brought upon itself, the *Tagesspiegel*, published in the American sector of Berlin, argued that the federal structure was an artificial problem directly incurred.[62]

> "Directly in the sense that the federal principle for the structure of the state has prevailed everywhere but for the adherents of centralism, especially the North Rhine Westphalian Minister of the Interior, Dr. Walter Menzel, who continue again and again to try and undermine the principle with their suggestions."

Indeed, unlike the authors of articles in the *Schwarzwälder Zeitung* and *Tagesspiegel*, Menzel argued strongly for the *Bund* being given more power than the *Länder*. He was also one of the leading exponents of a '*soziale Mehrheitsdemokratie*'.

Early in October, several newspapers noted the SPD's readiness to consider the *Bundesrat* option, that is a second chamber composed of members of the *Länder* governments.[63] Several considerations led the SPD to become more flexible in its position on the second chamber.[64] It was aware of the differences between the Northern and Southern German representatives in the CDU/CSU faction over the nature and status of the second chamber, with the former tending to favour a Senate and the latter a *Bundesrat*. (See above, pp. 160-161.) The SPD knew that the CDU/CSU representatives from the French and American zones (16 in total) outnumbered those from the British zone (11). Consequently, the SPD sought to exploit this difference in October, when it seemed that compromise was being reached

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[59] For example, *Welt*, published by the British Military Government, above-party *Südkurier* or above-party *Rhein Zeitung*, 25 September 1948.
[60] 2 October 1948.
[61] 27 September 1948.
[62] 2 October 1948.
[63] For example, SPD-leaning *Hannoversche Presse* or US-zone *Süddeutsche Zeitung*, 2 October 1948.
[64] Niclauß, pp. 223-224.

within the CDU/CSU faction over a partial Senate solution, which, the SPD feared, would threaten the status of the popularly elected first chamber. A proposal for such a partial Senate was put forward by Lehr, a CDU MdPR from NRW, in the Organization Committee and in the Plenum.[65] (Dr. Thomas Dehler, an FDP MdPR for Bavaria, made a similar proposal based on the mixed second chamber of 1848/9. See below for details, pp. 177-178.) The nature of the second chamber was only discussed in general terms in the Organization Committee on this occasion.[66] Two days later, however, the CDU/CSU faction discussed Lehr's proposal in detail and 13 CDU/CSU MdPR voted in its favour, whilst 15 preferred a *Bundesrat*.[67] By agreeing to the composition of the second chamber favoured by the Southern Germans, namely to a *Bundesrat*, the SPD hoped to persuade the Southern Germans to accept its position on the status of the second chamber, namely one lesser in status than the first. The greater flexibility shown by the SPD had a mixed reception in the press.

The SPD-leaning *Neue Ruhr Zeitung* reported that Ehard, Minister President of Bavaria, had instructed the Bavarian MdPR in Bonn to continue to push for a second chamber made up of representatives of the *Länder* governments.[68] Bavaria was represented by eight CSU MdPR: Dr. Ferdinand Kleindinst, Dr. Gerhard Kroll, Dr. Walter Laforet, Karl-Sigmund Mayr, Dr. Anton Pfeiffer, Kaspar Schlör, Dr. Josef Schwalber and Dr. Caspar Seibold; four SDP MdPR: Hans-Heinz Bauer, Dr. Willibald Mücke, Josef Seifried (who was replaced by Albert Roßhaupter on 14 October) and Jean Stock; and Dehler for the FDP. The above-party *Südkurier*, published in Konstanz, argued that Bavaria's whole development and the tensions then prevailing in the *Land*, presumably a reference to the efforts of the particularist Bayernpartei, meant that Bavaria could only support a true *Bundesrat*.[69] The paper observed,

> "it appears as if Bavaria, as the crystallization point of the federal idea, is being pushed into the role of the unproductive opponent; a development, which can only be disastrous for mutual understanding between the North and the South."

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[65] Organization Committee, 21 and 22 September 1948, in *PR. A&P*, XIII/I, pp. 69-71 and pp. 86-87; Plenum, 21 October 1948, in *PR. A&P*, IX, pp. 217-224. Lehr's proposal was not discussed in detail by his faction prior to the Plenum, 19 October 1948, in *Die CDU/CSU im Parlamentarischen Rat*, p. 83.
[66] Ibid., pp. 47-68 and 71-82.
[67] It is unclear who the 28th person was, since the faction comprised only 27 MdPR, in 23 September 1948, in *Die CDU/CSU im Parlamentarischen Rat*, pp. 27-30.
[68] 2 October 1948.
[69] 5 October 1948.

The paper's sympathetic stance towards Bavaria no doubt reflected its own Southern base in Baden. Baden's Minister President, Leo Wohleb (CDU), was an ardent federalist and encouraged in this by the French occupiers. In contrast, the SPD-leaning *Hannoversche Presse* was more critical.[70] It posited that the next few weeks would show

> "whether the will of not just those few with an understanding of the situation but of the vast majority of the Christian Democrats for German unity is more than an empty promise, that is the driving force for overcoming political fads, which find expression in the Bavarian and South Baden variety of federalism."

Numerous papers observed, however, that no agreement had yet been reached in the first week of October on the nature of the second chamber despite the SPD's willingness to consider the *Bundesrat* alternative. The *Neue Zeitung*, published by the American Military Government, summed the situation up in its headline: "Tug of war in the CDU/CSU".[71] Several newspapers discussed the different views on the second chamber held by Adenauer, MdPR and leader of the CDU, and Ehard, leader of the CSU but not an MdPR.[72] It was reported that the SPD's goal was a second chamber not equal in status with the first.[73] Once again, the above-party *Südkurier* suggested where its sympathies lay by commenting favourably on the CDU/CSU's intention to stick to its demand for a second chamber equal in status with the first.[74] The *Südkurier* attributed the failure of the attempt by the CDU/CSU, FDP, Z, and DP to build a "joint front" against the SPD on this issue to the FDP, which did not want an "anti-centralist front". Far more attention and space, however, was devoted by the press to the formulation of the catalogue of basic rights at this time.

In an article entitled "Dangerous Disagreement", the Christian *Schwarzwälder Post*, published in the French zone, argued that the increasingly apparent differences between the CDU and SPD would not augment the public's interest in the debates.[75] No reason was given for this belief, which probably reflected anti-party sentiments. The differences, especially the divergence over federalism, the article continued,

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[70] 5 October 1948.
[71] 9 October 1948. Cf. *Die CDU/CSU im Parlamentarischen Rat*, p. 70.
[72] For example, SPD-leaning *Freie Presse*, or CDU-leaning *Hannoversche Neueste Nachrichten*, 9 October 1948.
[73] For example, *Welt*, published by the British Military Government, or above-party *Westdeutsche Allgemeine*, 9 October 1948.
[74] 9/10 October 1948.
[75] 11 October 1948.

overshadowed the work of the assembly's committees. In fact, this divergence provoked such passion, according to the article, that one might have thought that a final rather than a provisional constitution was being formulated. The article made clear its own preference for a decentralized organization of the state, although it did concede,

> "nobody would be able to dispute that the central authority needs to receive an appropriate increase in power in view of the coming great and difficult tasks."

Once again, the newspaper's Baden base was significant in determining its attitude to federalism, although it recognized that the difficulties of rebuilding Germany required some authority to be delegated to the *Bund*.

The "egoism of the *Länder* in Bonn" was decried in an opinion piece in the SPD-leaning *Hannoversche Presse*.[76] Reference was made to Ehard's trip to Bonn in the second week of October to win over delegates to Bavaria's position in favour of a *Bundesrat* equal in status with the first chamber. This Ehard did "with much skill", according to the *Hannoversche Presse*. Possible "objects for compensation", such as the nature of the financial organization or the composition and status of the second chamber, were listed. True to its SPD orientation, the paper commented that the MdPR should be less concerned with negotiating such compensation and concentrate instead on truly 'national' rather than *Land* or party aspects. This was one of the earliest explicit references to the bargaining chips in the debate over the nature of the second chamber, with which Menzel and Ehard subsequently struck their deal. Other papers also reported upon Ehard's trip to Bonn and the subsequent efforts to reach agreement on the nature of the second chamber.[77]

The *Neue Zeitung*, published by the American Military Government, was one of the first to report upon the SPD's call for a plenary session in October, noting that

> "political circles in Bonn believe that the SPD will seize the chance to force the CDU/CSU finally to adopt the hitherto missing clear position on the bigger contentious issues [preamble, the composition and status of the second chamber, and the financial organization]."[78]

The *Neue Zeitung*, amongst others, cited remarks made by Menzel at a press conference that the big differences of opinion were within the CDU/CSU on the nature of

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[76] 12 October 1948.
[77] For example, US-zone *Süddeutsche Zeitung*, 12 October 1948.
[78] 14 October 1948.

the second chamber because of the "CSU's insistence" on federalism and the pressure exerted upon the CSU by the Bayernpartei. Furthermore, "commerce and industry were significantly more represented" in the North German CDU, which therefore

> "had more understanding for extensive planning, and hence, Menzel concluded, the divergence between the North German CDU and the SPD was less great than between the CDU and the Bavarian CSU."

This view was held by others too. For example, the *Hamburger Abendblatt*, which had no party affiliation, remarked,

> "it has got about that the representatives of the North German SPD and CDU could agree more easily on some questions, such as the famous dilemma Senate or *Bundesrat*, than the CDU and the Bavarian CSU, which is always accompanied by a white-blue shadow, the Bayernpartei, which is not represented in Bonn."[79]

The *Welt*, published by the British Military Government, summed up the SPD's attitude to the second chamber well by noting that it was not the second chamber's composition, whether it was a Senate or *Bundesrat*, but rather its status, which was to be less than that of the first chamber, that was decisive to the SPD.[80] For the SPD to be true to its belief in a '*soziale Mehrheitsdemokratie*', the second chamber had to be lesser in status than the first. The second chamber's status was therefore the crux of the matter and was subsequently a key element in the agreement reached between Menzel and Ehard. (See below, pp. 179-180.)

In mid October the *Neue Zeitung*, published by the American Military Government, reported that federal law would break *Land* law in an article on the Parliamentary Council's discussion of the separation of powers.[81] It was one of several articles which reported on the second reading of the catalogue of legislative rights of the *Bund* in the Competence Committee.[82] The *Welt*, published by the British Military Government, discussed this catalogue of legislative rights in some depth.[83] At this stage, it reported, the catalogue included, amongst other things, foreign affairs and defence, currency and coinage, treaties on navigation and commerce, and the railroads and postal service, whilst the catalogue of concurrent legislation included civil law and all matters concerned with economic and social planning. However, this was one item among many covered by the press, with, for example, the formulation of

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[79] 18 October 1948.
[80] 14 October 1948.
[81] 16 October 1948. Cf. Competence Committee, 14 October 1948, in *PR. A&P*, III, p. 529.
[82] Ibid., p. 528-534 (pp. 530-531).
[83] 19 October 1948.

the preamble, the nature of emergency powers, or the article providing for the cession of sovereignty to a European organization, all receiving as much if not more coverage at this time.

Of course, the plenary session held on 20/21 October 1948 was the subject of many reports.[84] Almost all papers were very thorough in their coverage of the debates, which included party statements on the question of the federal structure on the second day. Generally these articles were factual in nature, reporting rather than commenting on the debates, no doubt a reflection of the party statements' declamatory nature. Like many other newspapers, the CDU-leaning *Allgemeine Kölnische Rundschau*, for example, reproduced the positions of the parties in detail, naming the speaker for each party, in an article entitled "*Bundesrat* principle or Senate principle".[85] These articles served primarily to inform the public of the parties' positions rather than to contribute to the debate on the nature of the federal structure beyond the transmission of the Council's debates. To this extent the SPD's stated aim to inform the public better about the assembly's debates, one of the reasons it had given for its call for a plenary session in October, was fulfilled.[86] (See chapter II, pp. 53-54.) The plenary discussion on 20/21 October did lead to greater public debate on the composition and status of the second chamber.

Reporting on the progress of the deliberations, the FDP-leaning *Westdeutsche Rundschau*, published in Wuppertal, remarked,

> "the new constitution will preserve Germany's unity. This is one of the most significant results from Bonn. The constitution will certainly not be centralist but it will just as certainly not follow those Bavarian and Hanoverian particularists, who wish to reverse the march of time by 101 years - to 1847 that is. Federalism in unitarism: this is the formula on which one has agreed in Bonn and which would also meet the London Recommendations, which do after all stipulate a 'federal constitution'."[87]

The article then commented upon the FDP's efforts to find a compromise between the positions of the CSU and SPD on the second chamber, summing up its own stance, which was consistent with its FDP orientation, with

> "the basic idea of this second chamber must be that it is given influence on legislation but that it does not become an hindrance for the parliament."

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[84] *PR. A&P*, IX, pp. 176-216.
[85] 22 October 1948.
[86] 13 October 1948, in *PR. A&P*, XI, pp. 8-9.
[87] 16 October 1948.

In contrast, the DP-leaning *Niederdeutsche Zeitung*, which expressed the views of the Hanoverian particularists castigated by the *Westdeutsche Zeitung*, believed that the SPD was "obviously speculating on the political softness of the CDU."[88] Yet, the article continued,

> "whoever approves of democracy must strive for agreements that do not call for the renunciation of the irrenunciable. The real sovereignty of the *Länder*, however, is essential as a precondition for the *Bund*."

Much as the proponents of *Elternrecht* failed to recognize that democracy allows for differing points of view, the *Niederdeutsche Zeitung* failed to appreciate the undemocratic nature of its stance. (See chapter V, p. 229.)

The Koblenz-based, above-party *Rhein Zeitung*, published in the French zone, addressed the dangers of federalism in an opinion piece on the deliberations in Bonn so far.[89] Its title, "Whence are you going?", took up the popular theme of learning from the past. The piece began by stating that centralism had twice led Germans to catastrophe. In 1914 "the fault and incompetence of the Greater Prussian regime" had led to the outbreak of the First World War, whilst in 1939 the "excessive centralism of the Third Reich" provoked the Second. Consequently, it reasoned,

> "if experience is still to have a purpose, then the German people must give itself an organization, which will protect itself and the world from new disaster. This rebuilding can only take place on the basis of the federal principle. The Western powers see a significant guarantee of their future security in a federal union of the Germans. Yet it does not really require such a security thesis from abroad, felt by some to be pressure, to show the German people that they have taken the wrong path since 1870. A glance at the cities lying in ruins should suffice as proof that the realization of federalism, the rejection of a craving for power and adventure, is as much in the interests of Germany as of the Allies."

Very similar sentiments were expressed more briefly in the US-zone *Weser Kurier* and US-zone *Kasseler Zeitung*, which both published an identical article on the subject, entitled "In the Shadow of Centralism".[90] Both these newspapers and the *Rhein Zeitung* explicitly held the *Bund* but not the masses - although this was perhaps implicit - responsible for the mistakes of the past and argued that the powers of the *Bund* needed to be curbed as a consequence. The corollary in their eyes was to give more power to the *Länder* through a second chamber.

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[88] 19 October 1948.
[89] 16/17 October 1948.
[90] 16 and 25 October 1948 respectively.

Such arguments were antithetical to those of the KPD. True to the party's belief in a '*soziale Mehrheitsdemokratie*', the KPD-leaning *Volksstimme*, published in Cologne, described the decision taken in Bonn not only to separate the executive, legislative and judicial powers, but also to split the legislative into two chambers, of which only one would be popularly elected, as reactionary and undemocratic.[91] Contrasting the Parliamentary Council's work unfavourably with that of the People's Congress, the paper pondered,

> "what can one expect of an assembly, which in every paragraph tries fearfully to show that it is not thinking about giving the popularly elected first chamber any decisive rights over the government or judiciary."

Whilst the SPD insisted that the second chamber be lesser in status than the popularly elected first chamber and that the *Bund* have greater power than the *Länder*, neither the party nor SPD-leaning newspapers denounced the other parties publicly in the same extreme fashion as the KPD.

The US-zone *Süddeutsche Zeitung*, published in Munich, once again, presented Bavaria's concerns about the federal structure in a rather melodramatic opinion piece on 23 October.[92] In its opinion, there arose for Bavaria

> "the alarming, indeed shameful conclusion that there would probably be no more talk of federalism were it not for Document I of the Allies, which expressly recommended, or as some already say openly 'imposed', a federal type for the Basic Law."

This was an exaggeration but is evidence of Bavarian sensitivity on the issue. In the same edition, the *Süddeutsche Zeitung* also printed the text of an interview it conducted with Minister President Ehard, in which he elaborated on his expectations of the federal structure of the future West German state.[93] Presumably the views expressed by Ehard in this interview will have confirmed readers' already held understanding of Bavaria's position, but they elucidated the reasoning behind the adoption of this position.

The *Neue Zeitung*, published by the American Military Government, reported upon the proposal for a mixed second chamber put forward by the Bavarian FDP

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[91] 20 October 1948.
[92] 23 October 1948.
[93] Cf. above-party *Badische Zeitung*, 28 October 1948.

delegate, Dehler, in the Plenum on 21 October 1948.[94] He called for half the members of this chamber to be appointed by the *Länder* governments and half to be elected by the *Landtage*.[95] Medefind, author of the article, judged "remarkable" that Dehler

> "supports the point of view that German democracy has been walking along a bypath, which was not right, since 1848. One needed therefore to pick up some points directly in 1848 and thus arrive at what experience has shown to be the right path. One such point was the combination proposal for the *Länder* chamber, which had already been made in 1848."

Whilst Medefind noted that such a mixed chamber was now also supported by the CDU faction, the SPD-leaning *Freie Presse*, Bielefeld, correctly presented it as a proposal put forward by the majority of the CDU, in response to the wishes of their Southern German party friends.[96] (See above, p. 171.) In fact, both Lehr (CDU) and Dehler (FDP) had argued in favour of a mixed chamber in the Plenum on 21 October.[97] Dehler, who spoke after Lehr, claimed the idea was his, although it was based on 1848/9. The SPD immediately dismissed the proposal as a step backwards.[98] Lehr and Dehler both claimed that it combined the advantages and avoided the disadvantages of a Senate or *Bundesrat*. The *Freie Presse* observed, however,

> "even the impartial observer notices that this 'fifty-fifty' is less the product of considerations of expediency than of consideration of the [River] Main line. In the background the Bayernpartei stands threateningly."

Broadly speaking, those North of the River Main favoured giving the *Bund* more power, and those to its South favoured the *Länder* having greater power and believed that this could be best achieved through a *Bundesrat*.

Prompted by Lehr's "remarkable suggestion", Jürgen von Kempski discussed the composition of the second chamber in the above-party *Allgemeine Zeitung*, Mainz.[99] After outlining the advantages of the *Bundesrat* and the Senate options, von Kempski argued that it was necessary to ensure adequate participation of the *Länder* governments in the government of the federation. Notwithstanding his general hostility towards political parties, he felt it was necessary to introduce a "political

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[94] 28 October 1948. Dehler had already presented his proposal in the Organization Committee on 21 September 1948, in *PR. A&P*, XIII/I, pp. 64-67.
[95] *PR. A&P*, IX, pp. 224-229.
[96] 30 October 1948.
[97] *PR. A&P*, IX, pp. 217-229.
[98] Interruption by Schmid and response by Dr. Rudolf Katz, in ibid., p. 225 and pp. 229-233 respectively.
[99] 2 November 1948. Jürgen von Kempski (1910-1998), philosopher. Cf. J. von Kempski, 'Betrachtungen zur deutschen Verfassungsfrage' (spring 1948), in W. Benz (ed.), *"Bewegt von der Hoffnung aller Deutschen". Zur Geschichte des Grundgesetzes. Entwürfe und Diskussionen 1941-1949* (Munich, 1979), pp. 178-193 (pp. 182-185).

impulse" into the second chamber, which, he believed, directly elected Senators were better able to do.[100] Consequently he supported Lehr's suggestion for a mixed second chamber, which he thought combined the best of both options. Von Kempski did not, however, discuss the popularity of Lehr's proposal within the assembly.

Whilst Dehler's and Lehr's proposals continued to be discussed in the press for several days, Menzel and Ehard had already reached an agreement. Speaking in the Parliamentary Council's final plenary session on 8 May 1949, Professor Theodor Heuss (FDP) remarked,

> "I believe that in our work really the first, almost the most interesting event was the now legendary breakfast between the Honourable Member Menzel and Minister President Ehard from Munich, since the *Bundesrat* was born during this conversation or at this breakfast. ... It will be a very charming anecdote for the historian to establish one day that the *Rhenish Socialist* and the *white-blue statesman* reached an agreement on the basis of [the Prussian Conservative] *Bismarck*'s legacy...."[101]

In fact it was not a breakfast but an evening meal and meeting on 26 October 1948 in Bonn.[102] In essence, the SPD agreed to accept a *Bundesrat*, for which the CSU, on behalf of the Union parties, agreed to limit the power of the *Bundesrat* to a suspensive veto over the majority of decisions of the *Bundestag*, with the exceptions of changes in the *Bund*'s powers and financial equalization grants. Such grants, financed from the proceeds of certain taxes allocated to the *Länder*, were distributed by the *Bund* to ensure a uniform standard of living throughout the country and to assist financially weak *Länder*.[103] A *Bundesrat* made up of representatives of the *Länder* governments harked back to 1871, but its function was different under the deal struck by Menzel and Ehard.

The Menzel-Ehard deal was designed to thwart the mixed-chamber proposal put forward by the CDU, with which neither the CSU nor SPD were happy. The former was concerned that the interests of the *Länder* would not be adequately represented in a mixed chamber, whilst the latter feared that a mixed chamber would

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[100] H. Mommsen, 'Der lange Schatten der untergehenden Republik. Zur Kontinuität politischer Denkhaltungen von der späten Weimarer zur frühen Bundesrepublik', in K. Bracher *et al.* (eds.), *Die Weimarer Republik 1918-1933* (Bonn, 1998), pp. 552-586 (p. 573).
[101] *PR. A&P*, IX, pp. 532-533. Italics in original.
[102] For significance of and controversy about meeting, see Niclauß, pp. 224-225; Düding, pp. 135-144; and Morsey (1988), pp. 438-440.
[103] Cf. eventual art. 107 of Basic Law, and G. Färber, 'Finanzverfassung', in Bundesrat (ed.), *50 Jahre Herrenchiemseer Verfassungskonvent – Zur Struktur des deutschen Föderalismus* (Bonn, 1999), pp. 89-131 (p. 103).

threaten the supremacy of the popularly elected first chamber. Menzel and Ehard's scheme met with considerable opposition from the CDU. The faction resented that Ehard, who was not an MdPR, had acted without first discussing his intentions with his colleagues in the assembly. In particular, Adenauer, leader of the CDU, disapproved strongly both of the deal's content and how it had been reached.[104] As a North German adherent of the concept of a '*konstitutionelle Demokratie*', Adenauer wanted to introduce a check on the first chamber but did not want to give greater power to the *Länder*; consequently, he favoured a Senate.

Initially the deal occasioned some surprise in the press, although newspapers had already identified the possibility of agreement between the SPD and the CSU rather than the CDU. Subsequently, the press concentrated on party reactions to the deal rather than giving its own commentary. The first mention in the press of a possible arrangement between Menzel and Ehard, however, was a denial that such a deal had been struck. The CDU-leaning *Allgemeine Kölnische Rundschau*'s headline read "No Menzel-Ehard agreement. All questions are at the stage of interfactional discussions", and cited the denial of a deal made by Dr. Adolf Süsterhenn (CDU).[105] The next day the *Allgemeine Kölnische Rundschau* again referred to the compromise being mooted by Ehard and Menzel in the deliberations on the second chamber, as did the *Tagesspiegel*, published in the US sector of Berlin, and the *West Ausgabe. Nouvelles de France*, published by the French Military Government.[106] The latter two both noted the CDU/CSU faction's criticism of the possible compromise discussed by Menzel and Ehard.

The above-party *Badische Zeitung* commented upon Ehard's efforts to reach a compromise at the beginning of November.[107]

> "In spite of the noncommittal character of the conversation [between Menzel and Ehard], observers here have the impression that Bavaria might more possibly reach an understanding with the SPD than with Dr. Adenauer, since they fear that he will under no circumstances drop the Senate solution."

If necessary, the SPD was prepared to forgo a Senate to preserve the greater status of the first chamber, and was therefore able to reach a deal with the CSU, for whom

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[104] 28 October 1948, in *Die CDU/CSU im Parlamentarischen Rat*, pp. 86-115.
[105] 29 October 1948.
[106] 30 and 31 October 1948 respectively.
[107] 2 November 1948.

adequate representation of *Länder* interests in a *Bundesrat* was more important than an absolute check on the power of the popularly elected first chamber.[108] Adenauer, as mentioned above, did not share this point of view. The headline of the *Neue Zeitung*, published by the American Military Government, spelled out the situation frankly: "CDU/CSU divided in Bonn. The North [CDU] against Bavaria – SPD supports CSU".[109] The article went on to cite the beginnings of a deal between the SPD and CSU on the composition and status of the second chamber and the consequent differences between the CDU and CSU. The independent *Flensburger Tageblatt* was one of several papers to speak, amongst other things, of the compromise reached by Menzel and Ehard on the second chamber.[110] Whilst on the whole the fact that an agreement had been reached was welcomed, newspapers differed on the implications of the deal.

Newspapers from across the political spectrum and throughout the three Western zones noted that the SPD was willing to compromise about the composition of the second chamber if its status was not equal to the first. The US-zone *Hessische Nachrichten*'s headline read "SPD prepared to compromise".[111] Under the headline, "SPD turnaround: *Bundesrat* instead of Senate. Prospect for compromise still unclear...", the CDU-leaning *Hannoversche Neueste Nachrichten* was more cautious.[112] It reported upon the CDU's scepticism about the SPD's willingness to compromise and its fear that the SPD was trying to drive a wedge between the CDU and CSU. The CDU's fear was not entirely misplaced: by striking a deal with the Bavarians over the *Bundesrat*, the SPD hoped to quash the proposal for a mixed chamber put forward by the Northern CDU.

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[108] In fact, a broadly similar deal had been struck in Bavaria in 1946, when the CSU agreed to reduce the status of the second chamber in return for the SPD accepting the existence of a second chamber. Cf. Fait, pp. 256-287 (pp. 270-271).
[109] 2 November 1948.
[110] 4 November 1948. Cf. *Neue Zeitung*, published by the American Military Government, 2 and 4 November 1948.
[111] 5 November 1948.
[112] 6 November 1948.

The SPD's decision to drop a Senate in favour of a *Bundesrat* was analysed by Fritz Fay in the *Welt*, published by the British Military Government in Hamburg.[113] Fay commented that for the strongly Conservative elements in Bonn

> "it was and is important that the second chamber is an absolutely equal organ in law-making, without whose consent laws can in no circumstances be made."

He believed that the SPD had recognized this weakness of its opponent and had therefore declared itself willing to make a concession to the federal principle in order to increase the effective strength of the future central authority. Translated into the political practice of the Bonn discussions, he continued, this meant that

> "with the exercise of greater influence by the *Länder* on the federal legislation, the power of the *Bund* can at the same time be greater without the balance being upset. That is probably why the SPD is now for a *Bundesrat* and not a Senate. However, at the same time the SPD demands a certain privilege for the representatives of the people so as 'not to allow a blurring of responsibilities'."

Quite what the paper's readership made of Fay's analysis, it is impossible to establish. Yet he effectively summarized the key positions in the debate and presented these to his readers. In essence, the first compromise on the status and nature of the second chamber had now been reached and was broadly accepted in Bonn, in spite of Adenauer's unwillingness to do so, and even though some discussion of alternatives continued.

On 8 November, Adenauer tried to persuade leading CSU politicians in Munich of the merits of a Senate.[114] He was convinced that a *Bundesrat* according to CSU design was not the best guarantee of a federal structure.[115] He believed federalism could be better secured through the right division of powers and financial sovereignty between the *Bund* and the *Länder* and by making it difficult to change the constitution.[116] Upon his return to Bonn, Adenauer made a last attempt to salvage the Senate idea by suggesting that a Senate exist alongside the *Bundestag* and

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[113] 6 November 1948. Fritz Fay, journalist and SPD city councillor in Frankfurt/M., in O. Schumacher-Hellmold, 'Bonn – Eine Entscheidung des Herzens. Warum sie Bonn zur Hauptstadt wählten', in *Bonner Geschichtsblätter. Jahrbuch des Bonner Heimat- und Geschichtsvereins* 26 (1974), pp. 193-272 (p. 212-213).

[114] Adenauer's report to his faction, 9 November 1948, in *Die CDU/CSU im Parlamentarischen Rat*, pp. 142-146.

[115] R. Morsey, 'Der politische Aufstieg Konrad Adenauers 1945-1949', in R. Morsey and K. Repgen (eds.), *Adenauer-Studien I* (Mainz, 1971), pp. 20-57 (p. 49).

[116] Cf. statements to this effect, 28 September and 6 October 1948, in *Die CDU/CSU im Parlamentarischen Rat*, p. 32 and p. 58 respectively.

Bundesrat.[117] This suggestion received considerable coverage, as did its rejection by the SPD.

Much of the press coverage of Adenauer's three-chamber proposal was of a factual kind. The variety of explanations offered by the press for the thinking behind this three-chamber proposal implies that many were uncertain about what exactly Adenauer sought to achieve with his idea. The above-party *Südkurier*, published in Konstanz, suggested it was part of Adenauer's effort to seize back the initiative after the SPD's decision to forgo a Senate, which he himself advocated, in favour of a *Bundesrat*.[118] The above-party *Badische Zeitung*, Freiburg, regarded Adenauer's proposal as an effort to bridge the gap between the views of the CDU, CSU and SPD.[119] Another paper published in the French zone, the Christian *Schwarzwälder Post*, described it as "a lead weight" on further deliberations when compromise had seemed within reach on the second chamber.[120] Its critical assessment was echoed by the SPD-leaning *Freie Presse*, amongst others.[121] Dr. Erwein Freiherr von Aretin was, as always, particularly dismissive.[122] No paper came out fully in favour of Adenauer's proposal, a reflection of its half-baked nature.

On 22 November 1948 the Military Governors handed over a memorandum to the Parliamentary Council, which elucidated the Allied understanding of a 'governmental structure of federal type' in response to French concerns that the *Bund* was being given too much power.[123] (See chapter III, pp. 107-116.) The Basic Law had to provide (a)

> "for a bicameral legislative system in which one of the houses must represent the individual states and must have sufficient power to safeguard the interests of the states"

Since the Allies believed that the financial organization proposed by the assembly did not meet their federal stipulations, point (d) of the memo limited the powers of the

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[117] Ibid., p. 50. Proposal is not discussed by H.-P. Schwarz, *Adenauer*, vol. I, *Der Aufstieg 1876-1952* (Munich, 1994), p. 593.
[118] 11 November 1948.
[119] 14 November 1948.
[120] 12 November 1948.
[121] 13 November 1948.
[122] CSU-leaning *Münchner Merkur*, 14 November 1948. Biographical background on Aretin (1887-1952), though it includes very little on his post-war activities, in E. von Aretin, *Krone und Ketten. Erinnerungen eines bayerischen Edelmannes* edited by K. Buchheim and K.O. von Aretin (Munich, 1955), pp. 7-18.
[123] *PR. A&P*, VIII, pp. 37-42.

Bund in the financial sphere. (See discussion below, p. 192.) It also called for far-reaching self-administration at the local level.[124] This latter provision did not spring from an Allied belief in organic federalism but rather was linked to the post-war Allied practice of (re-)introducing democracy from the bottom-up.

The memo provoked much coverage and was the primary subject of attention for several days. (See chapter III for details, pp. 112-116.) A copy was circulated by the Council's secretariat.[125] "Document of federalism" was the headline in the *Welt*, published by the British Military Government, whilst the CDU-leaning *Rheinische Post* declared,

> "Allied conditions for Bonn. Far-reaching federalism ordered. Federal power limited. *Länder* to have fiscal sovereignty".[126]

Particularly the CDU- or CSU-leaning papers and Southern German papers spelled out the Allied insistence on, as well as understanding of, a federal structure. The US-zone *Süddeutsche Zeitung*, published in Munich, for example, commented,

> "it would certainly have been nicer if the nature of the content of a federal constitution had been understood without this coaching, but it is also not a tragedy that it became necessary, even if one might argue about whether the timing was good."[127]

Such comments reveal the extent to which Southern Germans, especially Bavarians, felt vindicated in their insistence on a *Bundesrat*.

A few days later several newspapers reported that the CDU had come to accept a *Bundesrat*. The FDP-leaning *Westdeutsche Rundschau*, Wuppertal, attributed this to "the intransigence of the CSU".[128] The US-zone *Süddeutsche Zeitung*, on the other hand, reported that the CDU/CSU faction had decided to opt for the *Bundesrat* solution and to drop Adenauer's three-chamber proposal after consultation with its Ministers President.[129] Ehard's satisfaction with this decision was noted by the above-party *Allgemeine Zeitung* and the CDU-leaning *Hannoversche Neueste Nachrichten*,

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[124] Point (c) stipulated, "that the powers of the federal government shall be limited to those expressly enumerated in the constitution and in any case, shall not include education, cultural and religious affairs, local government and public health....", in ibid., pp. 37-42 (p. 39).
[125] *Sekretariatsumdruck* 1, in BA, Z5/202. Unclear, however, how soon this was circulated, in *PR. A&P*, X, p. liii.
[126] 23 and 24 November 1948 respectively.
[127] 25 November 1948.
[128] 27 November 1948.
[129] 27 November 1948. Cf. discussion in CDU/CSU faction, 26 November 1948, in *Die CDU/CSU im Parlamentarischen Rat*, pp. 211-228.

amongst others.[130] The above-party *Rheinpfalz* reported that whilst the parties had agreed on the composition they had not yet agreed on the status of the second chamber, which was now the subject of debate.[131] In a comment which demonstrated its author's adherence to the concept of a '*konstitutionelle Demokratie*', the article argued that a second chamber was necessary, since

> "a counterweight needs to be given to the one-sided parliamentarianism and the perhaps too stormy and changeable people's parliament should be confronted with a conservative element of the state, which guarantees constancy and calm deliberation."

In a similar fashion, Dr. Walter Strauß (CDU) called for a *Bundesrat* to prevent "parliamentary absolutism", which, he believed, would develop if a Senate were to be chosen.[132] (See chapter II for discussion of anti-parliamentarianism, pp. 63-75.)

Just as on other topics, newspapers sought to inform their readers as much as possible about the intricacies of the debate by using political scientists and lawyers to discuss the issues. (See chapter I, pp. 31-32.) The US-zone *Süddeutsche Zeitung*, for example, published an analysis of the SPD's willingness to accept a *Bundesrat* lesser in status than the *Bundestag* by Prof. Friedrich Glum.[133] He condemned the agreement, since it did not meet the requirements of true federalism, which he proceeded to outline.[134] Furthermore, he argued,

> "real federalism is naturally inconsistent with the *Bund* being given fiscal sovereignty, since then the *Bund* can coldly force the *Länder* to follow its will at any time."

Glum was a Bavarian federalist writing for a like-minded readership. It is unlikely that his views were shared throughout Germany. Nonetheless, he identified the next sticking point in the deliberations on the federal structure, namely the question of the extent of the *Bund*'s and the *Länder*'s fiscal sovereignty.

The question of *Bundesrat* or Senate was also addressed by the lawyer Professor Ernst von Hippel in the Christian *Schwarzwälder Post*, published in the

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[130] 29 and 30 November 1948 respectively.
[131] 30 November 1948.
[132] 21 September 1948, in *PR. A&P*, XIII/I, p. 58.
[133] 20 November 1948. Friedrich Glum (1891-1974), OMGUS adviser on administrative and constitutional matters, Berlin, 1945-1946, and in Bavaria, 1946, Head of section in Bavarian Minister President's Office, responsible for constitutional, economic and financial law, 1946-1952. Cf. V. Otto, *Das Staatsverständnis des Parlamentarischen Rates. Ein Beitrag zur Entstehungsgeschichte des Grundgesetzes für die Bundesrepublik Deutschland* (Bonn, 1971), p. 23, on Glum and Ellwanger Kreis.
[134] Cf. Glum's 1946 proposal for a 'United States of Germany', in W. Benz, 'Föderalistische Politik in der CDU/CSU. Die Verfassungsdiskussion im "Ellwanger Kreis" 1947/48', in *VfZ* 25 (1977), pp. 776-820 (pp. 782-783).

French zone, a week later.[135] In an article characterized by anti-party sentiment, Hippel argued in favour of a Senate, which, he believed, "represented in its gist a finer political principle" if one did not want "a simple party state, of which the world is already so tired". Contrary to what others had claimed, members of a *Bundesrat* appointed by the governments of the *Länder* would, he felt, represent their parties more than their *Land*, since

> "any tie of a member of a *Bundesrat* with the tradition of the *Länder* would not exist or only exist by chance as it were. Or who will vouch that the representatives of centralist thinking, should they have a majority in the *Landtag*, will regard the *Land* as of value in itself, the character and nature of which is to be respected? On the contrary, such centralists, by their very nature, would out of inner necessity have to regard the particular *Land* not as a, even if minor, end in itself but rather as an area for conquest and a force field for their party."

Such views resembled Adenauer's. When trying to persuade his faction of the merits of a Senate, he had argued that a *Bundesrat* was more susceptible to being dominated by political parties, and had warned of the possibility of the SPD and KPD winning a majority of seats, especially once Berlin and the Eastern zone were incorporated.[136]

As soon as the agreement reached between Menzel and Ehard had been accepted by the various factions in the Council, the 'first compromise' was debated in the Main Committee.[137] On 30 November, a majority of 16:1 voted in favour of a *Bundesrat*, made up of members of the *Land* governments, which appointed and recalled them. Only once its composition had been agreed, was the status of the second chamber debated. The following day, the CDU/CSU motion for the equal status of both chambers ("a federal law comes into being through concurrent majority decisions in both houses") was rejected by 12 SPD, FDP, KPD and Z votes to 9 CDU/CSU and DP votes. Once taken, this decision was not reversed in subsequent readings of the Basic Law. The extent of the second chamber's veto power was settled in January in the second compromise, when the SPD and FDP succeeded in limiting it.[138] In the case of bills not requiring the express consent of the *Bundesrat* (those which required consent were enumerated), the second chamber was given only a delaying veto, which could be overturned by an ordinary majority in the *Bundestag* if

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[135] 26 November 1948.
[136] Morsey (1971), p. 49.
[137] First reading, 30 November-1 December 1948, and second reading, 14 January 1949, in *Parlamentarischer Rat. Verhandlungen des Hauptausschusses. Bonn 1948-1949* (Bonn, [1950]), pp. 123-149 and pp. 493-509 respectively.
[138] *PR. A&P*, XI, pp. 58-61 (p. 61).

the veto had been adopted by an ordinary majority, but had to be overridden by a two-thirds majority if the veto had been passed by a similar majority.[139]

The vote in favour of a *Bundesrat* was the result of a change of position by the FDP. Once the idea of a mixed chamber had been dropped and a *Bundesrat* accepted, giving the second chamber equal status meant increasing the power of the *Länder* governments, which the FDP wanted to avoid.[140] The FDP was far more concerned with securing a division of powers on the federal level between the executive and legislative branches of government, than with providing for a division of power between the *Bund* and *Länder*. Consequently, the FDP departed from its initial adherence to the concept of a '*konstitutionelle Demokratie*' and voted with the SPD to give the first chamber greater powers. This meant that the final settlement on the status and composition of the second chamber was more in keeping with the idea of a '*soziale Mehrheitsdemokratie*', with the second chamber having lesser powers than the popularly elected first chamber. This decision, however, did not accord fully with Allied ideas on a "governmental structure of federal type" and led to differences with the Allies in the spring. (See below, pp. 193-197, and chapter III, pp. 121-146.)

The press covered the committee deliberations in considerable detail, paying attention not only to the articles on the second chamber's status and composition but also, for example, to the catalogue of basic rights, which was often just as contested. Reports on the federal structure tended to report the facts but the emphasis employed generally reflected the orientation of the publication. Thus the CDU-leaning *Allgemeine Kölnische Rundschau* ran a headline "Selection of President without *Bundesrat*. The SPD reduces significance of second chamber", highlighting what it regarded as the SPD role in the decisions taken by the Main Committee.[141] In contrast, the headline of the *Frankfurter Neue Presse*, published in the US zone of occupation and without a particular party orientation, merely read, "Second chamber has less power. The crucial regulation of federal legislation."[142] SPD-leaning papers did not run headlines on the subject of the second chamber instead focusing on other issues,

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[139] Cf. eventual articles 74 and 77.
[140] Niclauß, p. 321.
[141] 1 December 1948.
[142] 2 December 1948.

such as the decision that the Federal President be elected by a Federal Assembly.[143] This reflected the party's view that the second chamber was of secondary importance, in keeping with its adherence to the concept of a '*soziale Mehrheitsdemokratie*'.

The second and third compromises: the financial organization

In mid-October, Dr. Friedrich Wolff, an SPD MdPR, contributed an article to the above-party *Westdeutsche Zeitung*, published in Düsseldorf.[144] He explained that resolving the problems of the second chamber and the financial organization were related, since agreement by one party on the one issue was conditional on the other party's agreement on the other issue. Perhaps rather simplistic, the article nonetheless makes clear how closely the two topics were related and how vital the resolution of both was to the federal structure of the future West German state. The financial organization was not only central to the relationship between the *Bund* and the *Länder*, it was also a major bone of contention between the Western Allies and the Parliamentary Council, between whom agreement had to be reached for the Basic Law to be passed. Indeed, it has been argued that the Allies made the difference in the question of the organization of finances in the Basic Law.[145] (See below, p. 196.)

Once agreement had been reached on the second chamber, the Parliamentary Council had to determine the nature of the financial organization. This was very difficult subject matter for the layperson to grasp. Even within the Parliamentary Council, specialists, such as the FDP delegate Dr. Hermann Höpker-Aschoff from North Rhine Westphalia, chiefly dealt with the financial organization.[146] It is perhaps only with the benefit of hindsight that the importance of the financial organization to the eventual political settlement reached in April 1949 within the Parliamentary Council and between the assembly and the Allies can be understood. As Prof. Hermann von Mangoldt (CDU), writing five years after the formulation of the Basic Law, observed,

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[143] 30 November 1948, in *Parlamentarischer Rat. Verhandlungen des Hauptausschusses*, pp. 113-118. Cf. chapter II, pp. 73-74.
[144] 18 October 1948.
[145] Niclauß, pp. 303-316 (p. 316).
[146] Hermann Höpker-Aschoff (1883-1954), Prussian Minister of Finance, 1925-1931. See 'Hermann Höpker-Aschoff', in E.H.M. Lange, *Gestalter des Grundgesetzes. Die Abgeordneten des Parlamentarischen Rates: 15 historische Biografien* (Brühl, 1999), pp. 159-172.

> "the question of the extent and content of the financial power of a federal state is its central problem; since it is the answer to this question that actually really determines the effectiveness of the distribution of power between the *Bund* and the *Länder*."[147]

At the time it is unlikely that this was fully appreciated by the majority of the population, both cause and effect of the limited debate of the intricacies of the financial organization in the press. Other aspects of the federalism debate, such as the question of the second chamber, were more accessible to outsiders and therefore featured more frequently in the newspaper coverage.

An exception to the somewhat limited public interest in the financial organization as a whole were those matters that pertained to the post-war situation. Thus, for example, the *Tagesspiegel*, published in the US sector of Berlin, argued that whilst in principle fiscal sovereignty must lie with the *Länder*,

> "in the current situation in light of the heavy burdens of occupation costs, reparations, *Lasten-ausgleich*, help for refugees and so on, the *Bund* needs to be given more powers, which can be gradually removed later."[148]

In the immediate-term, the financial arrangement needed to take account of the costs of the occupation and resettlement of refugees, both of which called for a *Bund* with adequate financial powers. On the whole, however, the federal structure was not discussed from the perspective of the provisional nature of the Basic Law.

Various newspapers reported on the Finance Committee's deliberations on 7 October over whether the *Bund* should have fiscal sovereignty.[149] The above-party *Trierische Volkszeitung* noted that the Finance Committee had not reached agreement and remarked that whilst the federal principle demanded the fiscal sovereignty of the *Länder*, several practical considerations spoke for a more centralized organization.[150] The position of the FDP, the article continued, meant that the more centralized solution was likely to prevail. This already set out the key elements of the debate, which were to shape it until the conclusion of the Basic Law. Broadly speaking, the

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[147] *Das Bonner Grundgesetz* commented upon by H. von Mangoldt, first edition (Berlin and Frankfurt/M., 1953), p. 553.
[148] 8 October 1948. Cf. article by Dr. Hans Röper, above-party *Allgemeine Zeitung*, 28 October 1948. Dr. Hans Röper (1912-), economic journalist, 1947-1948 editor of *Allgemeine Zeitung*. Cf. one of rare letters of submission on subject: EN5000, in BA, Z5/97.
[149] For example, the *Tagesspiegel*, published in the US sector of Berlin, or SPD-leaning *Freie Presse*, Bielefeld, 8 October 1948. Deliberations of Finance Committee, 7 October 1948, in *PR. A&P*, XII, pp. 444-473.
[150] 8 October 1948.

SPD advocated a Federal fiscal administration, in which the *Länder* collected the taxes but the revenue thus accrued was administered by the *Bund*. The CDU/CSU, on the other hand, argued for the administration of the revenue from taxation to be split between the *Bund* and the *Länder*, since this guaranteed greater autonomy for the *Länder*. The FDP position tipped the balance in favour of the *Bund* having fiscal sovereignty in the German compromise reached by the 5-Person Committee in February.[151] Like the SPD, the FDP believed that fiscal administration by the *Bund* was necessary to ensure the greatest possible uniformity of living standards throughout Western Germany. The Germans cited the dire economic circumstances, one of the practical considerations to which the above-party *Trierische Volkszeitung* alluded, to the Western Allies in the spring 1949 when presenting their case for a more centralized fiscal administration.

The Finance Committee was one of the first of the Parliamentary Council's committees to finish its work in October. One reason for this was in all likelihood the recognition by its members that the final decision was political and not technical in essence.[152] The FDP-leaning *Westdeutsche Rundschau*, amongst others, noted that the Finance Committee had passed its proposal on to the Main Committee, and remarked that the trend was towards giving the *Bund* strong power in the sphere of fiscal administration.[153] This trend led several CSU members to protest "extremely sharply" against the proposal drawn up by the Finance Committee, which had been passed on for debate in the Plenum, since they saw the autonomy of the *Länder* threatened by such an arrangement.[154] Under the sub-heading "Whoever has the money takes the decisions", the SPD-leaning *Hamburger Echo*, on the other hand, welcomed the Finance Committee's decision to give the *Bund* the greater say in fiscal matters than the *Länder*.[155] It commented,

> "it is to be hoped that the Parliamentary Council agrees to the suggestions of its Finance Committee, since otherwise the *Bund* would sink to becoming the plaything of the opposing and often selfish interests of the *Länder*."

It was in Germany's national interest, the article implied, for the Bonn assembly to follow the Finance Committee's recommendations. As an SPD publication from

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[151] Cf. interfactional discussions, 27 January 1949, in *PR. A&P*, XI, pp. 72-75.
[152] *PR. A&P*, XII, p. xli.
[153] 14 October 1948.
[154] *PR. A&P*, XII, p. xli.
[155] 16 October 1948. Cf. Finance Committee, 13 October 1948, in ibid., pp. 483-489.

Northern Germany, the *Hamburger* Echo was in favour of the *Bund* having more power than the *Länder*, again demonstrating the importance of party orientation and place of publication in newspaper evaluations of the Finance Committee's work.

On the second day of the plenary session held by the Parliamentary Council on 21 October, Höpker-Aschoff introduced the ideas of the Finance Committee to the Plenum and to the public.[156] A day earlier, the Military Governors had already let it be known that they objected to the proposed Federal fiscal administration in a statement presented to the assembly's Vice-President, Adolf Schönfelder (SPD).[157] On behalf of the Military Governors, the liaison officers had informed Schönfelder that

> "the powers of the federal government in the field of public finance should be limited to the raising of revenues and the disposal of monies for purposes for which the federal government is responsible under the constitution."[158]

Schönfelder and Höpker-Aschoff were the only two to know about the contents of the Allied statement at this stage, since Schönfelder had not passed this information on to the Plenum. (See chapter III, pp. 107-108.) Höpker-Aschoff sought to address some of the Allied concerns in his plenary speech.[159] He explained that the Finance Committee had allocated legislation over tariffs and the major excise and vehicle taxes to the *Bund*, since anything else would have meant retreating 100 years. Whilst the Herrenchiemsee Convent had left the determination of tax exemption limits, tariffs and rates of assessment to the *Länder*, the Finance Committee considered uniform regulation of the rates of taxation necessary to prevent the relocation of industry. He emphasized that taxes which were geographically limited in their application, including the taxes on land transfer, entertainment, fire services and itinerant trade, had been left to the legislation of the *Länder*, making the formulation of the financial law more federal than that of the Weimar constitution. So that the *Länder* did not become pensioners of the *Bund*, he continued, the Finance Committee had decided to give the *Länder* the full proceeds of the taxes on beer, wealth and inheritance in addition to the proceeds of the land transfer, pari-mutuél and vehicle taxes, which

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[156] *PR. A&P*, IX, pp. 249-257; *PR. A&P*, XII, pp. xli-lv, for background on deliberation of financial articles.
[157] *PR. A&P*, VIII, pp. 18-20.
[158] Ibid., p. 20.
[159] He restated his main arguments in a letter to the British liaison officer a week later. 28 October 1948, in ibid., pp. 24-25.

they had already received under Weimar. He concluded that the proceeds of income, corporation and turnover taxes counted as joint income of the *Bund* and the *Länder*.

The very limited reaction to the October statement led the Allies to formulate a memorandum, which they presented to the Council on 22 November.[160] In it they repeated that the Basic Law must comply with the London Recommendations and spelled out more clearly what they understood by a 'governmental structure of federal type'. Important for this discussion was point (d), which limited the powers of the federal government in the field of public finance

> "to the disposal of monies, including the raising of revenue for purposes for which it is responsible, that the federal government may set rates and legislate on the general principles of assessment with regard to other taxes for which uniformity is essential, the collection and utilization of such taxes being left to the individual states, and that it may appropriate funds only for the purpose for which it is responsible under the constitution."

For the Allies the financial organization was clearly fundamental to the federal structure of the new West German state and, in contrast to the debate over the status or composition of the second chamber, Allied stipulations were to prove particularly significant for the eventual settlement of the financial organization.

Having learned about the Allied memorandum, either through a press release or its reproduction by the Council's Secretariat,[161] Medefind summarized the key message on the financial organization with the headline "Whoever has the money, has the power" in the *Neue Zeitung*, published by the American Military Government.[162] Most papers reported on the Allied insistence upon the *Länder* having fiscal sovereignty, as outlined in point (d), in their coverage of the memo.[163] The *Westdeutsche Rundschau* and *Rheinisch-Pfälzische Rundschau*, both FDP-leaning publications, noted Höpker-Aschoff's adherence to the *Bund* having fiscal sovereignty.[164] Höpker-Aschoff's preference was the result of his experience as Prussian Minister of Finance between 1925-1931, as well as of his reading of the past.[165]

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[160] Ibid., pp. 37-42. Cf. *PR. A&P*, XII, pp. xliv-xlv.
[161] *Sekretariatsumdruck* 1, in BA, Z5/202. Unclear, however, how soon this was circulated, in *PR. A&P*, X, p. liii.
[162] 24 November 1948. Title used independently of SPD-leaning *Hamburger Echo* in October.
[163] For example, French-zone *West Echo*, 24 November 1948.
[164] 27 November 1948.
[165] H. Höpker-Aschoff, 'Finanzhoheit in Deutschland', in *Die Gegenwart* 3:11/12 (1948), pp. 18-19.

The first reading of the articles on the financial organization took place in the Main Committee on 1/2 December 1948.[166] The second reading was on 15 January 1949.[167] It has been argued that the admission of journalists to the Main Committee hearings, unlike to the hearings of the Finance Committee, led to more passionate debate of the financial organization in the Main Committee and press conferences held afterwards.[168] The volume and liveliness of the coverage of this debate increased, but it still did not compare with the coverage of other topics under discussion. All papers reported upon the committee's decision to provide for fiscal administration by the *Bund*, thus giving the *Bund* greater power, as well as outlining the revenue of the *Bund* and *Länder* from taxation. The CDU-leaning *Allgemeine Kölnische Rundschau* described the debate on the financial organization in the Main Committee as "hotly contested", whilst the above-party *Allgemeine Zeitung* referred to the "several hours-long lively debate".[169] The latter also noted the possibility of rejection of the Basic Law by the CSU in light of this decision. Most newspapers observed that the Main Committee's decision ran counter to point (d) of the Allied memo of 22 November, which did not allow the *Bund* to administer those taxes not for its own use. Many papers, however, reserved comment until the second reading in the Main Committee.

Subsequently the financial organization was one of the principal topics for interfactional deliberation in the 5-Person Committee, established in January after it had become clear that the factions could not agree in the Main Committee. The committee comprised Dr. Heinrich von Brentano (CDU), Theophil Kaufmann (CDU), Schmid (SPD), Menzel (SPD) and Dr. Hermann Schäfer (FDP) (who alternated with his party colleagues, Dehler, Heuss, and Höpker-Aschoff), with Adenauer as President of the Council in the chair.[170] In February the committee expanded to form a 7-Person Committee by including Seebohm (DP) and Johannes Brockmann (Z). By focussing on the constitution as a whole, working together closely, and refusing to part until agreement had been reached, the committee succeeded in drawing up a proposal for the Basic Law upon which all the major German political parties could agree. This draft passed through its third reading in the Main Committee on 8-10

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[166] *Parlamentarischer Rat. Verhandlungen des Hauptausschusses*, pp. 151-187.
[167] Ibid., pp. 511-527.
[168] Feldkamp, in *PR. A&P*, XII, p. xlvii.
[169] Both 3 December 1948.
[170] *PR. A&P*, XI, p. xvi.

February.[171] The proposal put forward by the 5-Person Committee, which adhered to the Main Committee's decision to provide for fiscal administration by the *Bund*, was rejected by the Allies on 2 March 1949.[172] Much as in November, the Governors believed that the 5-Person Committee's proposed finance provisions departed from the criteria set out in the Frankfurt Documents and would result in the *Länder* being left without adequate independent sources of revenue for the conduct of their affairs. They also criticized that the powers of the *Bund* were defined insufficiently clearly "adequately to safeguard the position of the states in a federal system".

The SPD refused to accept the 2 March rejection and the subsequent first communiqué from the Foreign Ministers to the Bonn assembly on 5 April.[173] This communiqué reiterated the Allied position and called for the Germans to accommodate Allied wishes in the financial sphere. Party reactions were very different. The SPD regarded the Allied recommendations as a serious threat to German legal and economic unity and as depriving the *Bund* of the opportunity to manage public finances productively in the difficult circumstances of the time.[174] Newspapers sympathetic to the SPD echoed its refusal to accept the Allied rejection. Thus, for example, the SPD-leaning *Neue Ruhr Zeitung* equated agreement to the Allied demands on the question of the financial organization with self-renunciation on the part of the Parliamentary Council.[175] The CDU/CSU, on the other hand, argued that every effort should be made to reach agreement with the Allies, and the FDP proposed that the relevant articles should be resubmitted to the Finance Committee to see whether a compromise could be found.[176] The Finance Committee subsequently met on 7 April.[177] Following a party decision, which Menzel announced to the Committee, SPD members took part only as observers.[178] Consequently, the

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[171] *Parlamentarischer Rat. Verhandlungen des Hauptausschusses*, pp. 611-685. Basic Law as passed in third reading of Main Committee, in *PR. A&P*, VII, pp. 396-442. Cf. analysis of final months of deliberations, in R. Morsey, 'Die letzte Krise im Parlamentarischen Rat und ihre Bewältigung (März/April 1949)', in *Staat, Kirche, Wissenschaft und Gesellschaft. Festschrift zum 65. Geburtstag von Paul Mikat* edited by D. Schwab et al. (Berlin, 1989), pp. 393-410; and H.-J. Grabbe, 'Die deutsch-alliierte Kontroverse um den Grundgesetzentwurf', in *VfZ* 26 (1978), pp. 393-418.

[172] *PR. A&P*, VIII, pp. 131-144. Cf. *Sekretariatsumdruck* 3, in BA, Z5/202. Unclear, however, how soon this was circulated, in *PR. A&P*, X, p. liii.

[173] 5 April 1949, in *PR. A&P*, VIII, pp. 218-220.

[174] 6 April 1949, in *Parlamentarischer Rat. Verhandlungen des Hauptausschusses*, p. 731.

[175] 9 April 1949.

[176] 6 April 1949, in *Parlamentarischer Rat. Verhandlungen des Hauptausschusses*, p. 737.

[177] *PR. A&P*, XII, pp. 534-562.

[178] Ibid., p. 539.

Committee discussed how the Allied recommendations might threaten the legal and economic unity of Germany, as the SPD alleged, without taking any decisions.

Rather smugly, the US-zone *Süddeutsche Zeitung* argued towards the end of March that the Bonn assembly was once again exposing itself to rejection and cited speculations about what would happen next.[179] The rejection of the German proposal would result "precisely because of the Federal fiscal administration concealed within it." This comment reflected the *Süddeutsche Zeitung*'s Bavarian origin and its outspoken concern for *Länder* rights. The FDP-leaning *Westdeutsche Rundschau*, published in Wuppertal, outlined the reactions of the various parties to the anticipated rejection.[180] It reported that the CDU now advocated at least providing for the fiscal administration to be split between the *Bund* and the *Länder*, whilst the SPD stuck to the existing German draft, believing that the Allies would not reject it, and the FDP stated that the draft must not be allowed to and would not fail on account of the proposed Federal fiscal administration. (See chapter III, pp. 133-134.)

The above-party *Rheinpfalz*, published in Neustadt, took a different approach. It described the historical development of the German Federal fiscal administration almost as if in an effort to persuade the Allies that a Federal fiscal administration had not been responsible for Germany's failures in the past and therefore should not be prohibited now.[181] Whilst the centralized fiscal administration was no doubt welcomed by the National Socialists and made their work easier, it argued,

> "it did not form the basis nor a platform for the erection of the National Socialist state system, especially since the party succeeded only relatively late in finding its feet in the administration of Reich taxes. The party established itself and gained strength in the individual *Länder*, and that only because the Reich ... was too weak to counter the threat to its existence effectively."

Consequently, the *Rheinpfalz* argued, the Federal fiscal administration should not be held responsible for the rise to power of the National Socialists.

It was only upon the presentation of the second communiqué from the Allied Foreign Ministers on 22 April that the basis for agreement between the Allies and the Germans was given.[182] In it they indicated that they were willing to accept a

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[179] 24 March 1949.
[180] 29 March 1949.
[181] 29 March 1949.
[182] *PR. A&P*, VIII, pp. 244-246.

constitution which did not adhere strictly to the March memorandum's requirements, so long as "financial independence and adequate strength for both the *Länder* and Federal governments in operating in their respective fields" was secured. The State Department had come to share the British view that a compromise supported by all major parties was more important than individual articles of the constitution. Prompted by the British Foreign Minister, who was concerned that the German political parties were moving further apart, the State Department instructed Clay to deliver the communiqué in time for it to have an impact before the meeting between the Military Governors and a delegation from Bonn on 25 April. (See chapter III, pp. 143-144.)

Agreement was reached between the Military Governors and delegates from the Parliamentary Council in Frankfurt on 25 April in a third and last compromise, which paved the way for the final formulation of the Basic Law in Bonn.[183] The Allies accepted the need for financial equalization grants and the Germans agreed to split the fiscal administration between the *Bund* and the *Länder*. According to the eventual article 108 of the Basic Law therefore, the *Bund* was to administer the proceeds of customs duties, state monopolies, excise duties (except the beer duty), transport and turnover taxes and special capital levies, as well as its share of the proceeds from income and corporation taxes, whilst the revenue from all other taxes was to be administered by the *Länder*. The administrative structure of the latter could, however, be regulated by federal legislation, with the consent of the *Bundesrat*, and the *Bund* was responsible for the regulation of the judicial organization in taxation matters.

The second Foreign Ministers' communiqué was welcomed in the press as was the consequent agreement reached in interfactional discussions on 23/24 April.[184] (See chapter III, pp. 144-145.) Most papers gave a full account of the agreement reached on Sunday 24 April. Different emphases were adopted in the discussion of the agreement. Occasionally an article was explicitly partisan in its assessment. Thus, for example, the CDU-leaning *Allgemeine Kölnische Rundschau*, posited that interfactional agreement had only been reached on 24 April on the questions of the *Bundesrat* and fiscal administration because

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[183] Ibid., pp. 248-259.
[184] Interfactional discussions, 23-24 April 1949, in *PR: A&P*, XI, pp. 144-192.

> "the SPD has accommodated itself to the Allied demands in the previously so toughly contested financial question."[185]

The newspaper clearly wished to emphasize that the SPD had had to modify its position on the question of the fiscal administration to meet Allied demands and implied that it was SPD intransigence which had prevented agreement from being reached earlier. The compromise reached on 25 April between the Parliamentary Council delegation and the Military Governors in Frankfurt, when the Governors accepted the modified German proposal (see above, p. 196), was the central topic in the press in the following days.

On the whole, the compromise was welcomed across the political spectrum. However, as many newspapers, especially those from Bavaria, noted, the CSU criticized the compromise for giving too much power to the *Bund*. The CSU-leaning *Münchner Merkur*, for example, observed that it would be difficult to persuade the CSU of the Frankfurt compromise for fear of the Bayernpartei.[186] Conversely, the above-party *Westdeutsche Zeitung*, amongst others, observed that even the final resistance from Bavaria would not interfere with the ratification of the Basic Law.[187] In order to be ratified, the Basic Law had to be passed in 8 of the 11 or two thirds of the *Landtage* of the Western zones. This made Bavaria's resistance academic from the practical perspective. As noted earlier (see the *Allgemeine Zeitung*, p. 168), the attention paid to Bavaria's objections, however, was not just a reflection of that *Land*'s success in making its opinion heard, it was also a product of the reluctance to force the second largest *Land* into the new *Bund* against its wishes. Other newspapers cited Ehard's pronouncement that Bavaria would say 'yes' or 'no' to the provisional constitution after it had been passed in the Bonn assembly and once its final form was known; 'no' if insufficiently federal.[188]

The *Neue Zeitung*, published by the American Military Government, reported on the other parties' outrage at the CSU's threatened rejection of the Basic Law.[189] In its view, the CSU's objections were far greater in the party's Bavarian headquarters

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[185] 25 April 1949.
[186] 27 April 1949. Cf. US-zone *Süddeutsche Zeitung*, 28 April 1949.
[187] 27 April 1949.
[188] See, for example, above-party *Badische Zeitung*, 30 April 1949.
[189] 30 April 1949.

than in the Bonn faction. This the newspaper attributed to the need of parliamentary factions to work towards agreement along parliamentary lines, whereas party headquarters always had the next election in their sights. The *Neue Zeitung* further reported on the general view of the delegates and Allies that the eight CSU MdPR have enjoyed "disproportionate successes" in the difficult deliberations of the last eight months.

Once the third compromise had been reached in Frankfurt, the Parliamentary Council quickly drew up the final draft of the provisional constitution, in which article 20 stated that "the Federal Republic of Germany is a democratic and social federal state", sections II-VIII dealt with the relationship between the *Bund* and the *Länder*, defining the powers of each, and section X, articles 105-115, set out the financial organization. 53 MdPR voted in favour of the Basic Law in its final reading in the Plenum on 8 May 1949.[190] Of the twelve who rejected the provisional constitution, six belonged to the CSU (their two Frankish colleagues, Mayr and Schlör, voted in favour), and two each to the Z, DP and KPD. The CSU delegates cited the inadequate federal nature of the provisional constitution as their primary reason, whereas the Z and DP members objected to the failure to guarantee *Elternrecht* in the Basic Law, and the KPD representatives rejected it outright. This result was covered by the press. Whilst far greater space was devoted to the 'yes' vote and its implications, several newspapers commented upon the 'no' vote. The French-zone *West Echo*, for example, noted the potential impact of the 'no' voiced by the twelve delegates, especially the 'no' of the CSU.[191]

> "The more qualified the acceptance of the Bonn constitution in the West, the stronger the arguments of the East will one day be when it brings its '*Volksrat*-constitution' into conversation and debate. But that would redound to the greatest disadvantage for just those strict federalists. – The price for this platonic declamation [the 'no' vote] can easily become too high."

More typical of newspaper commentary on the formulation of the constitution at this time was an article published by the above-party *Allgemeine Zeitung*, entitled "On the Anniversary".[192] It read,

> "this date [8 May] contains a constant and bright reminder of the spirit in which this new German house must now be constructed. ... The Bonn constitution is incomplete but it is a

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[190] Debate of section X in Plenum, 6 May 1948, in *PR. A&P*, IX, pp. 485-486; and 8 May, in ibid., p. 593.
[191] 10 May 1949. Cf. US-zone *Weser Kurier*, 12 May 1949.
[192] 10 May 1949.

beginning. This piece of paper will only become a blessing for Germany if we all, each and everyone of us, fill it with an inner life."

After the Military Governors gave their approval on 12 May, the draft was given to the *Landtage* of the eleven West German *Länder* for ratification. With the exception of Bavaria, all the state parliaments voted in favour of the Basic Law between 18-21 May 1949. Thus the two-thirds majority necessary for ratification was achieved. The Bavarian parliament voted 'no' to the Basic Law itself but 'yes' to accepting the Basic Law if two thirds of the other German *Länder* voted in its favour. As intended by the Allies, this process of ratification served, once again, to underline the importance of the *Länder* in the constitutional framework. (See chapter I, p. 11.) It was further emphasized by the copious newspaper coverage of the ratification process.[193] On 23 May 1949 the Basic Law was promulgated at last.[194]

These final steps were given substantial coverage in the press, with the votes in the state parliaments reported as they were cast. Bavaria's split verdict was the subject of some commentary, often in the Bavarian press. Whilst acknowledging that the Bavarian vote would be without constitutional consequences, the US-zone *Süddeutsche Zeitung* sought to inform its readers about the motivation behind the Bavarian delegates' decisions. It printed pieces by Kroll and Mayr, both CSU MdPR, in which they explained their respective decisions to vote 'no' and 'yes' to the Basic Law.[195] Mayr was from Franconia. The above-party *Allgemeine Zeitung* believed that the debate in the Bavarian parliament had been important for Germany, since the different positions had been discussed openly again.[196] The democratic Christian newspaper, the *Tag*, was more critical, however, arguing that a 'yes' from Bavaria would have been "the best act of solidarity with the fighting and suffering Germans in the East."[197] No doubt this assessment reflected the *Tag*'s Berlin base.

Of course, the Basic Law as a whole was also commented upon in the press, frequently with some sort of evaluation of the federal structure, often in comparison

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[193] See, for example, above-party *Allgemeine Zeitung*, published in the French zone, or *Welt*, published by the British Military Government, 12 May 1949.
[194] See *Bundesgesetzblatt* 1 (23 May 1949), pp. 1-20.
[195] 19 May 1949.
[196] 21/22 May 1949.
[197] 22 May 1949.

with earlier or foreign constitutions. The historian Prof. Wilhelm Mommsen (1892-1966), for example, compared the Basic Law with the Weimar constitution in the *Neue Zeitung*, published by the American Military Government, under the heading "Misunderstood federalism. Unified state power and autonomy of the *Länder*".[198] He observed that in Germany

> "particularistic-conservative-dynastic thinking has time and again concealed itself behind true federalism. ... However, precisely if one approves of true federalism, which can be very much combined with unity, one should not forget that the Weimar state did not fail as a result of its alleged centralism, but rather partly because with the existing [level of] centralism in the overall political structure, the power of the Reich was weaker in relation to the *Länder* than it had been under the Prussian-hegemonic constitution of Bismarck."

Later in the summer, Dr. Willibald Apelt, an expert in constitutional law and author of a book on the Weimar constitution (1946), judged that "the experiences of Weimar [had been] taken into consideration" in his piece on the roles of the federal government and president.[199] This was one of a series of articles on the provisions of the Basic Law in the *Neue Zeitung*, published by the American Military Government, which Apelt wrote between the promulgation of the Basic Law and the first federal election in August. In another article he commended the principle, which

> "had already in Bismarck's federal system stressed the unity of the whole nation over the diversity of the constituent states and the variety of political parties, and established an equilibrium between federalism and centralism through the whole parliament"

and which was again upheld in article 38 of the Basic Law.[200] The *Allgemeine Zeitung*, in contrast, compared the Basic Law with the constitutional proposal of the People's Congress.[201] It observed that the "more centralistic character" of the latter

> "found expression in the part in which it is stated that all significant matters are decided by the Republic, everything else by the *Länder*."

Most newspapers regarded the resolution of the federal question in the Basic Law reasonably favourably, but paid more attention to other aspects of the constitution.

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[198] 21 May 1949.

[199] *Neue Zeitung*, published by the American Military Government, 9 August 1949. Dr. Willibald Apelt (1877-1965), expert in constitutional law, 1927-1929 DDP Minister of the Interior in Saxony; *Geschichte der Weimarer Verfassung* (Munich, 1946).

[200] *Neue Zeitung*, published by the American Military Government, 28 July 1949. Article 38, paragraph 1, read, "The deputies to the German Bundestag shall be elected in general, direct, free, equal, and secret elections. They shall be representatives of the whole people, not bound by orders and instructions, and shall be subject only to their conscience."

[201] 1 June 1949.

Conclusion

It was vitally important for German politicians and Western Allies alike that the provisional constitution was and was seen to be German. This meant that the Germans had to arrive at a federal structure which not only corresponded with the traditional German understanding of federalism, provided for an appropriate division of power between the *Bund* and the *Länder*, and met post-war West German needs, but also satisfied the exigencies of the victors. This was eventually achieved in a series of compromises, which were covered and commented upon by the newspapers of the three Western zones of occupation. Basically, the constitution provided for two chambers, one of which represented the governments of the *Länder* in the tradition of German federalism, but split the fiscal administration between the *Bund* and the *Länder* in a fashion hitherto unknown in Germany. Whilst the press called for these compromises on the federal structure to be made, exhorting the various political parties and *Länder* to think not only of themselves but of all Germany, there is little sense that the press moulded the debate or tangibly influenced the course of the debate on the federal structure. Of course, members of the Parliamentary Council were concerned that their positions found favour with the public and to that extent public opinion helped shape the broader debate. (See chapter II, pp. 58-63.)

The lack of tangible public impact partly followed from the nature of the subject matter, which once initial positions on the federalism-centralism spectrum had been adopted, was rather technical in nature, but it was also a reflection of the debate's lack of broader public resonance. Few letters of submission were addressed to Bonn calling for more power to be given to the *Bund* or to the *Länder*, say, or for a Senate in preference to a *Bundesrat*, as these questions related back to the division of power between the *Bund* and *Länder*. Thus the press acted more as a medium for informing the people about the Council's deliberations. It provided its readership with a broader context within which to understand the debate, through its commentary on the deliberations and its publication of pieces by political scientists or lawyers.

Even if limited to the press and not as copious as on other topics, the wider debate on the federal structure is nevertheless interesting. The frequent conjunction of

anti-party sentiment with a preference for a Senate in the press is striking.[202] It indicates a wider adherence to the concept of a '*konstitutionelle Demokratie*', in which the second chamber was intended to act as a check on the political parties. Party orientation and adherence to differing concepts of democracy were significant in shaping newspaper coverage of the debate. The extent to which the debate was framed with reference to the past reveals the climate in which the constitution was formulated: the majority sought to correct what they identified as the mistakes of the past, in particular of the Weimar constitution. Hardly anyone looked to the future and the surmounting of new challenges. Much like the deliberations over the inclusion of an *invocatio dei* in the constitution, which will be explored in the next chapter, the debate on the federal structure provided a welcome opportunity to disparage developments in the Soviet zone of occupation and conversely and implicitly to praise developments in the Western zones, even the division, although regarded as temporary, of Germany. The public debate on the federal structure of the future West German state does thus deepen our understanding of the democratization process in the Western zones, making clear the extent to which yardsticks, whether earlier German constitutions or, to a more limited extent, foreign constitutional arrangements, were needed against which progress or lack of progress, both variously defined, could be measured.

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[202] Cf. "Durch einen Senat hätte der Parlamentarische Rat die Anerkennung der politischen Parteien als Träger der politischen Willensbildung unterstreichen können. Daß es dazu nicht kam, ist vor allem auf die Überparteilichkeitsideologie zahlreicher Ratsmitglieder aus allen Parteien zurückzuführen", in Otto, p. 115. This can be linked to expressions of anti-parliamentarianism, on which see chapter II, pp. 63-75.

Chapter V - God and the Basic Law

Setting the scene

For many Germans, an important element in the rise to power of the NSDAP had been the abandonment of Christian values and, concomitantly, the increasing secularization of society. Upon the collapse of the Third Reich, they believed that a reaffirmation of Christian values would distinguish the post-war order from its Nazi predecessor and help to prevent something like the Third Reich from recurring. It would also mark a new beginning. This belief was reinforced by the prominent roles played by the Catholic and Protestant Churches in the immediate aftermath of the war, providing both material and spiritual succour to many Germans. Seen at the time as some of the few institutions to have survived the National Socialist era relatively untainted, the Churches were recognized as important institutions in the process of reconstruction by Germans and Allies alike, with the Allies even turning to the Churches for occasional advice on questions of German personnel in 1945/6. Some Germans believed that this reaffirmation of Christian beliefs should manifest itself in the constitution for the new West German state being formulated in 1948/9.

Views on the extent to which the constitution should explicitly make reference to Christian beliefs varied. After the war, over 95% of the West German population belonged, at least nominally, to the Catholic or Protestant churches.[1] In May 1949, 88% of those asked replied they believed in God.[2] Yet far from all believed that the constitution should bear an explicit religious imprint. Those of a liberal persuasion did not believe politics and religion should be mixed at all. Considerable discussion therefore ensued during the formulation of the Basic Law on the questions of the *invocatio dei* or reference to God, if any, and the guarantee of *Elternrecht* in the constitution, and, more broadly, on the character of the constitution as a whole with reference to the past and as a

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[1] *Statistisches Jahrbuch für die Bundesrepublik Deutschland* edited by Statistisches Bundesamt (Stuttgart, 1953), p. 44. In perspective, in 1991, 86% of Germans in the old West German *Länder* still belonged to one of the two large churches, in N.O. Oermann and J. Zachhuber, *Einigkeit und Recht und Werte. Der Verfassungsstreit um das Schulfach LER in der öffentlichen und wissenschaftlichen Diskussion* (Münster, 2001), p. 75.

[2] *Jahrbuch der öffentlichen Meinung 1947-1955*, edited by E. Noelle and E.P. Neumann (Allensbach am Bodensee, 1956), p. 123.

bastion against atheist Communism. The debate on God and the Basic Law was couched in almost exclusively Christian terms even if this was generally not made explicit.[3] That Germany might include non-Christians then or later was not discussed.

In the context of the debate about the formulation of the Basic Law, *Elternrecht* referred to the right of parents, if any, to determine the religious and ideological nature of the schools to which they sent their children.[4] Whether such a right existed was disputed in 1948/9, but to contemporaries it was clear that the word *Elternrecht* referred to this disputed right. Most importantly, *Elternrecht* was shorthand for the right of parents to determine the religious confession of the schools to which they sent their child. This shorthand is used here, hence the reference to the so-called *Elternrecht*, without any judgement of whether such a right existed. The school in question was of the *Volksschule* variety financed by the state.

The foundation of the German Reich on a "kleindeutsch" basis in 1871 had destroyed the confessional balance at the expense of Catholics. With the loss of territory and division of Germany after the Second World War, the confessional balance was restored in the three Western zones of occupation. In 1950 Catholics made up 45.2% and Protestants 51.2% of the population of the Federal Republic.[5] The huge movements of population during and after the Second World War led to a substantial mixing of the confessions. In Bavaria, for example, 1,424 boroughs contained only Catholics before the war and 140 only Protestants. After the war only 9 boroughs were still fully Catholic and there was no Protestant borough at all.[6] Nonetheless, Catholics still tended to be concentrated in Southern and Western Germany and Protestants in Northern and North-western Germany.

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[3] Cf. *Neuer Vorwärts*, 18 December 1948, below, p. 213-214. 'God' refers to the Christian God in this chapter.
[4] Cf. Drucksache 302, 24 November 1948, in PA, PR Drucksachen III.
[5] *Statistisches Jahrbuch für die Bundesrepublik Deutschland*, p. 44.
[6] F. Spotts, *The Churches and Politics in Germany* (Middleton, CN, 1973), p. 48; and in G.A. Ritter, *Über Deutschland*, second edition (Munich, 2000), p. 20. Cf. analysis of 1946 census data in report 121 (19 May 1948), in A.J. and R.L. Merritt, *Public Opinion in Occupied Germany: The OMGUS Surveys 1945-1949* (Urbana, 1970), pp. 238-239.

It was particularly in those *Länder* in which the confessions were mixed, such as North Rhine Westphalia, that the debate on an *invocatio dei* and *Elternrecht* was vigorously pursued.[7] NRW counted 41.1% Protestants and 54.8% Catholics in 1950.[8] The converse was true in Bavaria, where Catholics made up 71.9% of the population.[9] In his study of the constitution-drafting process on the state and federal levels in post-war Germany, Frank Pfetsch observed,

> "in spite of having come through religious wars and developing ecumenical relations, the confessional conditions were the decisive determinants in the discussions about the relationship of church and state, about the school question (whether confessional or non-denominational) and *Elternrecht* (whether parents, the state or the church have educational authority), and about basic values and educational goals."[10]

The same confessional determinants also played a crucial role in the debate about the relationship between religion and the state on the federal level. 35 of the 77 men and women who served as MdPR were Catholic, 29 were Protestant, 9 were non-believers, and 3 were non-denominational in belief.[11] Catholics outnumbered Protestants by roughly two to one in the CDU/CSU faction.[12]

Traces of former anti-Prussian sentiments almost certainly contributed to the stance in favour of an explicit constitutional guarantee of religious rights taken by many Catholic Southern and Western Germans in 1948/9. This was a consequence still of the *Kulturkampf* initiated by Prussia in the 1870s, in which various repressive measures against Catholics were introduced by the Protestant government.[13] Bismarck's attempt to integrate Catholics failed and had a contrary effect. Confessional divides were not neutralized but exacerbated.[14] By the end of the *Kulturkampf*, the Catholic third of the Reich, in particular in the Rhineland and Westphalia, had formed itself into a milieu with

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[7] Cf. B. van Schewick, *Die katholische Kirche und die Entstehung der Verfassungen im Westdeutschland 1945-1950* (Mainz, 1980), pp. 31-64.
[8] *Statistisches Jahrbuch für die Bundesrepublik Deutschland*, p. 44.
[9] Ibid., p. 44.
[10] F. Pfetsch, *Ursprünge der Zweiten Republik: Prozesse der Verfassungsgebung in den Westzonen und in der Bundesrepublik* (Opladen, 1990), p. 76.
[11] Pfetsch, p. 89. Figure of 77 includes replacements made during the deliberations.
[12] *Die CDU/CSU im Parlamentarischen Rat: Sitzungsprotokolle der Unionsfraktion* introduced and edited by R. Salzmann (Stuttgart, 1981), pp. xv-xix.
[13] Cf. R. Morsey, 'Der Kulturkampf', in A. Rauscher (ed.), *Der soziale und politische Katholizismus. Entwicklungslinien in Deutschland 1803-1963*, vol. I (Munich, 1981), pp. 72-109.
[14] Ibid., p. 106.

firm structures and its own political representation in the Centre party (hereafter referred to as Z). In the Weimar Republic, with most of its key demands met in the constitution, the Z participated in coalition governments in the Reich and Prussia. In 1933, however, the majority of its MPs in the *Reichstag* voted for the Enabling Law before the party dissolved itself. In 1945 the majority of former Z politicians and the Catholic Church's hierarchy decided not to re-establish a confessional party or confessional trade unions. Instead these politicians joined together with politically active Protestants to form the Christian Democratic Union (CDU). In Bavaria the new party was known as the Christian Social Union (CSU). New after the Second World War was the self-conscious identification of political parties as Christian in their nomenclature.[15] The CDU/CSU's new 'Sammlungskonzept' was successful and supported by both the Catholic and Protestant Churches. The Z, re-established in NRW and Lower Saxony in 1945, remained a splinter party after the war, although it sent two representatives, Helene Wessel and Johannes Brockmann, both from NRW, to the Parliamentary Council in 1948.

There has been little analysis to date of the public debate in the press and letters of submission on the Basic Law and God.[16] Burkhard van Schewick studied the influence of the Catholic Church on the formulation of the *Länder* constitutions and the Basic Law.[17] Helmut Witetschek considered the Council's attitude to the relationship between the state and the churches.[18] Werner Sörgel focussed on the intermediary level in his work on the Parliamentary Council and interest groups, which included the churches and the trade unions and their leadership.[19] His study includes some analysis of the letters of submission sent to the assembly but concentrates on those 'orchestrated' by the Catholic Church on the question of *Elternrecht*. Neither the public discussion on the Basic Law and God conducted in the media nor the closely linked and broader debate in the

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[15] T. Eschenburg *et al.*, *Geschichte der Bundesrepublik Deutschland*, vol. I, *Jahre der Besatzung, 1945-1949* (Stuttgart and Wiesbaden, 1983), pp. 187-190, on founding and naming of CDU/CSU parties in *Länder*.

[16] Cf. W. Benz, *Von der Besatzungsherrschaft zur Bundesrepublik: Stationen einer Staatsgründung 1946-1949* (Frankfurt/M., 1984), pp. 205-208.

[17] van Schewick, *Die katholische Kirche*, pp. 65-127, on Catholic Church and Basic Law.

[18] H. Witetschek, 'Die Haltung des Parlamentarischen Rates zum Verhältnis von Staat und Kirche', in *Politische Studien* 25 (1974), pp. 283-297.

[19] W. Sörgel, *Konsensus und Interessen. Eine Studie zur Entstehung des Grundgesetzes*, reprint of original 1969 edition (Opladen, 1985), pp. 201-213, on T.U.s, pp. 167-200, on churches.

population, as manifested in the letters of submission, have yet been studied fully. Only by placing the debate on God and the Basic Law in the context of the broader public debate about the provisional constitution as a whole can it be adequately understood.

The nature of the evidence has led to a concentration on the debate in the press and in the letters of submission sent to the Parliamentary Council as a whole and to individual delegates.[20] Not all letters on the subject of *Elternrecht* have survived.[21] Both the questions of the inclusion of an *invocatio dei* and especially of the guarantee of *Elternrecht* in the Basic Law attracted much newspaper and, it would seem from some of the letters of submission sent to the assembly, some radio coverage and prompted many people to write to the Bonn assembly. There was much interaction between the debate in the press and on the radio, the letters of submission and the Council's deliberations.

Reference to God in the constitution

Debate about a possible relationship between the Basic Law and God began, appropriately, with the preamble. The formulation of the preamble and catalogue of basic rights was assigned to the Basic Questions Committee. The Committee had 12 members, five each from the SPD and CDU/CSU, one from the FDP and one DP member.[22] The Z and KPD were not represented in the Basic Questions Committee. The number of letters of submission received led the Basic Questions Committee to set up a sub-committee, consisting of Dr. Helene Weber (CDU) and Dr. Fritz Eberhard (SPD), to sift through the letters in October 1948.[23] Weber and Eberhard reported back to the Basic Questions Committee on the content of the letters, recommending either the dismissal of the letter of submission or further discussion of the issues raised.

Much time and thought was devoted to the preamble, which was considered important for its context- and tone-setting role in the constitution. It was agreed from the

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[20] See section on sources in chapter I, pp. 24-47.
[21] W. Werner (ed.), *Findbüchern zu Beständen des Bundesarchivs*, vol. 35, *Der Parlamentarische Rat. Bestand Z5*, second expanded edition (Koblenz, 1994), p. iii.
[22] *PR. A&P*, V/I, p. x.
[23] 5 October 1948, in ibid., pp. 146-147.

beginning that the Basic Law should have a preamble, since, as Prof. Carlo Schmid put it for the SPD,

> "the preamble identifies the character of the Basic Law. The preamble spells out what the Basic Law is meant to be and, more especially, should spell out what it is not meant to be. The preamble will, as it were, give the key of the piece...."[24]

Precisely because of the tone- and context-setting nature of the preamble, the discussions on its formulation are revealing of the wider evaluation of the task of formulating the Basic Law and the frames of mind that shaped this evaluation.

The preamble, unlike the catalogue of basic rights, was a recent feature of German constitutions. The constitution of 1849 did not have a preamble, merely a statement that the German Constituent National Assembly had resolved this constitution. In 1871, there was a list of those German princes joining together in a federation to be known as the German Reich but no preamble. In 1919, however, the constitution was prefaced with a preamble, which set out the aims of the German people:

> "The German people, united in every branch and inspired by the determination to renew and establish its realm in freedom and justice, to be of service to the cause of peace at home and abroad, has given itself this Constitution."[25]

Debate about reference to God in the preamble was even newer. The constitutions of 1849, 1871 and 1919 made no reference to God at all. Six of the *Länder* constitutions formulated in 1946/7 invoked God in their preamble (Baden, Bavaria, NRW, Rhineland-Palatinate, Württemberg-Baden and Württemberg-Hohenzollern).[26] In the preparatory conference held at Herrenchiemsee on 10-23 August 1948, neither the majority nor the minority proposals for the formulation of the preamble made reference to God.[27]

The basis of the constitution, however, was a cause for dispute both within and outside the Parliamentary Council. Broadly speaking, Christians, especially devout, practising ones, particularly of the Catholic faith, believed that certain rights were God-

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[24] 8 September 1948, in *PR. A&P*, IX, p. 35. Cf. Heuss' opinion that the preamble was "not an illustrative or decorative preface but something like the accidental on the sheet of music which determines the tone of the piece." Quoted in E.H.M. Lange, 'Theodor Heuss und die Entstehung des Grundgesetzes', in *liberal - Vierteljahresheft für Politik und Kultur* 35/3 (1993), pp. 61-69 (p. 67).

[25] E.M. Hucko (ed.), *The Democratic Tradition: Four German Constitutions* (Leamington Spa, 1987), p. 149.

[26] Pfetsch, pp. 272-279.

[27] *PR. A&P*, II, pp. 504-640 (pp. 510-511).

given. For them reference to God as the source of these rights was necessary in the constitution. They demanded an *invocatio dei* in the introduction of the constitution and in those articles setting out the basic rights. Their point of view was put by Dr. Adolf Süsterhenn, a Catholic CDU MdPR, to the Plenum on 20 October 1948.[28] In his opinion,

> "the preamble ought also to give the Basic Law this divine orientation, when all is said and done, this moral and ethical qualification, precisely in order to express the *spirit of the constitution* [*sic.*], which I do not regard as a catchphrase but very much as a political reality. ... For this reason, we are of the opinion that such a metaphysical embodiment of the eternal human civil rights should occur both in the preamble and in the closely linked article 1. The embodiment could take the form of an addition to the sentence in article 1 of the basic rights, which reads 'the dignity of man is based on eternal rights', and which could read 'the dignity of man is based on eternal *God-given rights* [*sic.*]."

Süsterhenn argued that the fact that the basic rights originated from God must find expression in the Basic Law to ensure that the constitution had a proper basis.[29]

The plenary session on 20/21 October was called at SPD instigation to involve the public more in the formulation of the constitution. (See chapter II, pp. 53-54.) Each party set out its basic position in the Plenum. Speaking for the DP, Dr. Hans-Christoph Seebohm, a Quaker, advocated a clear expression of the ethical basis of the constitution. He believed,

> "the reference to God belongs in this preamble, since we are not only responsible to the German people but also responsible to the spiritual powers, personified by God, through our conscience."[30]

Wessel, the Z's representative, echoed Süsterhenn's views on the inclusion of an *invocatio dei* in the preamble and reference to God as the foundation of man's basic rights.[31] In her discussion of the basic rights though, she went even further by demanding the inclusion under all circumstances of *Elternrecht*, since she believed that the German people would not be fully satisfied with anything less.

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[28] *PR. A&P*, IX, pp. 183- 191 (p. 185).

[29] Background on Süsterhenn and his thinking on natural law, in W. Baumgart, 'Adolf Süsterhenn (1905-1974)', in *Zeitgeschichte in Lebensbildern*, vol. VI, *Aus dem deutschen Katholizismus des 19. und 20. Jahrhunderts* edited by J. Aretz *et al.* (Mainz, 1984), pp. 189-199. Baumgart argues, p. 194, that for Süsterhenn the recourse to natural law was method of rectifying damaging developments following the French Revolution of nineteenth century, in which the religious and metaphysical spheres had become separated from the political. For Süsterhenn's work on the Rhineland Palatinate's constitution, which considerably shaped his work on the Basic Law, see H. Mathy, 'Adolf Süsterhenn (1905-1974)', in *Geschichte im Westen* 3 (1989), pp. 203-217.

[30] *PR. A&P*, IX, p. 199.

[31] *PR. A&P*, IX, pp. 208-212. For Wessel's thinking, see E. Friese, 'Helene Wessel (1898-1969)', in *Zeitgeschichte in Lebensbildern*, vol. VIII, *Aus dem deutschen Katholizismus des 19. und 20. Jahrhunderts* edited by J. Aretz *et al.* (Mainz, 1997), pp. 107-122.

Liberals disagreed. Prof. Theodor Heuss (FDP), a Protestant, cautioned against anchoring the constitution too much in the metaphysical sphere "since one then proceeds to accept more or less a lack of responsibility."[32] Speaking for the SPD, Schmid made no reference at all to an *invocatio dei* or religion in his speech.[33] Instead Schmid outlined the preamble's purpose, which was to answer the "'why' of our activity".[34] Neither Schmid nor Heuss argued in favour of *Naturrecht*. There was copious press coverage of all the various speeches beginning the following day. The political orientation of the newspaper determined the reaction. On the whole, those newspapers oriented towards the right of the political spectrum, with their consequent closer links to the churches, condoned the call for an *invocatio dei*, while those on the left and liberal publications condemned it.

It was clear from its choice of subtitle, "On the basis of the divine moral laws", that the CDU-leaning *Allgemeine Kölnische Rundschau* considered Süsterhenn's plea for a Christian foundation for the basic rights noteworthy.[35] Indeed its editorial judged an invocation of God to be the only guarantee that the constitution would have any value.

> "Only the declaration of belief in God as the highest law-maker can ensure that the rights of the individual and the community are given a firm foundation and that the constitution enjoys an incontestable authority. Awe inspired by the highest religious concept should not hold back our parliamentary representatives from making this declaration."

The *Frankfurter Neue Presse*, which like the majority of papers in the American zone was party-neutral, published an editorial entitled "God in the Preamble". Its author, Wilhelm Ingensand, argued,

> "when democrats appeal to the 'dignity of man', they - consciously or unconsciously - acknowledge our culture's Christian heritage. This fact favours the inclusion of God's name in the preface of the constitution. ... For those who do not believe, the metaphysical anchoring of the constitution could at best be made plausible by the Christians amongst us understanding it as a call upon God."[36]

Thus Ingensand believed that if all were to accept an invocation of God, then Christians must live by the Christian precepts. The correspondent of the CDU-leaning Düsseldorf-based *Rheinische Post* observed that the debate about the nature of the preamble was basically one of whether

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[32] *PR. A&P*, IX, p. 196.
[33] Ibid., pp. 179-183.
[34] Ibid., p. 180.
[35] 22 October 1948.
[36] 22 October 1948.

> "one should give the most important law of the federation a metaphysical foundation in God or not. The Christian group is led by the CDU against a liberal-Marxist block, in which the Communist Heinz Renner and the leader of the FDP, Heuss, have become brothers-in-arms."[37]

The newspaper echoed the party's vigorous post-war aversion to Liberalism and Marxism, both of which were in the eyes of many prominent Catholic CDU politicians responsible for the rise of Hitler.[38] The article also illustrates the passion with which the relationship between God and the Basic Law was fought over in the confessionally-mixed NRW, one of whose representatives in the Parliamentary Council was in fact the Communist Heinz Renner. Eventually the NRW constitution, promulgated in 1950, invoked God in the preamble and guaranteed *Elternrecht*, against the wishes of the SPD, KPD and FDP.[39]

Another perspective was given in the editorial of the SPD-leaning *Neue Ruhr Zeitung*.[40] Schmid's speech in the Plenum was admired, whilst the other speeches were criticised for

> "exhaust[ing] themselves partly in legal niceties or overemphasiz[ing] questions of detail, such as confessional schools. The very gravity of the task of giving the German people new leadership and direction did not become evident."

Aside from this one oblique reference to Süsterhenn's demands, God and his invocation were not mentioned in the article. The *West Ausgabe. Nouvelles de France*, published by the French Military Government, noted the speeches of representatives of the smaller parties in the Plenum too, and outlined in some detail Wessel's demand for the anchoring of *Elternrecht* in the Basic Law.[41] The Z-leaning *Rhein-Ruhr-Zeitung*, which also reported Wessel's speech, noted the Z's goal of incorporating "the concept of 'God-given natural rights' in the formulation of the basic rights".[42]

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[37] 23 October 1948.
[38] M. Mitchell, 'Materialism and Secularism: CDU Politicians and National Socialism, 1945-1949', in *Journal of Modern History* 67 (1995), pp. 278-308.
[39] P. Hüttenberger, *Nordrhein-Westfalen und die Entstehung seiner parlamentarischen Demokratie* (Siegburg, 1973), pp. 437-473.
[40] 23 October 1948.
[41] 22 October 1948.
[42] 22 October 1948.

When the Parliamentary Council began its deliberations, the SPD faction refused to accept an *invocatio dei* in the preamble.[43] Bergsträsser articulated the SPD's reservations about including an *invocatio dei*, saying that it signified creating a relationship between politics and God, to which his party objected.[44] "To recognize the moral forces without which a state cannot exist", he explained, "was something completely different." Albeit reluctantly, the FDP was willing to consider its inclusion. Heuss was prepared to include an *invocatio dei* but made clear that he did not consider the desire held by some parties for a metaphysical basis for the constitution to be particularly theological.[45] Neither the SPD nor FDP were prepared to countenance an *invocatio dei* in the catalogue of basic rights.

In interfactional talks in October 1948, the CDU made known its wish to include an *invocatio dei* in the Basic Law in the second reading in the Basic Questions Committee. Private talks with Schmid signalled that the SPD did not think this appropriate in individual articles but might accept it in the preamble.[46] This basis for a possible compromise was put to the Basic Questions Committee by its chair, Prof. Hermann von Mangoldt (CDU), in the second reading of the preamble on 9 November.[47] He remarked,

> "very great importance is attached to this [trusting in God] by my faction [CDU/CSU]. This *invocatio* also plays a great role in other countries. Think of the new publications of a constitutional nature amongst the Anglo-Saxons, in which the *invocatio* is to be found. It is to be found in the Atlantic Charter and other works. Of course it is not in the French constitution. [!] This matter is of great interest to large sections of the population. If it [the *invocatio*] were to be included at one point, then one could probably do without it in other sections – there would be understanding for this on our side too."

Introducing the second reading, von Mangoldt had noted,

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[43] "There is agreement that no mention of God will be made." SPD-Fraktionssitzung, 28 October, 2/3/4 November 1948, cited in *PR. A&P*, V/I, p. 497, footnote 5, and in subsequent debate in Basic Questions Committee, 9 November 1948, ibid., pp. 518-520.
[44] Ibid., p. 518.
[45] Ibid., pp. 519-520. Cf. earlier FDP statement to this effect, 9 October 1948, ibid., p. 509.
[46] *PR. A&P*, XI, p. 29.
[47] *PR. A&P*, V/I, p. 519. Text of Atlantic Charter, 14 August 1941, drawn up by Roosevelt and Churchill, in *Dokumente des geteilten Deutschland* selected and edited by I. von Münch (Stuttgart, 1976), pp. 3-4. The Charter does not, however, include an explicit *invocatio dei*.

> "the preamble, in the formulation we gave it [in the first reading], was strongly criticized by broad sections of the population. Therefore we need to think the question of the preamble over again and establish whether we can use anything from the proposals that we have been sent."[48]

Von Mangoldt here alluded to the press and letters of submission when referring to public opinion, which had expressed its sometimes strong opinions on the results of the first reading. The Bavarian monarchist, Dr. Erwein Freiherr von Aretin, for example, roundly denounced the proposed formulation in an article provocatively entitled "Godless Basic Rights" in the US-zone *Münchner Allgemeine Zeitung*.[49] Walter von Cube, speaking on the Deutschland-Rundschau, was equally forthright in his condemnation of the suggested formulation of the preamble,

> "I know of no introduction to a constitution, which with greater vigour devalues the subsequent content."[50]

Von Mangoldt's proposal for a compromise was taken up and the Committee agreed to incorporate an *invocatio dei* in the preamble but to make no reference to God in the catalogue of basic rights.[51]

Once the Basic Questions Committee had completed its second but before it had begun its third reading, the Main Committee began its first reading of the Basic Law and discussed the preamble on 10 December.[52] Von Mangoldt summarized the debate in the Basic Questions Committee, noting the public debate which had influenced it, and explained that the *invocatio dei* stood at the beginning to emphasize that the Basic Law was to be a product of the moral forces in Germany. The Main Committee passed the proposed preamble unanimously.[53] The SPD party-paper, the *Neuer Vorwärts*, explained to its readers that in order

> "not to give a pretext for unjustified accusations of an anti-religious attitude, the SPD faction has agreed to the formulation being prepared by and agreed upon by the majority of the other parties -

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[48] *PR. A&P*, V/I, p. 497.
[49] 17 October 1948. Biographical background on Aretin (1887-1952), though it includes very little on his post-war activities, in E. von Aretin, *Krone und Ketten. Erinnerungen eines bayerischen Edelmannes* edited by K. Buchheim and K.O. von Aretin (Munich, 1955), pp. 7-18.
[50] 16 October 1948, quoted by the Dienststelle Bonn der Bayerischen Staatskanzlei, in BA, Z5/Anhang 12, pp. 247-258. Cf. Criticism of report, including Cube, in French-zone *West Echo*, 7/8 November 1948.
[51] 9 November 1948, in *PR. A&P*, V/I, p. 519.
[52] *Parlamentarischer Rat. Verhandlungen des Hauptausschusses. Bonn 1948-1949* (Bonn, [1950]), p. 306.
[53] Ibid., p. 310.

> 'conscious of their responsibility before God and men' - although the SPD would have preferred an ideologically neutral formulation in the interests of true tolerance in all directions."[54]

The article clearly demonstrates the concern of the SPD leadership with the image of the party and its concern over a potentially adverse portrayal in the press.

Just three days later the General Editing Committee, made up of Dr. Heinrich von Brentano (CDU), Dr. Georg Zinn (SPD) and Dr. Thomas Dehler (FDP), produced a much shortened version of the preamble.[55] The Committee reasoned,

> "a preamble should contain only a few distinctive features characteristic of the content of the constitution, in a form which can be easily remembered by everyone."

The Editing Committee's revised formulation, which had kept the *invocatio dei*, was rejected by the Basic Questions Committee in its third reading on 19 January.[56] The Editing Committee had, strictly speaking, gone beyond its remit by taking a decision on the preamble's content, and this no doubt contributed to its rejection by the Basic Questions Committee. Süsterhenn's attempt on behalf of the CDU/CSU, DP and Z in the second reading in the Main Committee on 18 January to introduce the phrase "God-given" into the catalogue of basic rights in article 1 was rejected by 11 SPD, FDP and KPD votes to 10 CDU/CSU, Z and DP votes.[57] Heuss argued against the inclusion of the phrase, since he felt it to be "a strain on religion, which we should not allow ourselves for religious reasons".[58] Opinions outside the assembly were similarly divided.

The belief that God should be invoked as the source of man's rights on Earth led many people to participate in the constitutional debate. This was especially true of the bishops of the Catholic and Protestant churches, as well as of the Pope. It was also true of some of the laity. Particularly the proponents of 'God-given rights' made their voice heard. The number of letters of submission opposing the introduction of such rights, in particular the guarantee of *Elternrecht*, was smaller but their argument no less forceful. (See below, pp. 236-238.) Some even objected to reference to God being made. Whilst it

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[54] 18 December 1948.
[55] 13 December 1948, in *PR. A&P*, V/II, pp. 875-876.
[56] Ibid., pp. 965-978.
[57] Ibid., pp. 529-531.
[58] Ibid., p. 530.

is clear that most of the letters from individuals addressed to the Parliamentary Council had a limited impact upon the formulation of the constitution, they should not be dismissed out of hand. (See chapter II, pp. 59-60.) They do give us some indication, even if limited, of the opinions of the West Germans on the constitutional debate, specifically in this context, on God and the Basic Law.

Several letters of submission addressed to the Parliamentary Council called upon the assembly to invoke God in the constitution. Very early in September, Dr. Johannes Ricking from Damme i.O., suggested a formulation for the preamble, which, he believed, expressed the wish of millions of Germans.[59] With a deliberate echo of Paul's Epistle to the Ephesians, he proposed,

> "The German people, in the process of building a house for its ethnic and sovereign life, professes its faith in Christ as the insurmountable cornerstone of this house."[60]

Similarly, Franz Lammers, a writer from Bielefeld, sent in a proposal for the preamble, which began, "With God, for the people, the homeland and the fatherland...."[61] He argued that the preamble needed to convey the essence of the aims and the basis of the constitution otherwise the same confusion would dominate as had done with the Weimar constitution. He wrote his letter, he informed the Parliamentary Council, in reaction to an article criticizing the reference to God in the proposed constitution of the state of Bremen, which had appeared in the *Welt* on that day. This was echoed by Rosina Brummer from Munich, who wrote in reaction to a broadcast about the preamble on Radio Munich on 23 November.[62] In her opinion as a Catholic, working mother, whose

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[59] 7 September 1948, EN104, in BA, Z5/ 107. Cf. second letter of submission, 3 November 1948, EN322, in BA, Z5/108. Weber, reporting to the Basic Questions Committee on the letters of submission sent to the Parliamentary Council, remarked, "since the letter of submission [EN104] is only addressed to Christians, I suggest that we move on to today's agenda." The letter of submission was dismissed by the Basic Questions Committee, 3 November 1948, because of its limited use, in *PR. A&P*, V/I, p. 476.

[60] Ephesians. II.20.

[61] 20 October 1948, EN201, in BA, Z5/108. This letter of submission was dismissed by the Basic Questions Committee, 3 November 1948, because of its limited use, in *PR. A&P*, V/I, p. 474. Information on the authors of the letters is given only when it is given by the authors themselves in their letters to the assembly.

[62] 27 November 1948, EN193, in BA, Z5/108. This letter of submission was dismissed by the Basic Questions Committee, 26 December 1948, because of its limited use, in *PR. A&P*, V/II, p. 900. Cf. letter of submission from Antonie Müller, Bremerhaven, "a mother and housewife", insisting on inclusion of reference to God in Basic Law, 25 October 1948, EN185, in BA, Z5/107. This letter was dismissed by the Basic Questions Committee, 26 December 1948, because of its limited use, in *PR. A&P*, V/II, p. 900.

husband had not yet returned from the USSR, reference should be made to God in the preamble since politics required God's blessing. A letter of submission from Pfarrer Dr. Louis, Leverkusen, on behalf of 130,000 Catholic delegates of the German Rifle Club, argued that God must be recognized as the origin of all rights in the catalogue of basic rights, as well as for the protection of *Elternrecht* in the constitution.[63]

Early in the New Year, Margarete Müller from Passau objected to the fact that article 78 allowed for the possibility that the Federal President not swear a religious oath.[64] This was not a new provision. Article 42 of the Weimar constitution allowed the President of the Reich to decide whether to add a religious asseveration to his oath upon taking office. For Müller, however, this doomed the Basic Law for Christians. In her view, all of the Basic Law should be formulated on a Christian basis in light of Germany's experience under the Nazi regime, which had thought it could do without God.

Several letters of submission were sent in January to protest about the lack of reference to God in the provisional constitution. Dr. Klein from Rolandswerth complained that the assembly had failed to recognize that all state authority emanated from God and that the basic rights were God-given.[65] Further, he continued,

> "...but Christians are not in the minority. Why else would the SPD demand that the current *Länder* parliaments and not the people vote on the constitution."

This last sentence, which referred to the way in which the Basic Law was to be ratified, by votes in the various state parliaments rather than through referenda in the *Länder* (see chapter I, p. 11), is a distortion of the facts. This was not the SPD's reasoning but is revealing of the hostility felt towards the SPD by some Christians. Peter Cuerlis from Rorfeld felt that the second reading of the Basic Law meant that "German history had jumped out of the frying-pan into the fire" as a consequence of the Council's decision

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[63] November 1948, EN497, in BA, Z5/109.
[64] 4 January 1949, EN1185, in BA, Z5/96. US-zone *Süddeutsche Zeitung*, 25 December 1948, in HHStA, Staatliche Pressestelle V, I c I d. On 24 November, in first reading of art. 78 in Main Committee, it was agreed that the president should normally swear an oath with reference to God on taking office but that the religious reference could be omitted, in *Parlamentarischer Rat. Verhandlungen des Hauptausschusses*, pp. 99-109. It eventually became art. 56 of Basic Law in May 1949.
[65] January 1949, EN1286, in BA, Z5/96.

that human and basic rights are not God-given.[66] This decision, he insisted, had to be reversed. Similarly, Prof. Dr. med. Heinz Lossen from Mainz wrote,

> "One would assume that the years of reflection after the unconditional surrender would have shown even the least church-minded that different maxims were required to lead people to the inner and outer freedom, from those which we mortals set ourselves. Just as yesterday, however, rigid party programmes forbid us from doing that which is natural."[67]

He concluded that reference had to be made to God in the Basic Law. Not only are these letters of submission evidence of how people were prompted to engage in the constitutional debate by the media, all four letters of submission suggest how the debate was framed with reference to the Nazi past and some also display the anti-party sentiment that was much in evidence after the war. (See chapter II, pp. 63-75.)

The occasional letter also argued against an *invocatio dei* in the constitution. Georg Wilberg from Straubing, for example, wrote in reaction to a discussion heard on the radio.[68] He objected to an invocation in the preamble, since

> "this invocation [of God] does not relieve any need; nor does it improve people or make the situation better since it is always made without thought."

This was related to the wish expressed by some authors of letters to the assembly that the Parliamentary Council not build castles in the air. (See below, pp. 221-223.) Kaspar Nerz, an 84-year old democrat and socialist, argued that all religious and cultural topics should be removed from the political arena, and religion be treated as a science, that is left free of political interference.[69] After noting that he was following the deliberations "through the news in the newspaper though these were meagre", E. Lupprian from Seesen am Harz suggested an alternative to an *invocatio dei*.[70] He proposed the inclusion in the Basic Law of the statement

> "all these basic rights are limited by the basic duty to adhere conscientiously to the general moral laws (active reason according to Immanuel Kant)."

Kant's moral laws, he explained, were better than the Bible since the Basic Law was for believers and non-believers alike. Few such letters survive, perhaps partly because not many people went to the effort to articulate such views in writing.

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[66] 22 January 1949, EN1706, in BA, Z5/112.
[67] 24 January 1949, EN1780, in BA, Z5/112.
[68] 25 October 1948, EN183, in BA, Z5/99.
[69] 6 December 1948, EN586, in BA, Z5/110.
[70] January 1949, EN1788, in BA, Z5/113.

Despite the Basic Questions Committee's rejection of the Editing Committee's proposed preamble in January, the Editing Committee's version was eventually accepted in subsequent readings in the Main Committee. Whilst the discussions in the Parliamentary Council returned to the preamble each time there was a reading of the Basic Law, its content was no longer seriously contested until the close of the deliberations. On 28 April the preamble was once again the subject of interfactional talks, when the simplification of the Basic Law proposed by the SPD at its party conference on 20 April (see below, p. 241) was discussed.[71] Dr. Walter Menzel (SPD) advocated cutting the preamble to emphasize the provisional nature of the constitution, but Dr. Robert Lehr (CDU) underlined the importance of an *invocatio dei* for his faction. The preamble was kept. When the Basic Law was eventually promulgated on 23 May 1949, the preamble began, "Conscious of their responsibility before God and men ...."[72]

Debate about the catalogue of basic rights and whether to include Elternrecht

Basic rights defend the citizen against the arbitrary power of the state by guaranteeing, for example, the right to life and the inviolability of the person, the equality of all citizens, or freedom of assembly, speech and religion. In August 1948 the constitutional experts gathered at Herrenchiemsee decided that the catalogue of basic rights should enjoy pride of place in the provisional constitution. It was to follow the preamble and to precede all sections outlining the powers of the state. To emphasize with

> "the greatest possible clarity the completely different conception of a free-democratic state compared with the totalitarian dictatorship of the most recent past",

the conference resolved that article 1 should read "The state is there for the sake of the citizen, not the citizen for the sake of the state."[73] This decision set the proposal for the Basic Law apart from previous German constitutions, in which these articles had featured more or less at the end if at all. In 1849 basic rights were listed in Part VI of the constitution.[74] Neither the constitution of the North German Federation of 1867 nor the Reich constitution of 1871 referred to basic rights. Part I of the Constitution of the

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[71] *PR. A&P*, XI, p. 208.
[72] *Bundesgesetzblatt* 1 (23 May 1949), pp. 1-20 (p. 1).
[73] 10-23 August 1948, in *PR. A&P*, II, p. 217.
[74] Hucko, pp. 104-115.

German Reich of 1919 set out the 'Organization and Functions of the Reich', whilst the 'Fundamental Rights and Duties of Germans' were relegated to Part II.[75] Whilst most *Länder* constitutions formulated after World War I did not include a catalogue of basic rights, or only a very brief one, all the *Länder* constitutions formulated in 1946/7 did.[76] This was partly because the constitutional assemblies of the *Länder* in 1946/7 used the constitution of 1919 as their guide, but, more significantly, it was the result of experience of the Third Reich and a consequence of Allied pressure. On the whole, the catalogues of basic rights incorporated in the *Länder* constitutions of 1946/7 were more extensive than the one subsequently formulated in Bonn in 1948/9.

In September 1948, the Parliamentary Council decided to adhere to the decision taken in Herrenchiemsee. The decision to put the catalogue of basic rights first underlined the assembly's resolution to uphold and protect the value of the basic rights. It was a response to the abuse of basic rights under the National Socialist regime and the perceived threat of such abuse under Communism. This fear of possible future abuse was clearly expressed by Süsterhenn as the Parliamentary Council began its work. In his opening speech to the Plenum on 8 September, he declared,

> "the work we have been given demands from us a last *spiritual* [*sic.*] decision too. The political nightmare, which has hung over Italy since Mussolini's seizure of power in 1922, over Germany since Hitler's seizure of power in 1933, and over the whole of Europe since the German aggression of 1939, has not yet faded even now. Not only the states in Eastern-Central and Southern Europe, not only the German Eastern zone and Berlin, but all of Europe faces the threat of a *totalitarian centralist tyrannical system* [*sic.*] at the present moment, for which personal freedom and human dignity possess no ethical or even political value."[77]

The task of determining the content of the catalogue of basic rights fell to the Basic Questions Committee. The Herrenchiemsee conference opted not to include socio-economic or religious-cultural rights, which included *Elternrecht*, in its draft of the constitution.[78] In Bonn, the factions in the Parliamentary Council resolved to restrict the

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[75] Ibid., pp. 174-190.
[76] Pfetsch, pp. 284-285.
[77] *PR. A&P*, IX, p. 54.
[78] "... it did not seem necessary to include all institutions somehow described as basic rights in a comprehensive catalogue of federal basic rights alongside the fundamental rights of human freedom. On the contrary, it must suffice and will at the same time be more impressive if the number of basic rights in the Basic Law is limited to the most important human and civil rights of the individual. The inclusion of

scope of the basic rights to the rights of the individual and not of the community in contrast with the codification the latter had enjoyed under the Weimar constitution. This meant excluding socio-economic and religious-cultural rights from the constitution. The decision reflected the circumstances in which it was believed the Basic Law was being formulated. Important was the belief that the Basic Law was only a provisional arrangement whilst Germany remained divided. Schmid presented the SPD's argument in the Basic Questions Committee on 7 October.

> "Laws, in which the contents of our communal life are defined, cannot be drawn up and shaped by us standing in for the whole [of the German people]. In order to produce something legally binding here [in Bonn], we need the word of our brothers in the East. Besides which, creating *Lebens-ordnungen* where only a provisional arrangement is wanted does not work."[79]

The SPD argued that the very provisional nature of the constitution being drafted precluded the inclusion of "*Lebensordnungen*", as economic and cultural rights were labelled. Furthermore, Schmid added, the inclusion of such rights would mean that the work of the Basic Questions Committee "would know no bounds." The CDU/CSU concurred. For exactly the same reasons, von Mangoldt explained, his faction was ready to limit the content of the catalogue of basic rights.[80] The CDU/CSU had already decided on 28 September that only the "classic basic rights", those of the individual and not the community, were to be included in the Basic Law.[81]

The Basic Questions Committee aimed to produce a catalogue of basic rights that was realistic and pragmatic. Eventually only 19 articles were included in the catalogue. Socio-economic rights were left out, since it was felt that they could not be guaranteed and encouraged false hopes in the population.[82] This criticism had been levelled at some articles of the Weimar constitution, such as art. 163, which declared "Every German must be afforded the opportunity to gain his livelihood by economic labour."[83] The decision to exclude cultural and social basic rights was partly the result of uncertainty about future

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basic rights of the corporative kind was also considered. This was rejected in the end, particularly with reference to the provisional nature of the Basic Law.", in *PR. A&P*, II, p. 513.

[79] *PR. A&P*, V/I, p. 217.

[80] Ibid, p. 217.

[81] *Die CDU/CSU im Parlamentarischen Rat*, p. 31. No reason given.

[82] Cf. A. Confino and R. Koshar, 'Regimes of Consumer Culture: New Narratives in Twentieth-Century German History', in *German History* 19/2 (2001), pp. 135-161 (p. 138).

[83] Hucko, p. 186.

economic and cultural developments.[84] Another reason was that such rights were simply regarded as being irrelevant in the circumstances: a house for all was simply not feasible at the time. (Other reasons for their exclusion will be examined below, p. 223-226.)

Several newspaper articles and letters of submission addressed the content of the catalogue of basic rights in October. The proposed Declaration of Human Rights of the United Nations was printed by the *Neue Zeitung*, published by the American Military Government, on 7 October.[85] This Declaration influenced the discussions both within and outside the Bonn assembly by providing a contemporary yardstick by which the efforts of the Basic Questions Committee could be measured. The Kiel-based SPD-leaning *Schleswig-Holsteinische Volkszeitung* contended that when a constitution

> "promises too many rights and freedoms to people, which prove to be no more than a scrap of paper at the next office, then it could happen again that the people declare that they do not want rights but something to eat. Flats and not articles about the human right to accommodation fit for human habitation. Fascism began in this way.... We are not against constitutions as such. We just demand a realistic constitution (which, above all, lays down the rules of the political game)."[86]

At this time a more extreme sentiment was expressed in a letter sent to the Parliamentary Council. Its author, who signed only as "Spectator" from Oldenburg, criticized the article providing for the inviolability of the home, which, he felt, could not be guaranteed at the moment in view of the large number of refugees, which had to be housed.[87] It really was, therefore, high time that "an end is finally put to the total bolshevisation of the entire living space." Since this could not be fulfilled then, he remonstrated with the Parliamentary Council for creating illusions and false hopes.

> "The stimulation of false hopes has nothing to do with democracy and reminds us, once again, of earlier times. Hitler, too, constantly raised hopes, which, he knew, were not justified...."

Weber referred to the Spectator's criticism when she reported on the letters of submission to the Basic Questions Committee.[88] In her view, however, his concern had been resolved

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[84] H. von Mangoldt, 'Die Grundrechte', in *Die Öffentliche Verwaltung* 14/15 (1949), pp. 261-263 (p. 261).
[85] 7 October 1948. United Nations draft of 7 October 1948 was passed, with few changes, by full assembly of United Nations in Paris, 10 December 1948, in *PR. A & P*, V/I, pp. 220-225. *Die Wandlung* 4 (1948), pp. 351-357, had published draft from December 1947.
[86] 12 October 1948. Cf. very similar sentiment in *Welt am Sonntag*, published by British Military Government, 24 October 1948.
[87] 11 October 1948, EN202, in BA, Z5/108.
[88] This letter of submission was dismissed by the Basic Questions Committee, 3 November 1948, in *PR. A&P*, V/I, p. 475.

through article 6, which provided for the inviolability of the home. Similar, although less violent, sentiments were articulated by Wolfgang Schwarz from Munich in December.[89] In his view there was no point

> "in giving the Parliamentary Council suggestions for improvements, but it is subjectively expedient for me to accuse it of betrayal of the well-being of the people. 'The home shall be inviolable.' Presumably this is a reference to the palaces of the Members of Parliament? Or also to the refugee huts? This article seems to date from the previous century. In vain one searches in the Parliamentary Council's proposal for the sentences: 'Every German has the right to accommodation fit for human habitation. The restoration of churches is forbidden until every German has accommodation.'"

Towards the end of October, the SPD-leaning *Hamburger Echo* observed that a constitution was

> "not a political-constitutional autograph album with gilt-edging but rather a collection of state norms which respect and take effect in reality. ... Legally imperative, unrealizable rights are worse than none."[90]

The above-party *Rheinpfalz*, published in the French zone, observed that it was not only MdPR who enjoyed building castles in the air.[91] Instead, it was clear,

> "from the many letters which reach the Parliamentary Council daily, ... that also outside, also in the towns and villages in the South and in the North, the people universally imagine and wish for a nice and ideal constitution built squarely in the air."

What was missing, the article continued, was "an eye for the political and economic and, if one may say so, the psychological realities." The US-zone *Kasseler Zeitung*, adopted an even more cautionary note in an article entitled "Parliamentary Cloud-Cuckoo-Land".[92] "Perhaps", it commented,

> "it is not totally inappropriate to warn against the typically German tendency to get stuck into a programme and build a castle in the air: a parliamentary cloud-cuckoo-land, pretty to look at and a desirable goal, but which in its propagandistic effect will cause more damage than good."

The Parliamentary Council's delegates were aware that some of the letters received accused the assembly of building castles in the air. As Weber noted after sifting through the letters of submission sent to the Basic Questions Committee,

> "the letters are always to the effect that we are entertaining illusions about the rights which we put down [in the catalogue of basic rights], which cannot so easily be implemented."[93]

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[89] 31 December 1948, EN755, in BA, Z5/111.
[90] 26 October 1948.
[91] 28 October 1948.
[92] 29 October 1948.
[93] 9 November 1948, in *PR. A&P*, V/I, p. 513.

There was little the delegates could do, however, other than formulate a constitution and believe that history would prove them right. Accusations that delegates were building castles in the air were rather ironic given that they had decided to exclude socio-economic and cultural rights from the catalogue of basic rights partly for reasons of cost.

Many politicians felt that a compromise might more easily be reached between the parties in 1948 - regarded as necessary to ensure broad support for the constitution amongst the people and for the constitution to act as an integrating force - if contentious issues such as socio-economic or cultural rights were excluded from the catalogue of basic rights.[94] The parties also knew that party success in the Parliamentary Council at the price of compromise would not make it through the various *Landtage*. Two thirds of the *Landtage* had to pass the Basic Law for it to be ratified. (See chapter I, p. 11.) Furthermore, the parties thought that they might achieve more with a majority in parliament at a later date than with the current fairly equal distribution of forces in the Bonn assembly. This was certainly an argument used by Menzel to persuade the trade unions not to push for the inclusion of their socio-economic demands in October 1948,

> "the first legislative assembly will probably result in totally different opportunities for legislation in the spheres of social and labour law from [those that are possible with] the current composition of the Parliamentary Council."[95]

The parties each calculated that contentious questions such as socio-economic or religious rights were more likely to be settled in their favour when Germany was once again in a position to draw up a constitution for the entire country. This is perhaps particularly true of the SPD, which through the zonal division of Germany in 1945 had lost much of its traditional heartland in the East. Hence it could not be sure of a majority in the Parliamentary Council or later West German parliament but anticipated a majority once the four zones were united without the traditionally Conservative areas of Pommerania and parts of Eastern Prussia, which now belonged *de facto* to Poland. Excluding contentious points, it was reasoned, would also ensure a speedy formulation of the Basic Law, which, it was hoped, would prevent the spread of Communism and

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[94] Cf. von Mangoldt, p. 261.
[95] Menzel to Erich Ollenhauer, 1 October 1948, in AdsD, NL Walter Menzel, file R1. Cf. Eschenburg, p. 503.

deprive the Western Allies of an opportunity to change their minds about the establishment of a West German state.

The question of the regulation of religious-cultural rights in the Basic Law also impinged on the nature of the federal organization of the state. The Allies had stipulated that education and religious and cultural affairs be the domain of the *Länder* in their memorandum to the Parliamentary Council on 22 November 1948.[96] This was to prevent too much power accruing to the centre. Many of the *Länder* governments regarded these areas as theirs to regulate, as did many MdPR. Eberhard (SPD), for example, rejected the CDU/CSU motion to regulate the relationship between the church and state in the Basic Law on 24 November with the argument that this was a *Länder* matter and that not everything could be made into a federal issue.[97] Such efforts, he continued "were gradually becoming worrying even for those who do not take an extra-federal starting point." Excluding these articles from the Basic Law meant avoiding stirring up contention between the Ministers President, the Parliamentary Council and the Allies. Some Catholics, however, argued very strongly for the enshrinement of *Elternrecht* in the federal constitution. They wanted to ensure that Catholics living in a North German *Land*, in which they were in a minority, had the same access to confessional schools, as those living in Southern German *Länder*.[98] The same argument was used by the Catholic Church in support of its other interests. The Church wanted the federal codification of its rights since it feared that it would not otherwise enjoy these rights in *Länder* such as Hamburg or Bremen.

Another consideration was that the inclusion of socio-economic and cultural-religious rights in the catalogue of basic rights was likely to increase the financial burden on the state. The right of parents to determine the nature of the education their children

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[96] *PR. A&P*, VIII, pp. 37-42.
[97] Both Bergsträsser and Eberhard, in ibid., p. 635.
[98] The above-party *Westdeutsche Zeitung* commented upon the reversal of positions in the argument about the powers of the *Bund* and the *Länder* (see chapter IV, pp. 155-202), with the SPD and FDP arguing that the question of *Elternrecht* be regulated at *Länder* level, and the CDU/CSU calling for regulation on the federal level. It remarked, "smiling quietly to themselves during this argument under reversed banners, the audience discover that everything after all has two sides and that everyone does well never to forget that." 10 December 1948, in BA, Z5/183.

received posited a variety of schools from which to choose. Hence the debate centred on the provision of confessional schools by the state. Parents making use of this right tended to choose schools organized along the religious lines of the church to which they belonged. This caused problems when one faith was in a minority in an area, which was almost inevitably the case in 1948/9 as a result of the population movement during and after the war. For the opponents of *Elternrecht*, the cost of the establishment of confessional schools, particularly if the minority of one faith was a small one, was a significant consideration, as was the hindrance to the integration of refugees from the East into the Western *Länder*, which might be caused by confessional schools.[99] Heuss' response to a letter from Hans Happe from Hanover, who argued in favour of the anchoring of *Elternrecht* in the Basic Law, is revealing of the stance taken by those opposed to the guarantee of *Elternrecht* in the Basic Law.[100] Heuss replied,

> "It has not occurred to anyone, neither to us [FDP] nor to any other group, to dispute the right of parents and the duty of parents for the education of their children. That is a totally foolish alteration of the simple question of whether the changing wishes of a group of parents should determine the character of the public school system at the expense of the general public."[101]

Further reasons, indicative of contemporary perceptions on which rights should be included in the catalogue of basic rights, were given in the press. Writing about the Plenum on 20/21 October, the *Tagesspiegel*, published in the American sector of Berlin, for example, remarked that the equal strength of the parties (the SPD and CDU/CSU each had 27 MdPR) in the Bonn assembly made courageous decisions difficult. On the other hand, it had

> "happily prevented the Basic Law from becoming bloated with additions, which, since they will always be disputed, would have formed an eternal danger to the continued existence of the constitution."[102]

"The same decisiveness", it continued,

> "was employed against the demands of the churches as was used against the, albeit more agitatory, demands of the KPD. The former wanted the parents' right of co-determination in educational matters, and the regulation of church tax anchored in the constitution; the latter [KPD] wanted to load the constitution up with the usual economic and allegedly social demands. The majority in Bonn is, quite rightly, of the opinion that these matters belong in the sphere of legislation, which can at any time be adapted to the demands of the situation."

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[99] For an early expression of these considerations, see Heuss' speech to the Plenum, 9 September 1948, in *PR. A&P*, IX, p. 117.
[100] 28 January 1949, in BA, N1221/418.
[101] 3 February 1949, in BA, N1221/418.
[102] 23 October 1948.

The *Neuer Vorwärts*, the SPD party newspaper, suggested another reason for the keenness of the CDU/CSU to introduce religious-cultural rights.[103]

> "The fact that the CDU/CSU is held together above all by its emphasis on ideological points of view, has led to the expression of cultural demands."

These, however, if introduced, would make the formulation of the Basic Law very much harder. "It was not without good reason", the article continued,

> "that the basic rights had thus far been limited to the protection of the citizen from the arbitrary use of power by the state, and that wishes for the anchoring of social and economic rights, about which it was just as unlikely that agreement would be reached with the necessary speed as on the matter of cultural questions, had been postponed."

The *Neuer Vorwärts*' supposition was not without foundation but the pragmatism of Dr. Konrad Adenauer and other leading CDU politicians eventually won the day with the argument that it was not worth letting the formulation of the Basic Law fail on account of the lack of success in securing a full guarantee of *Elternrecht*. (See below, pp. 242-243.)

The dispute about the definition of basic rights was not new. Similar debate had taken place when earlier German constitutions were formulated. Vigorous discussion on cultural questions took place when the constitutions of the *Länder* were drafted, which sometimes tied closely into the federal debate.[104] Debate about the so-called right of parents to determine the confession of the school which their child attended had also accompanied the formulation of the Weimar constitution.[105] Debate about the kind of religious education in schools - notably, whether it was the responsibility of the state or the religious communities, whether religious instruction was given by church-appointed teachers to members of their faith or there was religious instruction for all - was even older.

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[103] 30 October 1948.

[104] See, for example, Hüttenberger, pp. 437-473, and van Schewick, *Die katholische Kirche*, pp. 31-64, on formulation of NRW constitution. (Note, however, that although debate on the NRW constitution began before the Basic Law, it was only promulgated after the Basic Law in June 1950.); see too M. Köster, '"Betet um einen guten Ausgang der Wahl!" Kirche und Parteien im Bistum Münster zwischen Kapitulation und Konzil', in J. Köhler and D. van Melis, *Siegerin in Trümmern. Die Rolle der katholischen Kirche in der deutschen Nachkriegsgesellschaft* (Stuttgart, 1998), pp. 103-124.

[105] Cf. L. Richter, *Kirche und Schule in den Beratungen der Weimarer Nationalversammlung* (Düsseldorf, 1996), especially pp. 654-672.

Efforts were made in 1918/9 to separate church and state fully. With memories of the *Kulturkampf* still fresh, this was met with strong institutional and popular opposition from Catholics. 60,000 people demonstrated outside the Prussian Ministry of Culture in January 1919 against the separation of church and state and the abolition of religious education.[106] Heuss alludes to this earlier confrontation in his sardonic reference to the practised supporters of Elternrecht in his *Parlamentarisches ABC*:

> "Das Elternrecht, Vermessener, rühr es doch nicht an,/ ein ganzes Erzkapitel rückt heran/ und hinter ihm, elementar/ *erregt, und schon erprobt, die alte Einsatzschar* [my italics],/ ergib dich, elender, eh du verdammt,/ dein kecker Kahn vom dunklen Schiff gerammt."[107]

Article 137, paragraph 1, of the Weimar constitution stated, "There is no state church."[108] Yet the churches maintained a privileged position, continuing to cooperate with the state in those spheres in which both had an interest, namely confessional religious instruction, theological faculties at universities, and the pastoral care of military personnel. Section III, articles 136-141, dealt with religion and religious associations, and subsequent articles, 146-149, set out the laws governing religious instruction in detail.[109] Article 146 formed the core of the Weimar compromise on *Elternrecht*, by providing for non-denominational primary schools as the norm throughout the Reich, whilst allowing the establishment of confessional schools upon the request of those responsible for the education of children.

Surveys conducted by the Western Allies after the Second World War suggest that opinions remained divided on the question of *Elternrecht*. A poll conducted by the American Military Government in their zone in mid 1948, found that almost all of those interviewed favoured religious instruction in elementary schools (96%) but only a minority favoured confessional schools *per se* (28%).[110] There was considerable regional variation in reply to the question who should give such instruction; in Bavaria 87% voted for the clergy, as did 75% in Württemberg-Baden. In Hesse almost as many favoured teachers as favoured clergy, whilst in Berlin 49% and in Bremen 62% voted for teachers.

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[106] Oermann and Zachhuber, p. 54.
[107] 23 May 1949, in BA, N1221/418.
[108] Hucko, p. 179. For its abolition in article 147 of the constitution of 1848/9, ibid., p. 108.
[109] Ibid., pp. 181-183.
[110] Report 126 (29 June 1948), in Merritt, pp. 243-244.

An earlier survey "for the establishment of the wish of the parents (*Elternwillen*)" conducted in what was to become North Rhine Westphalia in the British zone on 24 April 1946 produced some large majorities in favour of confessional schools. On average 69% of the inhabitants of urban districts and 80% of those in rural districts voted for confessional schools.[111] A majority voted in favour of *Elternrecht* in a survey conducted in Koblenz in the French zone in July 1946.[112]

The tacit agreement reached in August 1948 between the parties about the content of the catalogue of basic rights held in the early discussions in the Basic Questions Committee but was soon questioned by the trade unions and certain CDU politicians. It is unclear to what extent the West German people were aware that a decision had been taken to exclude socio-economic and cultural rights from the Basic Law; indeed the tacit nature of the agreement between the parties suggests it could not have been as does the subject matter of some of the letters of submission. However, the press soon informed its readers about the proposed contents of the catalogue of basic rights.

In October many newspapers published the draft of the catalogue of basic rights drawn up during the first reading in the Basic Questions Committee, which did not include any socio-economic or religious-cultural rights.[113] The churches, in particular the Catholic Church, responded by insisting upon the definition of *Elternrecht* as a basic right and wrote letters to demand its inclusion alongside other cultural rights.[114] The trade unions, in contrast, objected to the omission of socio-economic rights and demanded their inclusion.[115] However, not only the church and trade union hierarchies felt obliged to

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[111] Hüttenberger, p. 388.
[112] Van Schewick, *Die Katholische Kirche*, p. 24. No figures are given.
[113] 18 October 1948, in *PR. A&P*, V/I, pp. 333-340.
[114] Letter from Evangelische Kirche Deutschland, 9 November 1948, EN311, in BA, Z5/95, and letter from Cardinal Frings, 20 November 1948, EN464, in BA, Z5/109. Reproduced as Drucksache 275 and 319 respectively, in PA, PR Drucksachen II and III.
[115] Typical of the latter was a letter of submission from the Gewerkschaftsrat der Vereinigten Zonen, Frankfurt/Main, which declared, "the Trade Unions take the view that the basic rights of the citizens should be fixed uniformly by the central Basic Law. The basic principles of the economic and social constitution must also be set down in the Basic Law." Furthermore, the letter of submission spelled out, the trade unions wanted provision to be made for a Federal Labour Court. 8 September 1948, EN61, in BA, Z5/107. These demands were spelled out in more detailed fashion in October 1948, EN443, in BA, Z5/109. Cf. *PR. A&P*, V/II, p. 726; Sörgel, pp. 201-213 (p. 210).

react to a greater and lesser extent respectively. Newspapers from across the political spectrum and from all over Germany reported upon the deliberations and gave their opinion on the content of the proposed catalogue of basic rights. Several papers complained about the absence of a constitutional guarantee of *Elternrecht*. The CDU-leaning *Aachener Volkszeitung*, for example, observed that the beginning of the second reading in November necessitated a reiteration of the fact that "the natural right of parents to the care and education of their children" belonged in the catalogue of basic rights.[116] It continued,

> "Those who would reject *Elternrecht*, would, by so doing, prove that despite all democratic protestations, they had not yet got out of the totalitarian way of thinking."

This article exemplifies the position taken by many that *Elternrecht* was not something up for debate.[117] Consequently, in the eyes of its proponents, those who rejected the notion of *Elternrecht* were undemocratic. A position based on theological principles and matters of faith made argument impossible. The undemocratic nature of this stance, in which democracy allows for differing points of view, was lost on the proponents of *Elternrecht*.

Two Catholic CDU politicians, Dr. Adolf Süsterhenn (1905-1974), MdPR for Rhineland-Palatinate, and Dr. h.c. Helene Weber (1881-1962), MdPR for NRW, did much to question the tacit agreement about the content of the catalogue of basic rights reached at Herrenchiemsee.[118] Both had been approached by Wilhelm Böhler (1891-1958), cathedral canon of Cologne, responsible for the school question for the Catholic Church.[119] Böhler did not believe that the Basic Law would be only provisional in nature and therefore tried to anchor the interests of the church, especially *Elternrecht*, in the constitution as firmly as possible in 1948/9.[120] The churches had, of course, to believe that the basic rights were permanent or eternal whilst the politicians could take a more

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[116] 13 November 1948.
[117] Cf. Z-leaning *Neuer Westfälischer Kurier*, 29 October 1948. See too EN1169, in BA, Z5/111.
[118] See chapter VI, pp. 255-256, on Weber.
[119] B. van Schewick, 'Wilhelm Böhler (1891-1958)', in *Zeitgeschichte in Lebensbildern*, vol. IV, *Aus dem deutschen Katholizismus des 19. und 20. Jahrhunderts* edited by J. Aretz *et al.* (Mainz, 1980), pp. 197-207.
[120] Cf. L. Rölli-Alkemper, *Familie im Wiederaufbau. Katholizismus und bürgerliches Familienideal in der Bundesrepublik Deutschland 1945-1965* (Paderborn, 2000), pp. 70-73, on how *Elternrecht* tied in with the Catholic Church's broader policy on the family.

gradualist approach. Böhler sought out Catholic CDU MdPR who would agree with him and impressed upon them the need to insist upon the inclusion of religious-cultural basic rights from the beginning of the Parliamentary Council's deliberations. This Süsterhenn and Weber did.

On 6 October Weber persuaded a majority in her faction that *Elternrecht* should be included in the Basic Law.[121] The following day Weber signalled that the CDU/CSU intended to introduce a motion for the guarantee of *Elternrecht* in the Basic Questions Committee. On 20 October, the CDU/CSU faction agreed to demand that the right to life, protection of marriage, and a federal regulation of the relationship between church and state be included, alongside its call for *Elternrecht.*[122] This decision was the result of pressure from Süsterhenn and of letters from the Catholic and Protestant Churches. (See above, p. 228.) Consequently, the CDU/CSU introduced a motion for the inclusion of *Elternrecht* in the second reading of the catalogue in the Basic Questions Committee on 24 November.[123] Süsterhenn's proposal was dismissed by Bergsträsser, who argued that only the classic basic rights should be included and that everything else belonged in the social order, which the Committee had agreed from the beginning not to consider.[124] Heuss concurred and warned his colleagues against opening the floodgates by trying to settle the school and church questions in a few sentences now. If the floodgates were opened, he cautioned, the SPD might demand the inclusion of various socio-economic rights.[125]

In the discussions in the Basic Questions Committee on 4 December, Menzel again referred to the agreement made before the Parliamentary Council began its work to stick to the classic basic rights.[126] Cultural and religious rights were the domain of the *Länder.* This time it was his turn to warn his colleagues that if the Basic Questions Committee gave way, he no longer saw how the trade unions' demands could be refused.

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[121] *Die CDU/CSU im Parlamentarischen Rat*, p. 55.
[122] Ibid., p. 152.
[123] *PR. A&P*, V/II, p. 634.
[124] Ibid., p. 635.
[125] Ibid., p. 636.
[126] Ibid., p. 806.

Süsterhenn, however, declared that this was one of the most serious questions for his faction and that the room for compromise was much, much smaller here than on all other topics.[127] Menzel responded by asking dryly why the issue had then only been raised in the second reading.[128] Von Mangoldt sought to explain

> "that the reason this whole question plays such a big role in the CDU faction now is the result – one has to see this objectively – of the amount of space the press has devoted to these basic rights. Considerable demands and accusations have been made in the press and this question has been discussed in the press more than at the beginning."[129]

His explanation makes clear that discussions outside the assembly influenced the work within and that the CDU/CSU faction was prompted to act by the pressure of the debate in the press. The press was often a surrogate for public opinion in the minds of many politicians. Consequently, critical coverage in the press is likely to have induced the CDU/CSU faction to reconsider its position on *Elternrecht*, since it did not want to alienate its supporters.

On 7/8 December the first reading of the relevant articles took place in the Main Committee. On the whole, positions taken in the Basic Questions Committee were repeated, although Renner (KPD) and Wessel (Z) now added their opinions. Dr. Anton Pfeiffer (CSU), chair of the CDU/CSU faction, presented his faction's demand for the inclusion of *Elternrecht* in the basic rights.[130] Von Mangoldt, chair of the Basic Questions Committee, had declined to do so a day earlier with reference to his home *Land*, Schleswig-Holstein, in which, he argued, Catholic refugees would demand confessional schools, and with reference to the Protestant Church's lack of support for this demand.[131] (In Schleswig-Holstein, Catholics made up only 6% of the population in 1950.[132]) Pfeiffer cited "the echo from broad sections of our people", which, he argued, proved that a

> "satisfactory settlement of the questions raised in our motions [for guarantee of *Elternrecht*] was not only expected but demanded categorically."[133]

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[127] Ibid., p. 815
[128] Ibid., p. 815
[129] Ibid., pp. 820-821.
[130] *Parlamentarischer Rat. Verhandlungen des Hauptausschusses*, p. 239.
[131] *Die CDU/CSU im Parlamentarischen Rat*, pp. 258-259.
[132] *Statistisches Jahrbuch für die Bundesrepublik Deutschland*, p. 44.
[133] *Parlamentarischer Rat. Verhandlungen des Hauptausschusses*, p. 239. Cf. Drucksache 302, in PA, PR Drucksachen III.

Millions of German men and women were waiting for a satisfactory settlement of this question, he emphasized.

Elternrecht was considered by its adherents to be a God-given right and was hence in the eyes of many, with the exception, perhaps, of pragmatists such as Adenauer (CDU), not even up for debate. In December Adenauer made clear to his faction that "for him a rejection of the Basic Law because of *Elternrecht* was out of the question."[134] Its opponents questioned the very essence of the demand for *Elternrecht*. When Weber argued for the inclusion of *Elternrecht* in the catalogue of basic rights on 7 October, Heuss asked caustically, "What does *Elternrecht* mean as basic right? – To have children! What else?"[135] Weber retorted "to decide what to do with children!" So contentious was the topic and so divergent the opinions that several thousand letters of submission addressed this subject, and the debate was the subject of much press coverage, especially in the winter months.

It is difficult to gauge whether *Elternrecht* was the subject, which most aroused a response in the population 1948/9. Niclauß, for example, contrasts what he regards as the limited interest of the German population in the Parliamentary Council's work in general with what was "a veritable popular initiative" on the question of *Elternrecht*.[136] Certainly, it is a subject on which the Parliamentary Council received a great many letters of submission, whether in favour or not. However, as mentioned above (p. 207), not all letters have survived. The Parliamentary Council's Secretariat noted that by 8 March 1949 about 2,690 letters of submission on the question of *Elternrecht* had been received aside from those from church leaders.[137] "Single signatures and signatures from whole villages" the Secretariat explained,

> "have been counted only as <u>one</u> [*sic.*] letter of submission. Were one to count all incoming mail individually, one would arrive at a total figure of *c.*20-30,000. (i) In about 95% of the letters the recognition of <u>*Elternrecht*</u> [*sic.*] with regard to education as well as <u>confessional schools</u> [*sic.*] are demanded."

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[134] 15 December 1948, quoted by van Schewick, *Die katholische Kirche*, p. 107.
[135] *PR. A&P*, V/I, p. 218.
[136] K. Niclauß, *Der Weg zum Grundgesetz* (Paderborn, 1998), p. 261.
[137] BA, Z5/94, p. 11.

Writing in the CDU-leaning *Südwestdeutsche Volkszeitung*, Böhler traced what he saw as the increasing public engagement in the constitutional debate evident in December back to the call for the anchoring of Christian demands.[138] One flowed from the other in his opinion. This was partly true: the Catholic Church and its supporters succeeded in mobilizing the faithful in support of their cause. Prompted by Bishop Michael Keller of Münster, Cardinal Josef Frings, archbishop of Cologne wrote to all archbishops and bishops on 27 December 1948 to suggest that they encourage their congregations to address their demand for a federal guarantee of *Elternrecht* to the Parliamentary Council in writing.[139] The Catholic Church's efforts were strongly reminiscent of those undertaken in the nineteenth century and 1919 when it felt its rights to be threatened. (See above, pp. 205-206.) However, the growing public involvement was also partly attributable to the fact that debate had begun in the Main Committee. Its sessions were open to the public, which gave journalists unmediated access to information on the debates. (See chapter I, p. 16.) This ensured that more information about the deliberations got into the public domain, which in turn allowed more people to react if they so chose. Newspapers also took an increasingly active part in informing the public about the course of the deliberations in Bonn. The US-zone *Süddeutsche Zeitung*, for example, published the catalogue of basic rights at Christmas so that, as it informed its readers, they could form an opinion and prepare themselves for a referendum early in the New Year.[140]

Probably only on the question of the design of the flag were more letters of submission sent to Bonn, whilst the question of full equality for women also generated a considerable number.[141] The number of letters on the subject of *Elternrecht* did not necessarily make for variety of views. Indeed in the same memorandum cited above (p. 232), the Parliamentary Council's Secretariat observed on the senders of those letters of submission *not* from church leaders

> "The senders are clearly: parents' committees at Catholic [*sic.*] schools, individuals, Catholic church organizations and other Catholic groups, Catholic parish offices, and like bodies. 85 letters of submission, which make the same demands, were sent by Protestant parish offices and

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[138] 15 December 1948. Cf. similar claim made by CDU-leaning *Aachener Volkszeitung*, 5 January 1949.
[139] Van Schewick, *Die katholische Kirche*, pp. 100-101.
[140] 25 December 1948, in HHStA, Staatliche Pressestelle V, I c I d.
[141] Cf. *Spiegel* 3/7 (12 February 1949), p. 5.

> organizations. These letters often have several signatories. The figure is relatively small, since parishes or other communities sent the letters rather than individuals. (ii) In about 140 letters [*sic.*] from SPD-organizations, parents' and teachers' organizations, and a few individuals, position is taken in favour of the non-denominational school. Here too the number is influenced by the type of sender (organizations and such like)."[142]

Many of the letters of submission followed a pattern laid out by the churches and do not necessarily reflect the initiative of individuals but rather that of members of the Churches' hierarchies. However, it is not easy to draw the line here when attributing initiative. A priest might have suggested writing to the Parliamentary Council but it still required the layperson to take the step of actually doing so. Many letters of submission share the same formulation and were, it would seem, simply signed by members of a congregation, presumably at a priest's instigation. It seems that signing one submission together was, for many people the easiest and most efficient way of expressing their views on the subject, since many more letters of submission were received from organizations or groups than from individuals. It is, however, almost impossible to establish the exact nature of the motivation involved in the participation in such an exercise. Even if the letters of submission were largely inspired by priests or other members of the church hierarchy, the signature still implies agreement with the demands formulated, particularly since this was regarded as a matter of conscience and faith.

The vast majority of the letters of submission sent to the Bonn assembly by the proponents of God-given rights featured three key demands for inclusion in the catalogue of basic rights: i) guarantee of freedom from bodily harm, ii) protection of human life, iii) the right of parents to determine the nature of the schools to which they sent their child, the so-called *Elternrecht*. This format was adopted both by Protestant and Catholic proponents, including the Church hierarchies.[143] It was emulated and expanded upon by many lay Church organizations. Thus the Catholic committee of Erkelenz, for example, demanded,

> "i) the protection of marriage and family based on Catholic understanding, ii) the guarantee of the rights of parents to determine the education [of their child], iii) freedom for a private school system,

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[142] 8 March 1949, in BA, Z5/94.

[143] Format taken from letter of submission from Ev. Kirche, 29 October 1948, EN236, in BA, Z5/108. Cf. letter of submission from Cardinal Frings, 20 November 1948, EN464, in BA, Z5/109. Latter reproduced as Drucksache 319, in PA, PR Drucksachen III.

> iv) freedom of religious expression, v) the invulnerability of the human body and human life, vi) a guarantee of the right to life of the church."[144]

Or, to cite another example, a letter from the leaders and representatives of the Katholische Frauenjugend, Aachen, pleaded for the recognition and guarantee of

> "the respect of the dignity of the woman, the inalienable rights of parents and the family, especially the right of parents to [determine] the education of their child, as well as the invulnerability of human life, including the unborn."[145]

Far more letters of submission were sent to the Parliamentary Council on this subject by Catholics than by Protestants, just as stronger pressure was applied by the Catholic than the Protestant Church hierarchy. This was partly a reflection of the nature of the respective churches: the demands made by the Catholics echoed the papal encyclical of December 1929 and the position taken by the Catholic Bishops' Conference at Werl in June 1945, which was itself based on the encyclical. The Protestant Church, in contrast, was less centrally structured and found it more difficult to justify its demand for confessional schools on purely theological grounds.

That the letters of submission followed a pattern was recognized in the Parliamentary Council. In the first reading in the Main Committee, Bergsträsser (SPD), an historian by training, observed that he had seen some of the letters of submission himself.[146]

> "[I] noticed that some of the letters of submission take as their starting point something that was organized by you [the supporters of *Elternrecht*] months ago. ... It now seems as if your suggestion has become known throughout the country and as if one wants to support your proposal now."

The letters of submission could be consulted in the assembly's Secretariat and several MdPR thereby sought to inform themselves about public opinion. Information gleaned from the letters was employed to back up a proposition or to undermine an opponent's argument. Bergsträsser's remark was addressed to the supporters of *Elternrecht* in the Parliamentary Council as well as, presumably, those outside it. He went on to make an historical comparison with the letters of submission sent to the Frankfurt Parliament in 1848/9 on the school question, of which he had been reminded by the uniformity of some of the letters of submission. The uniformity of such letters, he implied, not only

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[144] 14 November 1948, EN367, in BA, Z5/108.
[145] 14 November 1948, EN361, in BA, Z5/108.
[146] 7 December 1948, in *Parlamentarischer Rat. Verhandlungen des Hauptausschusses*, p. 250.

suggested that they were part of a campaign but also lessened their value. The likeness of some letters was also raised in the Basic Questions Committee on 16 December, when Weber, reporting to that committee on the letters of submission received by the Council to date, referred to some of those received from the Catholic committees (for example, EN544, EN531, EN528).[147] She noted that all demanded

> "the right of humans, including the unborn, to life and body and invulnerability; a guarantee of marriage and family as the primeval cell of the people and the state; the recognition of the natural right and highest duty of parents to the life and education of their children...."

This led Heuss to observe "presumably the letters of submission have a common model."[148] Indeed, the Catholic journal, *Mann in der Zeit*, called for more letters to be written to the Parliamentary Council in March 1949 and printed a letter from the Arbeitsgemeinschaft der katholischen Männerwerke in Deutschland as an example for others to copy.[149]

Not only the letters of submission from the proponents of *Elternrecht* followed a pattern, so too did many of those from its opponents. Written by various SPD or teaching organizations, they argued against the provision of confessional schools and in favour of the *Gemeinschaftsschule.*[150] Such a school they regarded as less divisive in character and more firmly under the aegis of the state. The Hamburg organization of SPD teachers, for example, signalled their

> "strongest protest against the unleashing of the *Kulturkampf* through the planned anchoring of the confessional school in the Basic Law."[151]

Or, to cite another example, the Mittelrhein Youth wing of the SPD argued against the inclusion of *Elternrecht* in the Basic Law, since

> "the CDU and with it the churches seem clearly to understand the compulsion for all parents to decide in favour of the confessional school by their demand for *Elternrecht.* We do not dispute the right of parents to decide the type of education for their children. However, we do object to the introduction of the confessional school, which does not do justice to broad circles of German society, under the pretext of *Elternrecht.*"[152]

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[147] *PR. A&P*, V/II, p. 902.
[148] Ibid., p. 902.
[149] Cited by Sörgel, p. 199; cf. Schewick, *Die Katholische Kirche*, pp. 100-101.
[150] See, for example, EN1360, 1363, 1365, 1366, 1367, 1368, 1369, 1370, 1519 and 1520, in BA, Z5/112.
[151] Bezirksvorstand der Arbeitsgemeinschaft Sozialdemokratischer Lehrer Hamburg, 18 January 1949, EN1521, in BA, Z5/112. More very similar protests in BA, Z5/112.
[152] 1 January 1949, EN1356, in BA, Z5/112.

Teachers were amongst the most vociferous opponents of the guarantee of *Elternrecht* in the Basic Law. Teachers' organizations addressed numerous letters of submission to the Bonn assembly.[153] About 140 of the surviving letters of submission from SPD organizations, parents' and teachers' unions, and some individuals spoke out in favour of the *Gemeinschaftsschule*. For example, the Verband badischer Lehrer und Lehrerinnen, Heidelberg, sought to inform the Parliamentary Council of a meeting of all the teaching associations of the Western zones in Ettlingen/Baden on 27 December 1948.[154] In their 'Resolution of the Teachers' Unions of the Western Zones on the Constitutional Question', in which they spoke on behalf of 50,000 teachers, they

> "emphatically warn against the inclusion of general regulations about the ideological character of schools in the Basic Law, since such regulations (i) abolish the cultural autonomy of the *Länder*, (ii) must lead to a passionate *Kulturkampf*, (iii) would heavily burden the fight for a large majority in favour [of the Basic Law] in the referendum on the Basic Law, (iv) such regulations ought to be decided on the authority of an assembly freely elected by the people."

Adolf Schönfelder (SPD), Vice-President of the Parliamentary Council, cited this resolution in the Main Committee on 18 January when making his case against the CDU/CSU, DP and Z motion for the inclusion of *Elternrecht* in the Basic Law.[155] Rarer, but nonetheless often quite as outspoken, were the letters of submission from individuals. Oberstudienrat i.R. Dr. Hans Gueldner from Borgholzhausen argued against the guarantee of *Elternrecht* in the Basic Law in a letter addressed to Heuss, since he knew him to be a member of the 5-Person Committee.[156] Gueldner believed that such a guarantee of *Elternrecht* would go against the efforts to reduce the confessional divide in Germany. Teachers were outspoken adversaries of *Elternrecht* not only because they were frequently SPD supporters, but also, and perhaps more importantly, as a result of their first-hand experience of teaching and because of what they identified to be the pedagogical and social merit of mixed confessional schools.

Although the parties were moving closer together in their constitutional conceptions, the first reading of the Basic Law in the Main Committee in December 1948

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[153] *PR. A&P*, V/II, p. 902.
[154] 3 January 1949, EN721, in BA, Z5/96.
[155] *Parlamentarischer Rat. Verhandlungen des Hauptausschusses*, p. 555.
[156] 6 March 1949, in BA, N1221/418.

made obvious that there were still many areas of great divergence. One such was *Elternrecht*, and it was defeated by a narrow 11:9 SPD-FDP-KPD majority.[157] In the second reading on 18 January, Weber again introduced a motion in favour of *Elternrecht* on behalf of the CDU/CSU, Z and DP. She referred to the "millions of parents who are waiting for this vote today".[158] Arguing against the motion, Heuss commented on the many letters that had been received by the Basic Questions Committee on the subject of *Elternrecht*.[159] He rated these highly but

> "would rate them even more highly if they did not essentially originate from this diocese here [Cologne], and if they did not all work so much with the same vocabulary...."

Heuss' implication was clear: much like Bergsträsser (see above, p. 235) he believed that the Catholic Church was behind the letters sent to the Parliamentary Council in favour of *Elternrecht*. Indirectly, he acknowledged Böhler's success in mobilizing the NRW flock. The motion was again rejected by an SPD-KPD-FDP majority of 11:9.[160]

Once it had become clear that the differences could not be resolved in the Main Committee, the parties decided on 26 January to set up an interfactional committee.[161] It became known as the 5-Person Committee and comprised von Brentano (CDU), Theophil Kaufmann (CDU), Schmid (SPD), Menzel (SPD) and Dr. Hermann Schäfer (FDP) (who alternated with his party colleagues, Dehler, Heuss, and Dr. Hermann Höpker-Aschoff), with Adenauer as President of the Council in the chair, at the end of January.[162] The committee was to draw up an entire 'Basic Law package' that would find the support of the major parties. The proposed package did not satisfy the Churches, however, and Josef Cardinal Frings, chair of the Fulda bishops' conference, wrote to Adenauer to inform him of the "serious concern" with which the proposal filled the German bishops, since it did not provide for a full guarantee of *Elternrecht*.[163] After the first compromise had been

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[157] 7 December 1948 in *Parlamentarischer Rat. Verhandlungen des Hauptausschusses*, p. 254.
[158] Ibid., p. 567.
[159] Ibid., p. 557.
[160] Ibid., p. 567.
[161] *Die CDU/CSU im Parlamentarischen Rat*, pp. 364-365.
[162] *PR. A&P*, XI, p. xvi.
[163] 11 February 1949, EN4239, in BA, Z5/115. Josef Cardinal Frings (1887-1978), Archbishop of Cologne, 1942-1949, Chair of Fulda Bishops' Conference, July 1945-. See R. Morsey, 'Konrad Adenauer und Kardinal Frings', in R. Morsey, *Von Windhorst bis Adenauer: Ausgewählte Aufsätze zu Politik, Verwaltung*

reached over the second chamber in the autumn (see chapter IV, pp. 166-188), this package, the so-called 'second compromise' (see chapter IV, pp. 188-194), was accepted by all in the assembly, including the Southern Germans, as the basis for the third reading in the Main Committee on 8-10 February.[164] Here the parties in the Bonn assembly agreed, in principle, on the nature of the Basic Law. The 5-Person Committee's partial guarantee of *Elternrecht*, that is along the lines of the Weimar constitution, was passed with three votes against and one abstention.[165] On behalf of the CDU/CSU, DP and Z, Süsterhenn promptly declared that the fight to secure a full guarantee of *Elternrecht*, which was a natural and God-given right, in the constitution would go on.[166]

Many newspapers noted and commented upon the 5-Person Committee's constitutional proposal. Several papers cited Süsterhenn's declaration on behalf of the CDU/CSU, Z, and DP that *Elternrecht* was a natural right.[167] The CDU-leaning *Hamburger Allgemeine Zeitung* reported the German bishops' dissatisfaction with the constitutional draft, but noted that the CDU

> "considers it intolerable as things stand to delay the passing of the Basic Law because of the position adopted by the Church."[168]

Presumably anxious to avoid any differences between his party and the bishops being broadcast in public, Adenauer quickly complained to the paper's editors that its report was "totally untrue and distorted".[169] In rather extreme fashion, the headline of the CSU-leaning *Münchner Merkur* proclaimed,

> "Bonn puts religious education under state supervision. Beginning of third reading. Cardinal Frings calls together conference of bishops. Declaration of war by the CDU/CSU"[170]

In keeping with this attitude, the paper also published a piece by von Aretin, entitled "About *Elternrecht*", in which von Aretin strongly denounced the proposed

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und politischem Katholizismus im 19. und 20. Jahrhundert edited by U. von Hehl *et al.* (Paderborn, 1997), pp. 686-702; and references in van Schewick, 'Wilhelm Böhler (1891-1958)', pp. 197-207.

[164] *Parlamentarischer Rat. Verhandlungen des Hauptausschusses*, pp. 611-685. Formulation of Basic Law passed in third reading of Main Committee, in *PR. A&P*, VII, pp. 396-442.

[165] *Parlamentarischer Rat. Verhandlungen des Hauptausschusses*, p. 615. Formulation of relevant article 7b, in *PR. A&P*, VII, p. 399.

[166] Ibid. p. 615.

[167] See, for example, US-zone *Mannheimer Morgen*, 9 February 1949.

[168] 9 February 1949.

[169] 11 February 1949, in BA, Z5/9. Cf. *Die CDU/CSU im Parlamentarischen Rat*, p. 107.

[170] 9 February 1949.

compromise.[171] On 10 February, the majority of the Main Committee voted in favour of the continued validity of the articles of the Weimar constitution regulating the relationship between the churches and the state, with two votes against.[172] (See above, p. 239.) The so-called 'Bremer Klausel', the eventual article 141 of the Basic Law, was also introduced on this occasion.[173] It meant that in those *Länder* in which a different regulation was in force on 1 January 1949, article 7, paragraph 3 - "Religious instruction shall form part of the ordinary curriculum in state and municipal schools, except in secular (*bekenntnisfrei*) schools." - did not apply.[174] Süsterhenn rejected the clause, but Menzel made clear that it was "a crucial part of the compromise" reached in the 5-Person Committee. It was passed with 12:6 votes.[175] The 5-Person Committee expanded to form a 7-Person Committee in February by including Seebohm (DP) and Brockmann (Z). Whilst the churches continued to object to the absence of a full guarantee of *Elternrecht* in the draft,[176] of far more consequence were the reservations the Allies now made known about the German proposal in a memorandum to the Bonn assembly on 2 March.[177]

In the memorandum, the Military Governors demanded a reduction in the powers of the *Bund* in favour of the *Länder*, in particular in the financial sphere. (See chapter III, pp. 126-132, for more detailed account of events.) The Parliamentary Council sought to persuade the Allies to look more at the whole package of the constitutional proposal rather than to concentrate on particular articles but agreement was not reached in March. In light of the Military Governors' inability to agree amongst themselves on how to proceed and in view of their already scheduled meeting, the British, French and American Foreign Ministers took up the matter of the West German constitution in Washington D.C. in early April. In principle, they decided to accept the 7-Person Committee's proposal, which provided for a Federal fiscal administration, with some

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[171] 9 February 1949.
[172] *Parlamentarischer Rat. Verhandlungen des Hauptausschusses*, p. 682.
[173] Ibid., p. 683.
[174] Article 32 of Bremen's constitution (21 October 1947) stipulated that religious education of a general biblical and not a confessional kind would be given at state schools. This had its roots in Bremen's history, in Oermann and Zachhuber, pp. 66-68.
[175] *Parlamentarischer Rat. Verhandlungen des Hauptausschusses*, p. 684.
[176] Sörgel, pp. 199-200.
[177] *PR. A&P*, VIII, pp. 131-144.

modifications. The Foreign Ministers communicated their position to the Bonn assembly in two communiqués.[178] The first communiqué was released to the Parliamentary Council on 5 April. It did not make their change of position clear, instead telling the Parliamentary Council to "give due consideration" to the Military Governors' 2 March recommendations.[179] Menzel rejected the Allied recommendations on behalf of the SPD in the Main Committee on 6 April, arguing that the compromise reached in the 7-Person Committee was the limit to the concessions the Germans could make without putting German legal and economic unity in danger.[180] Speaking for the CDU, Lehr disagreed. He believed a new compromise could be found. Heuss proposed that the 7-Person Committee's February compromise be handed over to the Financial Committee and 7-Person Committee again to work out a means by which the Allied demands could be met. His proposal was passed with 12 votes to 9.[181] The SPD understood this as a departure from the February compromise, to which it consequently no longer felt bound.

The SPD postponed making a final decision on how to proceed until 20 April when a full party conference was scheduled. There the SPD opted for a simplified Basic Law reduced to the bare minimum necessary for an interim arrangement.[182] In the financial sphere, the SPD accommodated Allied wishes, but it struck all religious and cultural rights from its proposal. The SPD party conference received a great deal of coverage. Only a few papers, however, noted explicitly that the party's decision to simplify the Basic Law meant that the compromise reached over the basic rights no longer held.[183] The CDU-leaning *Westfalenpost* was unusual in devoting an entire article to the subject under the heading "Anti-Christian forces unmask themselves".[184] On 22 April the second communiqué from the Allied Foreign Ministers was delivered to the Parliamentary Council.[185] In it, they indicated their willingness to accept a constitution which did not adhere strictly to the March memorandum's requirements, so long as

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[178] 5 and 22 April 1949, in ibid., pp. 218-220 and pp. 244-246 respectively.
[179] Ibid., p. 220.
[180] *Parlamentarischer Rat. Verhandlungen des Hauptausschusses*, pp. 731-737.
[181] Ibid., p. 737.
[182] *PR. A&P*, VII, pp. 462-496.
[183] See, for example, DP-leaning *Deutsche Volkszeitung* or US-zone *Stuttgarter Zeitung*, 23 April 1949.
[184] 23 April 1949.
[185] *PR. A&P*, VIII, pp. 244-246.

"financial independence and adequate strength for both the *Länder* and federal governments in operating in their respective fields" was secured. This step from the Allies meant that interfactional talks were resumed in Bonn (23/24 April) and agreement was reached on the nature of the Basic Law.[186] Essentially, the powers of the *Bundesrat* were reduced in line with SPD and FDP demands, whilst the SPD and FDP agreed to split the fiscal administration between the *Bund* and the *Länder*. On 25 April the Military Governors accepted the Parliamentary Council's draft in essence and remaining differences between the Germans and Allies were resolved.[187]

In interfactional discussions in Bonn, the parties prepared a draft for the fourth reading in the Main Committee with the discussions in Frankfurt in mind.[188] Returning to the 5-Person compromise on the basic rights passed in the third reading of the Basic Law in the Main Committee in February (see above, pp. 238-240), the SPD proposed that article 7b, paragraph 3 read as article 149, paragraph 1 of the Weimar constitution - "Religious instruction shall form part of the ordinary curriculum in state and municipal schools, except in secular (*bekenntnisfrei*) schools." The CDU held this to be an attenuation but was prepared to consider it if it applied to all schools.[189] Further interfactional discussions took place on the precise wording of article 7 and the applicability of the 'Bremer Klausel' on 4 May 1949.[190] The intensive preparation bore fruit: the fourth reading in the Main Committee and subsequent readings in the Plenum went smoothly.[191]

A consequence of the drawn-out and difficult wrangling was that *Elternrecht*, which was not wanted by half the delegates in Bonn, and, more specifically, was not seen to be of central importance to the character of the Basic Law by the two Protestant CDU

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[186] *PR. A&P*, XI, pp. 144-192.
[187] *PR. A&P*, VIII, pp. 248-259.
[188] 28 April 1949, in *PR. A&P*, XI, pp. 208-217.
[189] Ibid., p. 211.
[190] Ibid., p. 268.
[191] Formulation passed in fourth reading in Main Committee, 5 May 1949, in *PR. A&P*, VII, pp. 532-570; fourth reading in Main Committee, 5 May 1949, in *Parlamentarischer Rat. Verhandlungen des Hauptausschusses*, pp. 743-766; second and third readings in Plenum, 6 and 8 May 1949 respectively, in *PR. A&P*, IX, pp. 429-503 (433-502) and pp. 504-630 (pp. 517-617) respectively.

representatives in the 5-Person and later 7-Person Committees, namely Lehr and Kaufmann, was not fully anchored in the constitution. Adenauer had already made clear his view that it was not worth letting the Basic Law fall through on this ground alone. (See above, p. 232.) Thus despite a mass mobilization of the faithful, the Churches failed to secure their interests fully because they were not supported by a majority in the Bonn assembly. Whilst the hundreds of letters of submission in favour of *Elternrecht* persuaded the CDU/CSU faction to press for its guarantee in the constitution, the letters did not persuade the opponents of *Elternrecht* to accede to this demand. *Elternrecht* was effectively dropped and instead section III of the Weimar constitution (with the exception of article 140), regulating the relationship between church and state, was incorporated into the Basic Law. This perceived inadequate guarantee of *Elternrecht* subsequently prevented the two Z MdPR, Wessel and Brockmann, from voting in favour of the Basic Law in its final reading in the Plenum on 8 May 1949.[192]

The Basic Law was promulgated on 23 May 1949 after it had been passed in the various parliaments of the *Länder* with the exception of Bavaria, which had voted against the Basic Law itself but in favour of adhering to its provisions if two thirds of the other *Länder* voted in its favour. Bavaria's partial rejection of the Basic Law was based on objections to the extent of the *Bund*'s powers rather than on any religious premiss. (See chapter IV, pp. 198-199.) Bavaria's representatives had not, in any case, been vociferous supporters of the inclusion of *Elternrecht* in the Basic Law since they knew it to be securely anchored in their *Land*'s constitution.[193] For the same reason, few letters of submission came from Bavaria in support of *Elternrecht*. This was in contrast with, for example, the great number of letters that came from the diocese of Cologne and NRW, in which the confessions were mixed and the debate on *Elternrecht* was vigorously pursued. The high voter turnout in the subsequent first federal election in August (78.5%) suggests the German people did in some measure agree with the principles of the Basic Law,

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[192] *PR. A&P*, IX, pp. 580-582. Seebohm (DP) also complained of its exclusion but the primary reason for the DP's rejection of the Basic Law was its insufficiently federal character, ibid., pp. 559-569.
[193] Van Schewick, *Die Katholische Kirche*, p. 78.

although the turnout was higher in 1953 with 83.2%.[194] The CDU/CSU won 31% of the votes, the SPD 29.2%, and the FDP 11.9%. For the majority of people the guarantee of *Elternrecht* was, much as for the CDU delegates, insufficient reason to reject the Basic Law and the major parties responsible for its formulation.

Conclusion

In his closing speech to the Plenum on 8 May 1949, Heuss elaborated on some of the issues, which, he thought, were especially significant for understanding the Parliamentary Council's deliberations, and which would be important for the new West German state.[195] The debate about the so-called *Elternrecht* featured prominently in his summing up, as did the relationship between the churches and political parties. Heuss admonished the openly Christian political parties and the newspapers which supported them, such as the CDU-leaning *Rheinischer Merkur*, not to behave as if they were the sole representatives of the Christian faith in politics. That this might be damaging to their cause, was recognized by Dr. Paul de Chapeaurouge (CDU), who, when looking back on the deliberations in Bonn, posited that

> "somewhat greater restraint by church circles during the deliberations ... would have been of greater benefit to the true interests of the churches."[196]

Furthermore, Heuss set out, once again, his view that the debate about *Elternrecht* was a twentieth-century one. On this, however, he was contradicted by the Rhineland-Palatinate's CDU MdPR, Dr. Albert Finck (1895-1956), who argued that *Elternrecht* was an issue already in 1848/9.[197] Perhaps Heuss' remarks (like de Chapeaurouge's) were coloured by his Protestant faith and directed primarily at the Catholic Church. Nonetheless, the fact that Heuss felt the urge to issue this admonition indicates the extent to which Germans at this time needed to be reminded that democracy by its very nature

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[194] C. Kleßmann, *Die doppelte Staatsgründung: Deutsche Geschichte 1945-1955*, fifth edition (Bonn, 1991), p. 437.
[195] *PR: A&P*, IX, pp. 531-543 (pp. 536-541).
[196] Paul de Chapeaurouge, *Bonner Eindrücke* (1949), unpublished manuscript, in HHStA, 622-1 Familie de Chapeaurouge, U326, p. 50.
[197] 8 May 1949, *PR: A&P*, IX, pp. 572-573. In 1848-1849, there had been some debate over the eventual part VI, article V of the constitution, which set out the relationship of state and church, as well as guaranteeing freedom of religion, and article VI, paragraph 153, which stated, "teaching and education remain under the authority of the state, and, with the exception of religious instruction, are removed from the authority of the clergy.", in Hucko, p. 109.

allows for differences in opinion. It was an admonition he might also have addressed to the authors of the letters of submission in favour of *Elternrecht*. Yet, paradoxically, it was the very nature of their obstinate belief that *Elternrecht* was a basic right, which motivated members of the public to engage themselves actively in the constitutional debate.

The press coverage and volume of letters of submission make clear that members of the public were interested in the question of an *invocatio dei* and in the scope and content of the catalogue of basic rights, particularly in the anchoring of *Elternrecht* in the Basic Law. Such interest did not, however, necessarily translate into approval of the Churches' demands. That far from everyone supported these demands is clear from the press coverage given to the question of socio-economic demands raised by the trade unions and from the coverage given to the opponents of *Elternrecht* in the Basic Law. This holds true even though press reports frequently reflected the reporting newspaper's party orientation or proximity to the churches or trade unions. The partisan nature of the coverage was recognized by many at the time. Heuss, for example, criticized "the sometimes very one-sided reporting of the CDU press" in reply to a letter of submission from a Dr. G. Michaelis.[198] Newspapers close to the CDU/CSU and Z, in particular those from NRW, called for a full guarantee of *Elternrecht* in the Basic Law. Nonetheless, the extent of the press coverage makes clear that the public debate was far broader, encompassing opinions from across the political spectrum.

The letters of submission are also evidence that public debate took place on these subjects during the formulation of the constitution. The majority of the letters of submission examined in this context specifically demanded that *Elternrecht* be guaranteed in the Basic Law and were signed by large numbers of people, generally of the Catholic faith. Individuals of a Christian persuasion tended to write more often in favour of some sort of *invocatio dei* in the constitution, whether in the preamble or as the basis for the catalogue of basic rights. Far more Catholics than Protestants wrote to the Parliamentary Council to call for the inclusion of an *invocatio dei* and a guarantee of

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[198] 1 February 1949, in BA, N1221/418.

Elternrecht in the Basic Law. This partly reflected the stronger feelings held by Catholics about confessional schooling. For historical reasons, confessional schools played a greater role in defining their sense of identity. It was also, however, a reflection of the Catholic Church's greater practice in mobilizing its faithful. This is evident in the origin of the letters of submission sent to the Bonn assembly, many of which came from the same dioceses that had submitted their demands to the constitutional assemblies in 1848/9 and 1919, and which had protested against Catholic persecution during the *Kulturkampf*.[199] Opponents of a Christian imprint upon the constitution also made their voices heard. Teachers' organizations, in particular, wrote to express their opposition to the guarantee of *Elternrecht* in the Basic Law, and these made up a substantial number of the letters of submission on this subject though still far fewer than were in favour.

Those who advocated broadening the scope of the catalogue of basic rights to include socio-economic rights were still fewer in number. Whilst representatives of the trade unions did write to the Parliamentary Council to this effect, the trade unions did not, it seems, encourage their membership to do so in marked contrast to the churches.[200] The trade unions lacked practice in getting their message across compared with the Catholic Church. With the exception of Communist newspapers, the trade unions' actions or failure to act on the subject of the inclusion of socio-economic rights in the Basic Law were not discussed by the press. It is likely that this contributed to the smaller number of letters written in support of the inclusion of such rights in the provisional constitution. Individuals, on the whole, tended to write to admonish the assembly's delegates not to build castles in the air rather than to advocate the inclusion of socio-economic rights. Such letters frequently represented a reaction to the past, to the too idealistic Weimar constitution and to the promises made and broken by Hitler, which the Parliamentary Council was not to repeat. All the letters of submission and many of the newspaper

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[199] Cf. origin of letters of submission sent to *Reichstag* in 1870s to protest at persecution of Jesuits, in M.L. Anderson, *Practicing Democracy. Elections and Political Culture in Imperial Germany* (Princeton, NJ, 2000), pp. 97-98.

[200] Sörgel, pp. 97-104 and pp. 200-213. Cf. Sörgel's conclusion that T.U.s did not press for the guarantee of their interests in all phases of Parliamentary Council's deliberations, p. 212.

articles make clear how, once again, the extent to which the public debate about the Basic Law was shaped by the lessons which it was believed could be drawn from the past.

Clearly, too, the press coverage and letters of submission had an impact on the delegates in Bonn. Both influenced the positions taken in the debates on an *invocatio dei* and *Elternrecht*. On the latter issue, in particular, the volume of letters of submission in favour persuaded the CDU/CSU faction to press for the guarantee of *Elternrecht* in the constitution. Weber and Süsterhenn used the letters and press coverage to back up their call for the guarantee of *Elternrecht* in the Basic Law. Von Mangoldt admitted that the press coverage had induced the CDU/CSU to reconsider its position. However, far from persuading the opponents of *Elternrecht* to accede to this demand, the letters and press coverage confirmed the opponents in their rejection of the Churches' demands. Heuss and Bergsträsser openly scorned the letters in favour of *Elternrecht*. By saying that greater restraint would have benefited the Churches' interests more, de Chapeaurouge comes close to suggesting that the pressure exerted by the Churches had the contrary effect from what was intended. In the end, however, the numerical majority commanded by the opponents of *Elternrecht* in the Council's committees meant that *Elternrecht* was not guaranteed fully in the Basic Law. The Churches had been unable to sway liberal opinion and the authority they exercised in Germany in the immediate post-war period had reached its limit.

The debate did not end with the promulgation of the constitution in May 1949. The *Z* continued to insist on the anchoring of *Elternrecht* in the Basic Law in their electoral campaign for the first federal parliament. The Catholic episcopacy expressed its reservation about the Basic Law over the omission of a full guarantee of *Elternrecht* in May 1949. More importantly, however, it accepted the Basic Law, thus paving the way for a loyal attitude on the part of Catholics to the new West German state. The debate about the ideological foundations of the Basic Law, the nature of its reference, if any, to God, the nature and scope of the basic rights, including the debate about the so-called *Elternrecht*, left its mark on the nascent Federal Republic. Forty years later, it was once again topical after the reunification of Germany, when the new *Länder*, subject to the

Basic Law, had to arrive at a regulation of the *Elternrecht* question in their constitutions.[201]

[201] For example, Oermann and Zachhuber, pp.21-52, on Brandenburg debate.

Chapter VI - The debate about full equality for women in the Basic Law

This chapter investigates the public debate about full equality for women, that is, both legal (*staatsrechtlich*) and civil (*staatsbürgerlich*) equality in the constitution, which took place in the three Western zones of occupation during the formulation of the Basic Law 1948/9. Simply put, legal equality refers to the constitutional rights of the citizen to participate in the body politic, to vote and to stand for office. Civil equality refers to a person's juridical standing, notably in family and inheritance law.

The question of full equality aroused strong feelings, which expressed themselves in the letters of submission sent to the Parliamentary Council, both by individuals and groups, and in the debate as it was conducted in and by the press. So far the debate in the public domain has not yet been fully analysed and its exploration in this chapter will therefore complement existing studies of the debate in the Parliamentary Council itself.[1] (See discussion of historiography below, pp. 260-263.) The reaction in the public was often caused by reports in the press. Thus, for example, the female workforce of the German Dunlop Rubber Company, Hanau, began their letter to the Parliamentary Council "With pleasure and satisfaction, we women ascertained from the press...."[2] In many cases a dialogue developed between the press and the public. It does not seem to have mattered that most articles in the press were written by men. Of the very few female journalists and female editors in the immediate post-war period, almost all who wrote on the subject argued in favour of full equality.[3] The newspapers' portrayal of, and hence participation in, the debate on full equality significantly influenced the stance taken by the CDU/CSU in December 1948-January 1949. As will be seen below, the press thereby

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[1] See, for example, R.G. Moeller, *Protecting Motherhood: Women and the Family in the Politics of Post-war West Germany* (Berkeley, CA, 1993), pp. 38-61.
[2] 28 January 1949, EN1855, in BA, Z5/113.
[3] For example, only 17 of the 340 journalists in the Rhineland-Palatinate, 1945-1949, were female, in S. Schmid, *Journalisten der frühen Nachkriegszeit. Eine kollektive Biografie am Beispiel von Rheinland-Pfalz* (Cologne, 2000), p. 207. Similar studies of the make-up of the journalistic profession in other *Länder* and the three Western zones as a whole remain to be written.

exerted a decisive influence on the constitutional deliberations on the question of full equality. Of particular concern for the analysis will be the political orientation of the paper, and the reasons for the newspaper's participation in the debate.

Women's rights and earlier constitutional debates

Remarkably, article 137 of the 1849 constitution abolished the rank of nobility and all special class privileges.[4] It did not, however, provide for the equality of men and women. Women had neither the right to vote nor to stand for office. The 1871 constitution made no reference to equality and, like its 1867 predecessor, left out basic rights altogether. On 12 November 1918, and before the new constitution was drafted, the Council of People's Representatives gave women the right to vote.[5] Subsequently, article 109, paragraph 2 of the Weimar constitution, promulgated in August 1919, read "Men and women have fundamentally the same civic rights and duties."[6] Articles 17 and 22 gave women the vote and access to public office. A majority in the National Assembly believed that it was necessary only to establish equality in principle so that

> "departures from it remain possible in cases which result from the difference of the sexes, such as the right and duty to military service...."[7]

On behalf of the SPD, Marie Juchacz called for the word 'fundamentally', which her party regarded as "a profound restriction" on women's rights, to be cut and for the article to read "Men and women have the same rights".[8] The SPD motion was rejected by 149 votes to 119.[9] According to Dr. Marie-Elisabeth Lüders, a DDP member of the National Assembly and later *Reichstag* deputy and an FDP *Bundestag* deputy in the 1950s,

> "the men set great store by the insertion of this word ["fundamentally"], with the purpose of keeping open the gate for treating women differently."[10]

The impact of article 109 was limited by the continued validity of the German Civil Code or *Bürgerliches Gesetzbuch* (*BGB*). The *BGB* was drafted in the 1870s and 1880s, passed

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[4] E.M. Hucko (ed.), *The Democratic Tradition: Four German Constitutions* (Leamington Spa, 1987), p. 106.
[5] *Reichsgestzblatt*, p. 1304.
[6] Hucko, p. 174.
[7] 11 July 1919, in *Verhandlungen der verfassunggebenden Deutschen Nationalversammlung* (Berlin, 1920), vol. 328, p. 1496.
[8] 15 July 1919, in ibid., p. 1560.
[9] Ibid., p. 1568.
[10] Quoted by U. Huffmann, D. Frandsen and A. Kuhn (eds.), *Frauen in Wissenschaft und Politik* (Düsseldorf, 1987), p. 40.

in 1896, and came into force in 1900. The *BGB* gave women full legal status, allowing them to initiate legal proceedings and to conclude contracts, but ensured the continued male prerogative in family law (book IV of the *BGB*, paragraphs 1297-1921).[11] When Juchacz called for "men and women have the same rights" in 1919, she demanded that the *BGB* be amended accordingly, but this too was rejected.[12]

Political rhetoric in the Third Reich paid much attention to its aggressive and male character, seeking to relegate women primarily to the role of child-bearers for the nation. In practice, however, the number of women in work increased from 34.4% in 1933 to 36.7% in 1939.[13] Nevertheless, after the war women often held men exclusively responsible for the excesses of the National Socialist regime and for Germany's defeat and occupation. Thus, for example, the female author of a letter cited by the *Hessische Nachrichten* wrote

> "the glorious end of male management in the Third Reich still lies too much in our bones for us to be taken in by the tempting promises of male management in the Fourth Reich."[14]

After 1945, the quest for survival placed an especial burden on women. Women worked, had to stand in queues for food, and go on foraging trips in the countryside. Many women were solely responsible for feeding and holding their families together. It was a challenge successfully met, which made it difficult subsequently for many women to accept a subordinate position to their returning husbands. Indeed, it is in this 'private sphere' that Frevert argues the contemporary belief in the 'Stunde Null' or new beginning of 1945, which led some contemporaries to speak of a 'Stunde der Frauen', had its strongest manifestation in practice.[15] As in other combatant countries, the war and early post-war period did open some opportunities for women. However, following the

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[11] M. John, *Politics and the Law in Late Nineteenth-Century Germany: The Origins of the Civil Code* (Oxford, 1989), pp. 199-240; *Bürgerliches Gesetzbuch (Beckische Kurz Kommentare)* edited by O. Palandt, 14th edition (Munich and Berlin, 1955), pp. 1274-1646.

[12] 15 July 1919, in *Verhandlungen der verfassunggebenden Deutschen Nationalversammlung* (Berlin, 1920), vol. 328, p. 1560 and p. 1568.

[13] U. Frevert, *Women in German History: From Bourgeois Emancipation to Sexual Liberation* (Oxford, 1989), p. 218.

[14] 24 January 1949, in Späth, p. 148.

[15] U. Frevert, 'Frauen auf dem Weg zur Gleichberechtigung – Hindernisse, Umleitungen, Einbahnstrassen', in E. Holtmann (ed.), *Wie neu war der Neubeginn? Zum deutschen Kontinuitätsproblem nach 1945* (Erlangen, 1989), pp. 113-130 (pp. 118-119).

currency reform in the Western zones of occupied Germany in June 1948, and as a result of economy measures and men returning from captivity, many opportunities for emancipation were closed again as *Doppelverdiener*, generally women, were dismissed. This return to the private sphere of the home and hearth was often conducive to limited political engagement on the part of women.[16] Indeed, it has been argued, that women did participate in politics after the war taking advantages of the 'openings' there, but that by 1947 it was clear that male structures were being re-introduced and women therefore participated less from then onwards.[17] Membership of many new women's groups and organizations, far from all of which were linked to political parties, declined from 1947 onwards.[18] The activities of the women in the winter of 1948/9, who wrote to the Parliamentary Council on the question of full equality, were exceptions to this rule. So too were the few women in political office, including the four women in the Parliamentary Council, and the female politicians and journalists who wrote on the equality question in the press. While one may speculate how different the constitutional debate might have been if the Parliamentary Council had formulated the Basic Law before 1947, with the consequent possible greater female involvement, no clear-cut answer emerges.

As in most countries of the immediate post-war period, but to a much greater degree in what was to become Western Germany, women were in the majority in the population. Yet they were very much in the minority in politics. This was true on the local, state and federal levels. For every 100 men aged twenty to thirty, there were 170 women in that age group, and for those aged thirty to forty, the ratio was 100 to 140 in 1946.[19] Female membership of political parties was considerably lower than male membership.[20] Press references to the 'fathers of the constitution' were apt.[21] Of the 70

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[16] For a discussion of women and the question of 'apathy', a phenomenon treated with great caution and a certain amount of scepticism, see E. Holtmann, *Politik und Nichtpolitik: lokale Erscheinungsformen politischer Natur im frühen Nachkriegsdeutschland: Das Beispiel Unna und Kamen* (Opladen, 1999), pp. 149-151.
[17] A. Kuhn, 'Power and Powerlessness: Women after 1945, or the Continuity of the Ideology of Femininity', in *German History* 7/1 (1989), pp. 35-46 (p. 45).
[18] Ibid., p. 45.
[19] *Deutschland-Jahrbuch 1949* edited by K. Mehnert and H. Schulte (Essen, 1949), p. 270.
[20] G. Bremme, *Die politische Rolle der Frau in Deutschland* (Göttingen, 1956), p. 217.

delegates (including the five from Berlin) to the Parliamentary Council in Bonn, only four were female, a smaller proportion of the total than in the Weimar National Assembly, in which 36 (8.5%) of the 423 delegates were female. The Parliamentary Council's percentage (5.2%) was smaller than the post-war average of constitution-drafting bodies – of the 2,138 men and women involved in drafting constitutions in the *Länder* between 1946-1953, 180 or 8.4% were women.[22] In comparison, only 3.8% of the MPs elected to the British House of Commons in 1945 were female.[23] In the three Western zones of occupation, the number of female politicians was greatest in the city-states; most represented the SPD, followed by the CDU and then the KPD. This led Pfetsch to observe that female participation was

> "an emancipation phenomenon, which took place above all in towns, in left-wing parties, outside established churches, in secondary educational spheres (commercial colleges and teacher training colleges), and against the background of white-collar, teaching and artistic occupations."[24]

Greater female participation in the formulation of the *Länder* constitutions did not, however, lead to the guarantee of full equality in the *Länder* constitutions formulated in 1946/7. Whilst several Länder constitutions (Hessen, Bremen, Rhineland-Palatinate, Bavaria, and Baden) explicitly provided for the legal equality of men and women, none provided for civil equality.[25] With the exception of a KPD motion in Bavaria calling for full equality, the issue does not seem to have been raised, possibly because revision of the *BGB* was a federal affair.[26]

The description of the route into politics for women in post-war Western Germany given by Pfetsch above only partially characterizes the paths taken by the four

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[21] For example, CDU-oriented *Westfalenpost*, 23 October 1948 or US-zone *Kasseler Zeitung*, 14 January 1949.

[22] F.R. Pfetsch, *Ursprünge der Zweiten Republik: Prozesse der Verfassungsgebung in den Westzonen und in der Bundesrepublik* (Opladen, 1990), p. 76, p. 65 and p. 89. Parliamentary Council's percentage is calculated on the basis of the 77 men and women who served as delegates, including replacements made during the deliberations.

[23] *Women in the House of Commons*, Factsheet M4: Members Series (House of Commons, January 2003), p. 6.

[24] Pfetsch, p. 77.

[25] Ibid., p. 406.

[26] Ibid., p. 406 and B. Fait, *Demokratische Erneuerung unter dem Sternenbanner: Amerikanische Kontrolle und Verfassunggebung in Bayern 1946* (Düsseldorf, 1998), p. 191. Cf. Hessische Landesregierung (ed.), *'Ein Glücksfall für die Demokratie'. Elisabeth Selbert (1896-1986). Die große Anwältin der Gleichberechtigung* (Frankfurt/M., 1999), pp. 84-86.

female MdPR. They were all born in the nineteenth century.[27] This is true too, however, of the majority of the politicians involved in the drafting of the post-war constitutions, of whom 95.8% were born before 1913.[28] Much as Louise Schroeder (1887-1957), Mayor of Berlin 1947-1948 and perhaps the most prominent woman in post-war German politics, the four assembly members had all already benefited from the provisions of the Weimar constitution granting women the right to stand for public office.[29] That they had been active in politics before the war helps explain why they reached the positions they did so soon after the Second World War. Few women who entered politics in the immediate post-war period reached positions of prominence. It was the women familiar with the politics of Weimar who succeeded on the political stage of the occupation period, particularly on the zonal and inter-zonal levels of Western Germany in 1947-1949. Perhaps they were less disappointed or deterred by the re-assertion of the 'male structures' in politics, described by Kuhn (1989), than those new to politics after the war, who had hoped for great change. Yet most of the men in positions of political prominence after the war had been active in politics in the Weimar Republic too, with some notable exceptions, such as Prof. Carlo Schmid.[30] Whilst for men this Weimar experience was a great advantage and source of contacts, it would seem that this criterion excluded many of the women, who had been drawn to politics after the war.

The majority of the people knew little about their representatives in the Parliamentary Council, which, some argued, would have been different if West Germans

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[27] None of the women prominent after 1945 were born after 1915, in N. Möding, 'Die Stunde der Frauen? Frauen und Frauenorganisationen des bürgerlichen Lagers', in M. Broszat, K.-D. Henke and H. Woller (eds.), *Von Stalingrad zur Währungsreform. Zur Sozialgeschichte des Umbruchs in Deutschland* (Munich, 1988), pp. 619-647 (p. 639).

[28] Pfetsch, p. 69.

[29] Louise Schroeder (SPD), member of Weimar National Assembly, MP in *Reichstag*, 1920-1933, deputy mayor of Berlin, 1946-1947, and *amtierende Oberbürgermeisterin* of Berlin, 1947-1948. M. Koerfer, 'Louise Schroeder', in W. Mühlhausen and C. Regin (eds.), *Treuhänder des deutschen Volkes. Die Ministerpräsidenten der westlichen Besatzungszonen nach den ersten freien Landtagswahlen. Politische Porträts* (Kassel, 1991), pp. 139-162; G. Notz, *Frauen in der Mannschaft. Sozialdemokratinnen im Parlamentarischen Rat und im Deutschen Bundestag 1948/49-1957* (Bonn, 2003), pp. 460-482.

[30] Specifically on Schmid's post-war career, see H. Auerbach, 'Die politischen Anfänge Carlo Schmids: Kooperation und Konfrontation mit der französischen Besatzungsmacht 1945-1948', in *VfZ* 36 (1988), pp. 595-648. Cf. P. Weber, *Carlo Schmid 1896-1979: Eine Biografie* (Munich, 1996); C. Schmid, *Erinnerungen* (Bern, Munich, Vienna, 1979).

had elected their delegates in Bonn directly.[31] Instead the *Landtage* made the selection. The SPD and CDU/CSU each had 27 MdPR in Bonn, the FDP had 5, and the KPD, Z and DP had two each. The *Welt* and the *Neue Zeitung*, published by the British and American Military Governments respectively, brought out brief profiles of the 65 MdPR.[32] The four women were subsumed under the headline "Fathers of the constitution". None of the female MdPR, of whom two belonged to the SPD, one to the CDU and one to the Z, was identified as a proponent of equality for women. The four women are profiled below because their profiles have not yet been juxtaposed in the literature on women and the Basic Law. Such juxtaposition is important for a better understanding of the public debate about full equality.

Three of the women represented North Rhine Westphalian constituents, a reflection of the size and industrialization of the *Land*. The oldest, Dr. Helene Weber (1881-1962), a teacher by training, was a CDU delegate.[33] Weber had already participated in the formulation of the constitution of the Weimar Republic, as a Centre-Party member of the National Assembly in 1919, one of three members of the later Parliamentary Council to have done so. Between 1921-1924 Weber was an MP in the Prussian parliament and in the *Reichstag* from 1924-1933. Weber was the only woman of the four in the Parliamentary Council who could look back on political experience on the national level as well as ministerial experience from before the war. Weber was appointed as the first female head of a section in the Prussian Ministry for Welfare in 1920, heading the section *Soziale Ausbildung und Jugendfragen*. She was later appointed as ministerial adviser on youth care in the Prussian Ministry of Education and Cultural Affairs. She was dismissed from this post by the National Socialists for 'political unreliability' in 1933. In rare recognition of her work, the University of Münster awarded her an honorary doctorate (Dr. rer. pol. h. c.) in 1930. In 1927 Weber also became a member of her faction's *Reichstag* executive committee. Along with the majority of her

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[31] For example, the Deutsche Wählergesellschaft took this view in its New Year's greeting to the MdPR, 27 December 1948, in PA, Sammlung Selbert, file 27.
[32] 29 August 1948, in HHStA, 622-1 Familie de Chapeaurouge, U286; and 25 September 1948, in HHStA, Staatliche Pressestelle V, I c I d, Parlamentarischer Rat in Bonn.
[33] R. Morsey, 'Helene Weber (1881-1962)', in *Zeitgeschichte in Lebensbildern*, vol. III, *Aus dem deutschen Katholizismus des 19. und 20. Jahrhunderts* edited by J. Aretz *et al.* (Mainz, 1979), pp. 223-234.

party, Weber voted in favour of the Enabling Act in 1933, although she had argued against doing so in party discussions beforehand.[34]

After the war, Weber was appointed to the first state parliament in Düsseldorf in 1946 by the British and to the Zonal Advisory Council of the British Zone in 1947. However, she was not elected to the state parliament in 1947, and Rudolf Morsey suggests that her selection for the Parliamentary Council was probably the result of an initiative of Dr. Konrad Adenauer.[35] A vociferous Catholic in the Parliamentary Council, Weber was a proponent of the guarantee of *Elternrecht* in the Basic Law. Her efforts in the Parliamentary Council were acknowledged by Dr. Roland Chaput de Saintonge, the British Military Government Liaison Officer to the Parliamentary Council, in May 1949, in his 'Notes and Commentary on the Basic Law; with a History of the Council and Notes on its Members' addressed to Sir Christopher Steel, Political Adviser to the Control Commission for Germany (British Element) in Berlin.[36] Chaput de Saintonge wrote,

> "Her chief interest in, and main contribution to, the work of the Parliamentary Council lay in the problems connected with the rights of women and the churches. She talked at length on these subjects both in the Basic Questions Committee, of which she was a member, and at meetings of the Main Committee when the relevant articles were under discussion. On the rights of women she spoke well, though in the opinion of other women members, not sufficiently seriously, but when, towards the end of the work of the Main Committee, she had to take over from [Adolf] Süsterhenn (who was injured in a car accident) the task of ensuring the inclusion in the Basic Law of the cultural provisions desired by the Church, she was practically ignored by the male members of the Council."

Helene Wessel (1898-1969), a Z MdPR for North Rhine Westphalia, had also been active in politics before the Nazi seizure of power. A trained social worker, Wessel was an MP in the Prussian parliament 1928-1933. After the war she resumed her political career first as an appointed and then as an elected MP in the North Rhine Westphalian parliament.[37] Unlike Weber, Wessel decided not to join the new CDU but to remain an MP for the Z because she felt better able to achieve her social policies in this party. Partly because of the small size of the post-war Z but also in light of her experience, Wessel was

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[34] Ibid., p. 229.
[35] Ibid., p. 232.
[36] 10 May 1949, in R. Pommerin, 'Die Mitglieder des Parlamentarischen Rates. Portraitskizzen des britischen Verbindungsoffiziers Chaput de Saintonge', in *VfZ* 36 (1988), pp. 557-588 (p. 586). Chaput de Saintonge's full document, in PRO, FO, 371/76660, and in BA, Kl. E. 792/3.
[37] E. Friese, 'Helene Wessel (1898-1969)', in *Zeitgeschichte in Lebensbildern*, vol. VIII, *Aus dem deutschen Katholizismus des 19. und 20. Jahrhunderts* edited by J. Aretz *et al.* (Mainz, 1997), pp. 107-122.

one of the few women in post-war Germany to play a prominent role in a political party. She was one of two deputy chairs of the party (1945-1949) before being elected to its chair in October 1949. In 1952, however, Wessel left the Z in opposition to Adenauer's rearmament plans, and eventually joined the SPD in 1957. Chaput de Saintonge noted, "as was the case with the other women members, she concerned herself largely with cultural questions."[38] Wessel, like Weber, was very concerned to see *Elternrecht* guaranteed in the constitution and felt that the eventual formulation of the Basic Law was inadequate on this point. She therefore voted against the constitution in May 1949.

The third female representative for North Rhine Westphalia in the Parliamentary Council was Friederike (Frieda) Nadig (1897-1970) of the SPD, also a social worker by training.[39] She was dismissed from her post as a social worker in Bielefeld for 'political unreliability' by the National Socialists in May 1933. Nadig was a member of the provincial *Landtag* of Westfalen 1929-1933, and was first appointed and then elected as an MP in the NRW parliament 1946-1950, as well as serving on the Zonal Advisory Council of the British Zone from 1947. Chaput de Saintonge believed her contribution to the work of the Parliamentary Council was limited despite her membership of the Basic Questions Committee. "The only occasions on which she spoke were when questions concerning the rights of parents and children arose."[40] Chaput de Saintonge is rather harsh in his judgement of Nadig. Yet Nadig was initially hesitant about pressing for full equality for women in the constitution unlike her SPD colleague Dr. Elisabeth Selbert. Agreeing in principle, Nadig was worried by the legal problems which would arise from the need to rewrite the *BGB* but was persuaded to introduce the SPD motion in the second reading in the Basic Questions Committee. (See below, p. 264.)

The fourth was the lawyer, Dr. Elisabeth Selbert (1896-1986), of the SPD, chosen to represent Lower Saxony in the Parliamentary Council despite being a member of the

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[38] Pommerin, p. 586.
[39] Notz, pp. 54-79; *PR. A&P*, V/I, p. xiv.
[40] Pommerin, p. 578.

Hessian parliament at the time.[41] Selbert joined the SPD in 1918 and was active in Kassel politics but did not hold state or national office before the war.[42] Married, with two small children, she went back to school to do her *Abitur* in 1926, studied law and gained her doctorate and professional qualifications in her early thirties. In her doctorate on marriage break-up as grounds for divorce, Selbert condemned the *BGB*'s determination of the inferior status of women in marriage. Unlike her NRW colleagues in the British zone, Selbert had experience of seeing the formulation of a constitution to a successful conclusion after the war as one of the drafters of the Hessian constitution in 1946. Article 1 laid down: "All persons are equal before the law without regard to their sex, race, origin, and religious or political conviction."[43] This article provided for constitutional equality but did not bind the legislature to reform family law, which discriminated against women. Selbert, it would seem, had not yet fully recognized the possibility of guaranteeing absolutely full equality for women, which she pursued with such vigour in Bonn in 1948/9.[44] As mentioned earlier, none of the *Länder* constitutions formulated in 1946/7 provided for full equality. As with all the *Länder* of the British zone, deliberations on the NRW constitution began at a later date and continued whilst the Parliamentary Council was in session. The constitution was eventually promulgated in 1950. These deliberations gave the NRW representatives, male and female, experience of constitutional debate and helped shape their positions in Bonn, which, in turn, later moulded their opinions in the state debates 1949-1950.[45]

In the Parliamentary Council, Selbert was a member of the Committee for the Constitutional Court and Administration of Justice, subject matter about which she was very knowledgeable as a consequence of her experience as a lawyer. However, she is

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[41] Selbert's selection for Bonn assembly, in *'Ein Glücksfall für die Demokratie'. Elisabeth Selbert*, pp. 88-89. Cf. similar arrangement, in which Dr. Hermann Schäfer was selected to represent Lower Saxony and not Hamburg, in H. Stubbe-da Luz, 'Für Niedersachsen im Parlamentarischen Rat: Der Hamburger Hermann Schäfer/ FDP', in Erdmann, H. (ed.), *Drei Hamburger im Parlamentarischen Rat: Adolph Schönfelder und Paul de Chapeaurouge, Hermann Schäfer* (Hamburg, 1999), pp. 101-114 (p. 103).

[42] Notz, pp. 80-110 (p. 81).

[43] Text of Hessian constitution, 29 October 1946, in *Die Entstehung der Hessischen Verfassung von 1946. Eine Dokumentation* edited and introduced by H. Berding and K. Lange (Wiesbaden, 1996), pp. xlii-lvi. The constitution came into effect on 1 December 1946.

[44] *'Ein Glücksfall für die Demokratie'. Elisabeth Selbert*, pp. 84-86.

[45] B. van Schewick, *Die katholische Kirche und die Entstehung der Verfassungen im Westdeutschland 1945-1950* (Mainz, 1980), p. 49; Pfetsch, pp. 446-449 (p. 446).

now best remembered for her insistence on full equality for women in the Main Committee. This is partly because of the momentous milestone article 3, paragraph 2, of the Basic Law, "Men and women shall have equal rights" marked, partly because of efforts made in the 1980s and 1990s to write the histories of the women of the post-war period, which were seen to have been neglected up until then.[46] At the time, her stance and achievement were already the subject of press attention. (See below, pp. 263-280.) Her contribution was recognized by Chaput de Saintonge,

> "Her principal contribution to the work of the Council was in the Basic Questions Committee and, as a reserve member, in the Main Committee where she delivered impassioned speeches on the rights of women and cultural questions. She is a highly intelligent person and it is unfortunate that her manner of address is poor."[47]

Selbert's demand for equal rights was also very much her party's demand. Already in 1891 August Bebel's *Die Frau und der Sozialismus* had called for the radical transformation of the existing social order to secure professional, legal and political equality for women. In 1891 the SPD's Erfurt programme called for suffrage to be extended to all state citizens regardless of their sex.[48] In 1919 Juchacz had called for the Weimar constitution to provide for the same rights for men and women. (See above, pp. 250-251.) After World War II this demand was articulated with even greater force, a product of the wider desire to distinguish the post-war constitutional order from its predecessor and of the recognition of the outdated nature of the legal framework. These beliefs were clearly expressed by Prof. Ludwig Bergsträsser (1883-1960) on 21 September 1948 in one of the first sessions of the Basic Questions Committee. He remarked,

> "After the experiences of the Hitler years, it seems necessary to state the principle of equality explicitly. It is probably also necessary to highlight especially the legal equality of women and men, since there still exist a whole series of legal regulations and common law, which have not drawn the consequences of this principle yet."[49]

Whilst Chaput de Saintonge noted differences amongst the female delegates on the question of full equality, the press did not do so explicitly. Selbert and, to a lesser

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[46] For example, *Frauen in der Geschichte*, vol. V, *'Das Schicksal Deutschlands liegt in der Hand seiner Frauen'. Frauen in der deutschen Nachkriegsgeschichte* edited by A.-E. Freier and A. Kuhn (Düsseldorf, 1984).
[47] Pommerin, p. 583.
[48] Frevert, *Women in German History*, pp. 140-141.
[49] *PR. A&P*, V/I, p. 51.

extent, Nadig were generally mentioned in conjunction with the question of full equality but Weber was rarely cited and Wessel not at all. This was indicative of the assessment by the press as a whole of the protagonists of the debate, with the number of references generally corresponding to the ardour with which full equality was demanded. There was some variation between the left- and right-leaning press. The latter cited Weber slightly more frequently, a reflection of its sympathy with the CDU and its only female delegate. However, the press citations also reflected the membership of the Parliamentary Council's committees: Nadig and Weber were members of the Basic Questions Committee, the body which first debated the catalogue of basic rights. Selbert, on the other hand, was a reserve member of the Main Committee, which subsequently debated the catalogue in sessions open to the public. The impression of Paul de Chapeaurouge, a CDU MdPR from Hamburg, written in 1949, that the women "were all filled with the endeavour that, for God's sake, one of them did not leave the other three behind in the representation of women's rights", is inaccurate.[50] Some of the women were more active than others in the campaign to secure full equality in the constitution. It is though, an interesting reflection of the opinion of one of the minor conservative delegates in Bonn.

Neglect of women's rights in studies of the Parliamentary Council

Women and the provision for full equality in the Basic Law feature only in a limited fashion, if at all, in historical studies on the constitution and the beginnings of the Federal Republic.[51] The most significant study of interest groups and the Parliamentary Council by Werner Sörgel does not include a chapter on women whilst incorporating chapters on civil servants, the judiciary, municipalities, churches, trade unions, employers, and refugees.[52] Most research into women and the Federal Republic's constitution is to be found in specialized studies on women's history. Comparisons across time, that is with the formulation processes of earlier German constitutions, on the

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[50] Paul de Chapeaurouge, *Bonner Eindrücke* (1949), unpublished manuscript, in HHStA, 622-1 Familie de Chapeaurouge, U326, p. 14.

[51] An exception is the analysis of the coverage of women's participation in politics by the *Westfälische Rundschau* 1945-1949 by J. Beyer and E. Holtmann, '"Auch die Frau soll politisch denken' – oder "Die Bildung des Herzens". Frauen und Frauenbild in der Kommunalpolitik der frühen Nachkriegszeit 1945-1950', in *Archiv für Sozialgeschichte* 25 (1985), pp. 385-419 (pp. 398-403).

[52] W. Sörgel, *Konsensus und Interessen: Eine Studie zur Entstehung des Grundgesetzes* (Opladen, 1985), p. 92. Cf. chapter I, pp. 21-22.

question of women and the constitution, tend also to be limited to specialized works on constitutional history.[53] Frequently, references to women and the Basic Law note the public calls made for the provision of full equality without comparing these initiatives, say, to the efforts undertaken by the churches for the anchoring of *Elternrecht* in the constitution. Such comparison provides a context for the extent and nature of both efforts, and allows for a more accurate assessment of the effectiveness of each, and consequently a better understanding of both. A more just perspective on the debate on full equality will only be reached when it is seen in its proper contemporary context of parallel debates on other topics.

Antje Späth was one of the first to look at the "rege öffentliche Diskussion um die Gleichberechtigung".[54] Späth builds her case upon Selbert's pronouncement in the Main Committee that

> "should this formulation of the article ['Men and women have equal rights.'] be rejected again today, then I can tell you that in the entire public those women in positions of influence will express their opinion on this and in such a fashion that the acceptance of the constitution is perhaps in danger."[55]

Späth argues that once the formulation was rejected, Selbert called upon those women whom she estimated to be in positions of influence, such as trade unionists, women's organizations, members of parliament, and journalists to help her in her effort to secure a constitutional guarantee of full equality. Apparently this led to "a wave of indignation in the press and public" in support of Selbert.[56] Späth characterizes these efforts of Selbert as a "mobilization" of the female public but she does not provide much evidence.[57] More evidence of a 'mobilization' is given by Heike Drummer and Jutta Zwilling in their

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[53] For broader international historical context of this debate, see, for example, S. Reynolds, 'Lateness, Amnesia and Unfinished Business: Gender and Democracy in Twentieth-Century Europe', in *European History Quarterly* 32/1 (2002), pp. 85-109; and K. Offen, *European Feminisms 1700-1950: A Political History* (Stanford, CA, 2000).

[54] A. Späth, 'Vielfältige Forderungen nach Gleichberechtigung und 'nur' ein Ergebnis: Artikel 3 Absatz 2', in *Frauen in der Geschichte*, vol. V, *'Das Schicksal Deutschlands liegt in der Hand seiner Frauen'. Frauen in der deutschen Nachkriegsgeschichte* edited by A.-E. Freier and A. Kuhn (Düsseldorf, 1984), pp. 122-167 (p. 141).

[55] Ibid., p. 138; Selbert, 3 December 1948, in *Parlamentarischer Rat. Verhandlungen des Hauptausschusses. Bonn 1948-1949* (Bonn, [1950]), p. 206.

[56] Späth, p. 140.

[57] Ibid., p. 149.

biography of Selbert (1999), which will be discussed further below.[58] Despite these shortcomings, however, Späth's article is one of the few pieces which has given more than passing attention to the subject and it has opened the way to attempts to situate the debate on equality within the wider constitutional debate of 1948/9.

Späth's initiative was broadened by Barbara Böttger in 1990.[59] Böttger set out to write a history of the anchoring of the provision for full equality for women in the Basic Law. She includes a biographical exploration of Selbert's career and surveys earlier stages in the struggle for women's equality.[60] After making a brief acknowledgement that most letters sent to the Bonn assembly were written on the subject of *Elternrecht*,[61] Böttger begins to consider the debate in the press but then concentrates on the letters of submission on the question of full equality.[62] Whilst the thorough exploration of the letters and their authors is in itself to be welcomed, Böttger tends to overstate their impact and neglect the role of the press.

A leading, subsequent exploration of the debate about the provision of full equality is Robert Moeller's lengthy chapter on 'Gender and the Basic Law', in which he examines the discussion about the special protection of the family, and analyses contemporary views on the role of women.[63] Moeller made full use of the Federal Archive's collection of letters of submission to the Parliamentary Council. Yet he neglects to compare the letters written on the question of full equality with those on other subjects and does not explore the debate that took place in the press. Therefore his conclusions appear to be more tentative. The first substantial profile of Nadig was written by Gisela Notz in her new study (2003) of the female SPD delegates in the Parliamentary

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[58] H. Drummer and J. Zwilling, 'Elisabeth Selbert. Eine Biographie', in *'Ein Glücksfall für die Demokratie'. Elisabeth Selbert (1896-1986)*, pp. 9-160 (pp. 98-100).
[59] B. Böttger, *Das Recht auf Gleichheit und Differenz. Elisabeth Selbert und der Kampf der Frauen um Art. 3 II Grundgesetz* (Münster, 1990), pp. 160-237.
[60] Ibid., pp. 16-122, for historical background.
[61] Ibid., p. 193.
[62] Ibid., p. 194 (footnote 95) consulted some private papers to which she had access, which included "letters of submission, letters, carbon copies of replies and newspaper clippings" but does not seem to have consulted (p. 312) PA, Sammlung Selbert, File 27. This is a small collection of letters, newspaper clippings and proposals for the Parliamentary Council compiled by Selbert (but only sent to the archive in 1974). It contains nothing on the question of full equality for women.
[63] Moeller, pp. 38-75.

Council and in the *Bundestag* 1948-1957.[64] A collection of essays, which includes Drummer's and Zwilling's profile of Selbert, published in 1999 on the fiftieth anniversary of article 3, paragraph 2, remains the most up-to-date and detailed examination of Selbert's life and the equality debate.[65] A great variety of sources was consulted, and attention paid to the debate as it was influenced by letters of submission and the press. Nevertheless, little comparison was made with other contentious subjects which preoccupied the Parliamentary Council in its deliberations.

Press: reaction or initiation?

Initially, no attention was given by the press to the interests of particular sections of German society when reporting upon the deliberations of the Parliamentary Council beyond a newspaper addressing itself to a particular regional or political readership. (See chapter I on organization of the press, pp. 24-33.) In the early coverage of the deliberations in September and October, basic rights and the provision of equality were not linked explicitly, or indeed implicitly, to women. The press simply did not elaborate on the question of equality as it might apply to women. The Military Governors left unspecified the nature of the basic rights that the future constitution was to guarantee in the Frankfurt Documents on 1 July 1948 and in their memorandum to the Parliamentary Council on 22 November 1948.[66] No reference was made to women's equality by the Western Allies.[67] The position of women in Great Britain, France and the United States was itself not as equal as it might be, particularly in law; indeed, France had only given women the right to vote in 1944.[68]

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[64] Notz on Nadig, pp. 54-79; on Selbert, pp. 80-110.

[65] Hessische Landesregierung (ed.), *'Ein Glücksfall für die Demokratie'. Elisabeth Selbert (1896-1986). Die große Anwältin der Gleichberecht-igung* (Frankfurt/M., 1999).

[66] Frankfurt Document I, in *Documents on Germany under Occupation 1945-1954* edited by B. Ruhm von Oppen (London, 1955), pp. 315-316; Document II, p. 316; Document III, pp. 316-318. Memorandum from Military Governors to Parliamentary Council, in ibid., pp. 343-345.

[67] The question of Allied democratization policy *vis à vis* German women has barely been addressed. Exceptions are H.-J. Rupieper, 'Bringing Democracy to the Frauleins: Frauen als Zielgruppe der amerikanischen Demokratisierungspolitik in Deutschland 1945-1952', in *Geschichte und Gesellschaft*17/1 (1991), pp. 61-91; R. Boehling, '"Mütter" in der Politik: Amerikanische Demokratisierungsbemühungen nach 1945', in *Geschichte und Gesellschaft* XIX/4 (1993), pp. 522-529.

[68] In much of post-war Europe, women only enjoyed juridical equality at this time, in G. Eley, *Forging Democracy. The History of the Left in Europe, 1850-2000* (Oxford, 2002), pp. 299-328 (pp. 320-328).

When the Parliamentary Council began its deliberations on 1 September 1948, responsibility for the formulation of a first draft of the catalogue of basic rights, which included the question of full equality, was given to the Basic Questions Committee. Its sessions were closed to the public and press, which partly explains the limited attention given to the subject of equality by the press. After publication of the catalogue of basic rights drawn up during the first reading in the Basic Questions Committee,[69] several newspapers began to complain about the absence of a constitutional guarantee of *Elternrecht*.[70] No mention was made of the provision for only limited equality along the lines of the Weimar constitution in the draft.[71] The papers had to be prompted by the SPD's argument to complain about this failure to include full equality. Both the press and the public needed to be made aware of the demand for the provision of full equality for women in the constitution and brought to express their opinion on the issue. In the second reading in the Basic Questions Committee on 30 November, Nadig proposed the SPD formulation 'men and women have equal rights'.[72] In spite of her and Bergsträsser's vigorous efforts, the proposed formulation was rejected. Instead the Committee opted for 'Men and women have the same civil rights and duties'.[73] Before the Basic Questions Committee had completed its work, the first reading of the catalogue of basic rights began in the Main Committee on 3 December. Here Selbert, a reserve committee member, argued passionately for the SPD formulation 'men and women have equal rights'.[74] The sessions of the Main Committee were public; consequently the debate in the press and public could begin in earnest.

From now on the debate inside the Parliamentary Council would be influenced by the debate outside it. The SPD proposal was rejected in the Main Committee on 3 December by 11 votes to 9. The Basic Questions Committee stuck to its earlier rejection of the SPD proposal on 11 January.[75] It was only after the Parliamentary Council had

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[69] 18 October 1948, in *PR. A&P*, V/I, pp. 333-340.
[70] See, for example, CDU-leaning *Aachener Volkszeitung*, 13 November 1948.
[71] *PR. A&P*, V/I, p. 338.
[72] *PR. A&P*, V/II, p. 738.
[73] Ibid., p. 749.
[74] *Parlamentarischer Rat. Verhandlungen des Hauptausschusses. Bonn 1948-1949* (Bonn, [1950]), pp. 206-209.
[75] *PR. A&P*, V/II, p. 928 and p. 955.

received numerous letters of submission over the New Year from women demanding full equality (see below, pp. 281-285) and the lively debate in the press had forced some of the parties to rethink their positions that agreement was reached in the second reading of the Main Committee held on 18 January.[76] Committee members voted unanimously for the formulation 'Men and women have equal rights'. A second sentence proposed by the CDU/CSU that 'Legislation must put this into practice in all areas of the law' was passed by 20 votes with one abstention. The article was shortened to the first sentence only by the Editing Committee, and subsequently passed unanimously in the third and fourth readings of the constitution in the Main Committee.[77]

The provision of full equality was barely mentioned in the second and third readings in the Plenum on 6 and 8 May.[78] Wessel welcomed article 3, paragraph 2 and the revision of the *BGB*, as did Seebohm.[79] Weber, once again, suggested that the difference between the factions over the question of equality had been one of formulation, not substance.[80] This, in turn, was again refuted by Nadig, who reminded the delegates on the right of the chamber that they had rejected the SPD motion in its first reading in the Main Committee.[81] Its chief proponent, Selbert, did not speak on the subject in the Plenum: the battle had by then already been won. Full equality was eventually enshrined in article 3, paragraph 2 of the Basic Law on 23 May 1949.

Wary of what had happened under the Weimar constitution, Selbert strove to ensure that the *BGB* was revised in accordance with the constitutional provision for equality. The SPD proposed that the *BGB* be brought into line with the provision for full equality by 31 March 1953 and that this be stipulated in the Basic Law.[82] (It was not specified by whom this was to be done.) The Conservative factions in the Bonn assembly initially opposed this too. In the Basic Questions Committee, Dr. Thomas Dehler (FDP),

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[76] Ibid., pp. 538-544.
[77] 8 February and 5 May 1949, in ibid., p. 613 and p. 745.
[78] *PR. A&P*, IX, pp. 429-502 (pp. 433-503) and pp. 504-630 (pp. 517-617).
[79] 8 May 1949, in ibid., p. 555 and p. 565 respectively.
[80] Ibid., p. 569.
[81] Ibid., p. 584.
[82] Selbert's attempt to bring forward the deadline for changing the *BGB* even further to 31 March 1951 was rejected. Organization Committee, 13 January 1949, in *PR. A&P*, XIII/II, pp. 1064-1066.

for example, objected to the SPD's proposal 'men and women have equal rights' because this would make the *BGB* unconstitutional.[83] On 14 January Dr. Adolf Süsterhenn (CDU) again raised concerns and suggested that the lawmakers be put under an obligation to revise the law by 1953.[84] This the SPD argued was inadequate, since lawmakers could not be forced to adhere to an obligation. The Committee was persuaded and on 14 January voted in favour of Selbert's proposal.[85] Eventually article 117, paragraph 1, one of the transitional and concluding provisions of the constitution, read "Law which conflicts with paragraph 2 of Art. 3 shall remain in force until adapted to that provision of this Basic Law, but not beyond 31 March 1953." Lawmakers did not succeed in rewriting the *BGB* by 1 April 1953. Since several courts hesitated in their application of the new principle, the Federal Constitutional Court ruled on 18 December 1953 that article 3, paragraph 2 was a legal norm and not just a statement of intent.[86] Full equality thereby became immediately effective in law. Nonetheless, it was only with the Equal Rights Law of 18 June 1957, which came into force on 1 July 1958, that many of the male prerogatives in civil law against which women had protested in 1948/9 were finally abolished.[87]

Press reports captured and portrayed the positions of the parties at particular points in time and transmitted them to the public, sometimes creating the impression that these positions were hard and fast ones. In his later commentary on the deliberations in Bonn, Prof. Hermann von Mangoldt (CDU), chair of the Basic Questions Committee, argued that the public nature of the committee's sessions contributed to the determination of the results.[88]

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[83] 30 November 1948, in *PR. A&P*, V/II, p. 748.
[84] *Parlamentarischer Rat. Verhandlungen des Hauptausschusses*, pp. 487-488.
[85] Ibid., p. 488.
[86] W. Rüfner, 'Art. 3, Abs. 2 & 3', in *Bonner Kommentar*, second edition (HH, 1964-), pp. 199-346 (p. 233).
[87] *Bundesgesetzblatt* I, pp. 609-640. Cf. Nadig's fight in the *Bundestag* for the *BGB* to be revised according to the Basic Law, in Notz, pp. 68-74.
[88] *Das Bonner Grundgesetz* commented upon by H. von Mangoldt, first edition (Berlin and Frankfurt/M., 1953), p. 17. Cf. concern expressed by von Mangoldt during the deliberations, in 'Zum Beruf unserer Zeit für die Verfassungsgebung. Grundsätzliches zu den Bonner Verfassungsarbeiten', in *Die Öffentliche Verwaltung* 1/2 (Nov. 1948), pp. 51-53 (p. 52).

> "As much as this decision [to hold the meetings in public] was to be welcomed in the interests of the publicity of the constitutional work, it would have been advisable temporarily to exclude the public when one or other question was under discussion."

When the public response to the course of the deliberations was not what the CDU/CSU had expected, the party decried the influence of the press, arguing that it did not allow for the evolution of thinking on constitutional questions. As will be seen below, however, this was also a means of masking the incongruity between the demand of many women for full equality and the CDU/CSU's hesitancy in according this right.

The *Hessische Nachrichten*, which had no party allegiance like most newspapers published in the American zone, was one of the first to report upon the debate over full equality, doing so already in November. The paper had presumably been informed of Selbert's and the SPD's intention to introduce a proposal for full equality by Selbert or the SPD organization, perhaps a consequence of Selbert's Hessian connections. Its headline "Full equality for women. An SPD motion with far-reaching implications in Bonn" was followed by a brief item noting Selbert's proposal.[89] It believed that, if introduced, this article would represent a "fundamental change" because the equality of women would have then to be guaranteed in all spheres of the state. This, it continued,

> "would represent an enormous step forward, since full equality had not been achieved under the Weimar constitution nor the Hessian one or any other constitution [since the *BGB* had not been rewritten] and would provide for **the woman having the same power of decision in marriage as the man** [*sic.*]."

The same paper reported a fortnight later, again with special emphasis, that the SPD motion for full equality had been rejected by eleven votes to nine in the Main Committee.[90]

The debate on the question of equality in the Main Committee at the beginning of December was noted by several papers from across the political spectrum without comment.[91] After citing the result of the vote (11 against, 9 for), the above-party *Allgemeine Zeitung*, published in the French zone, reported on Selbert's proposed

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[89] 20 November 1948.
[90] 4 December 1948.
[91] See, for example, SPD-oriented *Nordwestdeutsche Rundschau* or CSU-oriented *Münchner Merkur*, 4 and 6 December 1948 respectively.

introduction of equal rights for men and women and the changes to the *BGB* which this would entail. In an article on the Main Committee's reading of the basic rights, the CDU-leaning *Frankfurter Neue Presse* noted the rejection of Selbert's proposal, which would have meant that "certainly those women, who felt disadvantaged by the laws governing marriage in force up to now, would have been satisfied."[92] The independent *Lüneburger Landeszeitung*, published in the British zone, remarked upon the "particularly lively discussion on the status of women", but observed that women and men had only been accorded the same civil rights and duties, not full equality.[93] The SPD-oriented *Rhein Echo* announced "No obligatory military service. Bonn does not want to recognize equality" in its headline.[94] The Communist *Niedersächsische Volksstimme* reported that the "bourgeois majority" (CDU, CSU, FDP) had resolutely rejected the SPD proposal for full equality.[95] Other papers, including some SPD-oriented ones, merely noted the results amongst others in reports of the reading of the catalogue of basic rights.

The SPD-oriented *Rheinische Zeitung*'s headline suggested disapproval of the Main Committee's decision not to guarantee women full equality "Women not to enjoy equal rights?", and seemed to ask for an outraged reaction from its readership.[96] The article remarked on the strong divergence of opinion on the question of full equality for women: the SPD proposal that women and men enjoy the same civil rights was passed with a narrow majority but the CDU/CSU, FDP, DP, and Z succeeded in rejecting the SPD proposal on the equal status of women in law with 11 votes to nine. The article reported that SPD delegates had asserted that the last word had not been spoken on the subject. The SPD-oriented *Hannoversche Presse* echoed this and cited the SPD intention "instead ... to appeal to women's organizations of all political persuasions to the effect that they win recognition for their demand for full equality."[97] In the Committee, Selbert herself had announced on 3 December:

> "should this formulation of the article ['Men and women have equal rights.'] be rejected again today, then I can tell you that in the entire public those women in positions of influence will express

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[92] 6 December 1948.
[93] 6 December 1948.
[94] 7 December 1948.
[95] 8 December 1948. Cf. Communist *Norddeutsches Echo*, 9 December 1948.
[96] 6 December 1948.
[97] 7 December 1948.

> their opinion on this and in such a fashion that the acceptance of the constitution is perhaps in danger."[98]

This threat was translated into practice, as is clear from the letters of submission sent to the Parliamentary Council and in some later press reports. To ensure that women were informed about what was at stake, Selbert enlisted the support of female editors, journalists, and trade unionists, as well as holding lectures herself on the subject of equality in Hamburg, Munich and Frankfurt, where she encouraged her audience to make their views known in Bonn.[99] Through these activities the public was mobilized over the New Year.

Shortly after the debate in the Main Committee, the *Neue Zeitung*, published by the American Military Government and without any political leaning, printed a longer article on the question of full equality under the headline "Reform of laws governing marriage".[100] It began by noting that many of the constitutional debates on subjects such as the status of the second chamber or the nature of the financial organization did not touch the average citizen directly.

> "The 'man and woman on the street' only feel addressed when they become directly aware of the connection between the political topic [under discussion] and daily life."

Such a connection was made, so the article continued, in the Main Committee's discussion of the status of women.

> "The excitedness of the discussion [in the PR] was caused by the closeness to life of the problem – just that closeness to life, which produces a response in the broadest public – and by the far-reaching significance of the SPD proposal."

The article set out the laws which would require changing if full equality were introduced, particularly in civil law and on women's status in marriage. It concluded,

> "the contradiction with the present lies in the fact that the legal form of an outdated epoch is still in force, whilst its material content passed away with that very epoch. This has led to the incomprehensible situation for a large part of the population, above all for women."

This last sentence especially, and the article as a whole, suggested sympathy with the demand for full equality.

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[98] *Parlamentarischer Rat. Verhandlungen des Hauptausschusses*, p. 206.
[99] Hessische Landesregierung, p. 99.
[100] 8 December 1948, in Späth, p. 142.

The US-zone *Weser Kurier*, published in Bremen, outlined in some detail the "lively debates" on the status of the illegitimate child and equality for women, including the CDU/CSU and the SPD positions on both issues. Yet it chose to print the article under the headline "The rights of the illegitimate child. Debates about the protection of the family in the Basic Law", suggesting which debate it regarded as more important or more likely to appeal to its readers.[101] This article also indicates the extent to which the protection of the nuclear family and the status of women were linked for many at the time. This link was not one made by the press alone; some MdPR made similar connections, as did representatives of the churches.[102]

The CDU-oriented *Westfalen Zeitung* objected to the manner in which the debates had been reported so far.[103] Under the headline "Distorted reporting slanders CDU: about equality for women. Her rights in the coming federal constitution", the article reported on what it regarded as the distorted reporting by the SPD press of the CDU's stance. In its view, the SPD press had incorrectly portrayed the CDU as opposed to the equality of women. In fact, the article stated, the CDU did support equality as was made clear by the faction's support for the following formulation

> "(1) All persons are equal before the law. The law must treat the equal equally; it can treat the different according to their peculiarities. However, the basic rights must not be infringed. (2) Men and women have the same civil rights and duties."

The article particularly underlined that the CDU faction's belief that this was adequate had persuaded Weber not to press for the inclusion of a paragraph on the status of women in civil law. The report, however, demonstrates the confusion, perhaps wilful on the part of some, surrounding the status of women and the impact of any change in the law. The report did not, as the CDU faction did not, fully realize the inadequacy of the cited proposed formulation, which failed to guarantee full equality. That special reference is made to Weber, as the female CDU delegate, almost in the form of a blessing for the proposed formulation, is interesting. It implies an understanding of the equality question

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[101] 9 December 1948.
[102] For the Catholic Church and the 'family', see L. Rölli-Alkemper, *Familie im Wiederaufbau. Katholizismus und bürgerliches Familienideal in der Bundesrepublik Deutschland 1945-1965* (Paderborn, 2000), pp. 536-560; and Moeller, pp. 61-75.
[103] 11 December 1948, in Späth, p. 154.

as one only for women rather than for the population as a whole. The article also suggests why the other women felt that Weber did not speak sufficiently seriously on the question of equality, as Chaput de Saintonge remarked,[104] namely, that she did not fully grasp the issue.

With the provocative headline "Must someone be master in the home? A woman is fighting for the equality of women in Bonn", the above-party *Westdeutsche Zeitung* introduced a long piece on the debate over equality for women.[105] After a brief profile of Selbert, it summarized the reading in the Main Committee and labelled the 11:9 defeat of the SPD proposal for the guarantee of full equality "sensational".[106] The article, the paper informed the reader, was based partly on the statements made by Selbert in the committee meeting, partly on material provided by Selbert to the paper. Presumably, Selbert supplied such material to several newspapers, if not personally, then through the SPD organization. The press transmitted the information in the form of articles on the question of equality, and the public was alerted to the debate and the SPD position. Evidently, Selbert employed the press to put her case and reach a wider audience. It is clear that her tactic was effective.

The *Westdeutsche Zeitung* reminded the male MdPR that they had the female majority of the population to thank for their mandate. (In fact this was true at one remove: the members of the Parliamentary Council were selected by the *Landtage*, which had been directly elected. See chapter I, pp. 13-14.) The article also repeated Selbert's warning, made in the Main Committee on 3 December, that women would in the last instance decide on the acceptance of the Basic Law if it were to come to a referendum.[107] A constitution which did not guarantee full equality would be unacceptable for women, the article concluded. Evidently, this warning resonated, as the subsequent change in the CDU/CSU and FDP positions makes clear.

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[104] Pommerin, p. 586.
[105] 13 December 1948.
[106] Cf. KPD-oriented *Hamburger Echo*, 16 December 1948, in HHStA, Staatliche Pressestelle V, I c I d; SPD *Neuer Vorwärts*, 18 December 1948.
[107] *Parlamentarischer Rat. Verhandlungen des Hauptausschusses*, p. 207.

The *Rheinische Zeitung* demonstrated its continuing sympathy with the demand for full equality by setting out the case made by the SPD in one of the longest articles on the subject.[108] With the challenging headline "Women demand reform of the law – Should men have more rights than women?", the report made clear the need for change, particularly against the background of the demographic effects of the war. The article invited its female readership to make its voice heard:

> "because the legal position of a woman is always a reflection of her position in society and the state, women should join those representatives of their sex, who are fighting in the very front rank for the political and legal equality of women with men."

Further, the report concluded,

> "women should make their influence felt through the political parties, so that a large number of female MPs can look after their rights in the future *Bundestag*. In Social Democracy, it will be in the future as it has been in the past: men and women have equal rights – even with regard to their numerical representation in their parliamentary parties."

This was a noble aim, which was not yet reality in any political party in 1948.

It is interesting to note in this context that Wessel, in her speech upon the Main Committee's decision to accept Selbert's formulation on 18 January, proposed the introduction of an electoral mechanism that would ensure that "women were represented according to their number and abilities, which they had after all shown in political life since 1919...."[109] Her proposal for a quota system was not, however, taken up. A quota system was also demanded by Hildegard Krüger, a ministerial adviser in the Interior Ministry in Kiel, in a letter to the Parliamentary Council in February.[110] Krüger argued that the Basic Law should stipulate that each sex should make up at least a third of the members of all public decision-making bodies at *Bund*, *Länder*, and communal level, in order to guarantee the "participation of women in public life". She cited Control Council Law 18 (14 March 1946), art. 2 (b), which stipulated that each housing committee

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[108] 15 December 1948, in Späth, pp. 143-144.

[109] *Parlamentarischer Rat. Verhandlungen des Hauptausschusses*, p. 542. Cf. proposal made by Maria Deku (1901-1983), CSU member of the Bavarian constitutional assembly, for introduction of a quota for the number of women in the Bavarian Senate in 1946, but which was rejected, in Fait, pp. 278-283. Cf. Discussion of women and electoral systems in *Frankfurter Neue Presse*, 29 March 1949.

[110] 14 February 1949, EN4063 and EN4096, in BA, Z5/114. A letter of submission signed by Annegret Neumann *et al.*, Hamburg, was sent to the Parliamentary Council subsequently in support of Krüger's proposal, 11 April 1949, EN5001, in BA, Z5/115.

include at least one woman among its members, as precendent and attached the signatures of several other women in support of her case.[111]

In a similar vein to the earlier piece in the *Westfalen Zeitung*, another major CDU-leaning newspaper, the *Allgemeine Kölnische Rundschau*, published an article by Weber entitled 'On Equality for Women'.[112] Weber wrote that the CDU did support equality for women, something which she felt had been secured in the Weimar constitution. Perhaps Weber was sensitive on this point since she too had been one of the formulators of the Weimar constitution. Weber then cited the CDU/CSU formulation that 'Men and women have the same civil rights and duties', which together with the sentence 'No one may be prejudiced or favoured on account of his sex', Weber argued, illustrated CDU/CSU support for equality. She continued, "a curious propaganda has suddenly arisen after the SPD decision to introduce the motion 'Men and women have equal rights' in the Main Committee." It was wrong to argue that only the SPD supported the rights of women as certain articles had done, she concluded, since the CDU/CSU had only rejected the SPD motion because they felt that women's equality was adequately secured by the CDU/CSU formulation cited above.

In the same edition and clearly to be read in conjunction with Weber's article, the *Allgemeine Kölnische Rundschau* reported on the CDU/CSU faction's decision to submit the proposal "Men and women have the same rights and duties. Legislation must put this into practice in all areas of the law" to quash doubts and misunderstandings about its position on the question of equality.[113] This, the small article remarked, should serve "to cut the ground from under some propagandist assertions". In common with most of the articles cited, no author is given. Hence it is not entirely clear against whom these remarks were directed, whether towards the left-leaning press and/or the SPD and KPD factions in the Bonn assembly. Yet the proposal was still not the endorsement of full equality demanded by Selbert and others. It is unclear whether the article was another

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[111] Control Council legislation, in Federal Research Division, Library of Congress, http://www.loc.gov/rr/frd/Military_Law/Enactments/03LAW18.pdf (last accessed 7 July 2004).
[112] 15 December 1948, in HHStA, 622-1 Familie de Chapeaurouge, U286.
[113] 15 December 1948.

example of the failure to understand the issue or the product of opposition to full equality for women, a possibility not to be ruled out with this CDU-leaning paper with close connections to the Catholic Church. It was probably a mixture of both, as might also be said of Weber's position.

The *Allgemeine Kölnische Rundschau* and *Westfalen Zeitung*'s sentiments on the "distorted reporting" by the SPD press as well as its reports of the CDU/CSU's views on the SPD argument, echo the CDU/CSU faction's reiteration of its position in a *Drucksache* to the assembly earlier in December:

> "The SPD press and Radio Stuttgart have now brought a coverage of events [in the Main Committee], which was totally misleading, for they have claimed that the CDU voted against equality. This news was spread about everywhere and has led to great confusion. ... It is the CDU's intention to find a formulation with the other factions, on which all can agree."[114]

This is clear evidence of how the press influenced the debate in the Parliamentary Council. The attempts of Selbert and the SPD to initiate debate on the question of full equality in the press had been successful. The SPD's success was indirectly acknowledged by the CDU/CSU in this *Drucksache*. The SPD had sought to influence the debate using the press, and the CDU/CSU faction was forced to counter this process, again using the press.

"Afraid of equal rights? – Women's questions are the subject of deliberations in Bonn".[115] Under this headline, the report in the SPD-oriented *Hannoversche Presse* was very much in sympathy with Selbert's demand for full equality and dismissive of those who feared the legal chaos that full equality would allegedly bring. It was particularly dismissive of the other parties in the Parliamentary Council, their fear of equal rights, and their "cheap argument". Against the background of women's lives and work during and after the war, any claim that women should not be accorded full equality with men because they were not equal did not hold water, according to the *Hannoversche Presse*. "Of course, it would be an enormous venture to change the *BGB* from scratch...", the article concluded,

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[114] Drucksache 372, 8 December 1948, in *PR. A&P*, V/II, p. 778, and in PA, PR Drucksachen III.
[115] 18 December 1948, in Späth, pp. 144-145.

> "but it is nevertheless a task, which women must demand be done, after so much courage and independence and sense of responsibility were demanded from them in bitter years – and were given."

Perhaps this is an example of one of the articles that so piqued the other factions in the constitutional assembly, notably the CDU/CSU, with the characterization of their argument as "cheap". Unwittingly perhaps, the article implied, however, that the change of the *BGB* must be demanded of men, presumably because men were in the majority in the Parliamentary Council as well as amongst the lawyers likely to reformulate the *BGB* rather than because such a reformulation could only be undertaken by men.

The press informed its readers of the exact wording of the proposed catalogue of basic rights as it stood after its first reading in the Main Committee over Christmas. It was published by the *Süddeutsche Zeitung*, for example, to allow its readers to form an opinion and prepare themselves for a referendum early in the New Year.[116] In January 1949, some newspapers began to note the letters sent to the Parliamentary Council in support of full equality. The *Norddeutsches Echo*, a KPD newspaper, published an open letter from Maria Moritz (KPD), MP in the Hessian parliament and therefore a colleague of Selbert, addressed to all female delegates of the Western parliaments (in Germany), in which she argued in favour of full equality and demanded their support for Selbert's efforts.[117] The letter tried to mobilize members of the *Landtage* against the conservative arguments in Bonn. Whilst Moritz' letter was addressed to politicians, the *Norddeutsches Echo* asked in a postscript to the letter whether the question really was one just for politicians, "Does this not interest every woman and every organization? And does it not depend on their efforts too?" This postscript sounds very much like the call to action on behalf of full equality by those in positions of influence, in this case journalists, which Selbert had announced in December.[118]

In a similar vein, the Z-leaning *Neuer Westfälischer Kurier* reported but did not comment upon the letter of submission sent by the Frauenring of the British Zone to

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[116] 25 December 1948, in HHStA, Staatliche Pressestelle V, I c I d.
[117] 6 January 1949, in Späth, pp. 145-146.
[118] Cf. Hessische Landesregierung, p. 99.

Bonn protesting at the result of the vote in the first reading in the Main Committee.[119] The Frauenring, the article continued, was in favour of Selbert's formulation 'Men and women have equal rights'. The lack of comment on the part of the *Neuer Westfälischer Kurier* reflects the Z's lack of a clear stance on the question of full equality. Instead the party concentrated on securing a guarantee of *Elternrecht* in the Basic Law. This brief report and others were based on a dpd bulletin. The bulletin was not, it would seem, expanded upon by many papers.[120] The regulation of the emergency powers of the government in the Main Committee received more coverage that day.

"Indivisible equal rights": the headline of an article in the independent Socialist *Telegraf* made clear the views of its author and one of the *Telegraf*'s editors, Annedore Leber (1904-1968).[121] Leber, who had been active in the resistance in the Third Reich, was now an SPD member of the Berlin parliament.[122] In her view, it was either full equality or no equality. Leber argued that this debate needed to be conducted in an objective (*sachlich*) and unpolemical fashion, and laid out the arguments in favour.[123] She rejected outright the argument that a legal chaos would ensue if full equality were introduced, observing that Selbert was herself a lawyer and had proposed that the current laws remain in force until the *BGB* had been revised. Very pragmatically and just like Selbert in Bonn, Leber insisted that the change in principle had to be anchored in the constitution to ensure that the *BGB* was amended since it would not otherwise be done. She concluded that German women were entitled to expect that there was no further delay in the change in their status.

The *Neue Zeitung*, published by the American Military Government and without any political leaning, addressed what it believed women would gain or lose under full equality in its article "Equal rights for women? Bonn debates advantages and legal ramifications".[124] The article began by noting that few of the problems which the

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[119] 12 January 1949.
[120] See SPD-oriented *Rheinische Zeitung*, 12 January 1949.
[121] 11 January 1949.
[122] *Wer ist Wer? 1100 Kurzbiographien aus Politik, Wirtschaft und Kultur* (Berlin, 1948), p. 139.
[123] Cf. chapter II, pp. 65-69.
[124] 13 January 1949, in Späth, pp. 154-157.

Parliamentary Council had to solve were being discussed "with the passion with which the question of full equality was being debated by the public". The MdPR, it continued, were being "showered" by letters on the issue. (See below, p. 281.) Both these observations were acknowledgments of the vigour of public debate on the question of full equality. Yet without engaging with this broader debate in the population, the result perhaps of its author's conservative attitude, the article proceeded to set out the reservations held by the lawyers in the Parliamentary Council. They feared that a total vacuum would be created once the *BGB* was invalidated through the full equality provision in the Basic Law. That Selbert was a lawyer too was not mentioned. The article concluded by citing Weber's proposal. Whereas in December the *Neue Zeitung* had remarked upon the incongruity of nineteenth-century laws with mid-twentieth-century realities, the tone of January's article and the detail with which the concerns were set out suggested sympathy on the part of the article with the presented point of view of the male lawyers and the conservative factions in the Parliamentary Council.

The SPD-oriented *Aachener Nachrichten* was one of the first to report on the decision taken to revise the *BGB* in the second reading in the Main Committee on 14 January.[125] A few days later, the CDU-oriented *Frankfurter Neue Presse* reported on the Main Committee's decision on 18 January to provide for full equality, describing the formulation at which the delegates arrived in its subtitle as "a compromise formula" between the SPD and CDU.[126] It read, "Men and women have equal rights. Legislation has to implement this in all areas of the law", with provision made for change of the *BGB* by 1953.[127] The Communist *Neue Volkszeitung* acknowledged the Main Committee's decision without much comment.[128] Yet it noted that despite the insistence of Renner (KPD MdPR and an editor of the *Neue Volkszeitung*) that the protocol include the statement that men and women receive equal pay, the Main Committee had opted not to stipulate this in the Basic Law.[129]

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[125] 15 January 1949.
[126] 19 January 1949.
[127] *Parlamentarischer Rat. Verhandlungen des Hauptausschusses*, p. 544.
[128] 19 January 1949.
[129] *Parlamentarischer Rat. Verhandlungen des Hauptausschusses*, pp. 541-544.

The SPD-oriented *Rheinische Zeitung* juxtaposed *Elternrecht* and full equality for women as the issues on which the Parliamentary Council was receiving numerous letters of submission.[130] (Renner had made the same association in the Main Committee a day earlier.) Interestingly, the article remarked that the letters sent in favour of the anchoring of *Elternrecht* in the constitution were "almost identical in formulation, which suggests that they were an organized statement of opinion by organizations", whilst it repeated, without questioning, Selbert's statement to the Main Committee on 18 January that "the public response to the question of this basic right [full equality for women] was not artificially generated".[131] The uncritical stance towards the letters sent by women in support of an SPD demand alongside the critical attitude towards the letters in favour of the guarantee of *Elternrecht* in the Basic Law, which the SPD opposed, reflected the paper's SPD allegiance. After noting the Main Committee's decision, the *Rheinische Zeitung* cited Schmid's assurance that this meant equal pay for equal work too.[132] The SPD-leaning paper quoted Schmid whilst the KPD-leaning paper cited Renner. The party line seems to have been a constant determining factor in these press reports. Several papers just reported the results with little detail on the debate in the Main Committee.[133]

"A revolutionary act" was how Else Reventlow (1897-1984) described the Main Committee's decision in January to guarantee legal, civil and social equality for women in the new German constitution.[134] Her newspaper article, one of the few pieces signed by a woman, was printed on 5 February by the *Süddeutsche Zeitung*, published in the US zone and without any party affiliation.[135] In December, Reventlow had written to the Parliamentary Council on behalf of the above-party and inter-denominational Süddeutscher Frauenarbeitskreis, Munich, to demand that the formulation "Men and women have the same civil rights and duties" be included in the Basic Law.[136] (See

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[130] 19 January 1949.
[131] *Parlamentarischer Rat. Verhandlungen des Hauptausschusses*, p. 539.
[132] Ibid., p. 543.
[133] See, for example, French-zone *West Echo*, US-zone *Stuttgarter Zeitung* or *Neue Zeitung*, 20 January 1949.
[134] Teacher and journalist, daughter-in-law of Franziska Gräfin zu Reventlow. Joined SPD in 1918; 1933-1945 emigration; 1946-1953 active in Süddeutscher Frauenarbeitskreis, Munich; 1945-1948 correspondent for *Neue Zeitung*; 1949-1951 commentator for Bayerischer Rundfunk.
[135] 5 February 1949.
[136] 18 December 1948, EN1191, in BA, Z5/111.

below, p. 284.) The piece in the *Süddeutsche Zeitung* was less ambiguous in its advocacy of full equality for women. Under the heading "Reform of the statute-book in favour of women", Reventlow explained exactly which paragraphs of the *BGB*, in particular those relating to family law (paragraphs 1297-1921), required amendment. Although their discrete articles are very pragmatic in tone and content, it is clear that Leber and Reventlow both felt strongly about the question of full equality. Both were women in positions of influence, such as Selbert sought to mobilize, and both tried to persuade the public and politicians of the importance of guaranteeing full equality in the Basic Law.

The above-party *Hessische Nachrichten* reported at the end of January on the progress of the debate on full equality for women.[137] Since the paper's publication of an article in late December on the rejection of Selbert's demand by the CDU, the CDU faction in the Parliamentary Council had changed its mind, and many women had written to the newspaper expressing their support for Selbert's demand. Some of these letters to the newspaper were then reproduced, without further commentary. One letter questioned why women were in the minority in the Parliamentary Council whilst being in the majority in the population. (See above, pp. 251-252.) The letters strongly expressed their authors' expectation that full equality be introduced in the Basic Law, particularly in light of women's experiences during the war and the occupation period.

The US-zone *Weser Kurier* took a different line and addressed head-on one of the contradictions in German post-war politics, namely the discrepancy between the number of women in the population and the number of women in politics.[138] Whilst not rejecting women's demand for full equality, the article argued

> "the matter-of-course nature of the demand for women's equal rights is unfortunately called into question by the passivity of German women themselves."

Women, so the article continued, had to participate in politics since this was what full equality entailed. The *Weser Kurier* also introduced an economic context:

> "politics ... intervenes deeply in the life of every individual, it does not distinguish between man and woman in its effects: to seek to influence the course of politics is neither a pastime nor an urge for recognition for women – rather it is the instinct for self-preservation."

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[137] 24 January 1949, in Späth, pp. 146-148.
[138] 7 February 1949, in ibid., pp. 148-149.

Participation on the part of women in politics was thus necessary in light of the poor economic circumstances in which Germany found itself after the Third Reich. Rather than seeking to understand what it labelled the "passivity of German women", the article berated women for not engaging in politics more actively. It was not alone: most of the coverage of the Parliamentary Council's deliberations did not consider the reasons why women might *not* have engaged themselves in political activity in the immediate post-war years in large numbers, such as the difficulties of survival, especially the time and energy required to secure food and shelter.[139] These difficulties probably explain why female reaction to the circumstances did not, in the majority of cases, extend beyond the "complaining in a queue for the fishmonger's", which the *Weser Kurier* regarded as so inadequate.[140] Yet the difficulties of survival decreased after the currency reform of June 1948, as food became more readily available. By this stage, however, it has been argued, rather more Conservative structures had been re-imposed in politics.[141]

Little was made of the provision for full equality for women in the final assessments of the strengths and weaknesses of the Basic Law in the press in May 1949. This was perhaps surprising. To some extent this probably reflected the lack of any substantial comment on its introduction in the final readings of the Basic Law in the Plenum. (See above, p. 265.) For many journalists, however, the question of full equality was not the most important aspect of the new constitution even though the majority of the population was female. Of far greater importance was the re-introduction of a democratic order, which would allow West Germany to regain full sovereignty eventually, although it could be argued that full democracy depended on the equal rights of all its citizens. The lack of comment on equality in the final assessments of the Basic Law echoes the lack of publicly voiced expectation that full equality for women be introduced at the beginning of the Parliamentary Council's deliberations. Perhaps too, it once again reflects the largely male media world 'voicing' expectations at the beginning and the same largely male assessments of the eventual provisional constitution.

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[139] Möding, p. 621. Yet note Kuhn's rejection of Möding's argument, p. 42.
[140] 7 February 1949, in Späth, p. 149.
[141] Kuhn, p. 45.

Letters of submission

It is difficult to determine the number of women whose opinions were being expressed and transmitted to the Parliamentary Council on the subject of equality, probably several thousand women. Almost all of the roughly 50 surviving letters in the Federal Archive's collection of letters of submission were written on behalf of women's organizations.[142] Apart from letters of support, there were also letters of submission which advocated the inclusion of Selbert's formulation. Letters demanding full equality were not only addressed to the assembly as a whole but also to the female delegates individually. Nadig commented in the Basic Questions Committee on the "infinite number of letters" she had received,

> "according to which it was the explicit statement in the Weimar constitution that women have fundamentally the same civil rights and duties, which is felt to be a special obstacle [to full equality]."[143]

Similarly, the *Neue Zeitung* remarked in January that the delegates in Bonn were being "showered" by letters on this issue.[144] These letters of submission do not seem to have survived. The fifty surviving letters still represent a considerable sum compared with the number who wrote to express their opinion on other subjects. Nevertheless, far more letters of submission were addressed to the Parliamentary Council on the question of the new symbol for the West German state and whether *Elternrecht* should be guaranteed in the Basic Law.[145] Certainly more *individuals* wrote to the Parliamentary Council on the design of the flag, and more *organizations* on the subject of *Elternrecht.*

It is necessary to question the degree to which the letters expressed the views of women at large. The number of women interested in the constitution was almost the same as the number who said they did not care in an opinion poll conducted in March 1949. 48% of women replied that they did not care about the future constitution, 32% that they

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[142] The letter from the KPD Essen, Women's Section, is unusual in its clear statement that it was written after a KPD housewives' meeting attended by 300 women, 17 December 1948, EN733, in BA, Z5/111.
[143] 30 November 1948, in *PR. A & P*, V/II, p. 748. *PR. A&P*, which is usually a very reliable guide, does not give a footnote with an indication of the continued existence of these letters.
[144] 13 January 1949, in Späth, pp. 154-157.
[145] See chapters II and V, pp. 75-88 and pp. 232-244.

were fairly interested, 12% that they were very interested, and 8% were undecided.[146] For men, the percentages were 31, 35, 31 and 3 respectively. Selbert suspected that many women were not interested in the formulation of the Basic Law as a whole, but were concerned about the specific question of full equality, something which is borne out by the letters of submission.[147] No opinion poll asked about attitudes to full equality. The authors of several letters on the subject claimed to be speaking on behalf of women as a whole. No letters were written to express their author's opposition to full equality for women. None referred to developments in the Soviet zone of occupation, which is perhaps surprising, given that such comparisons were frequently made on other topics. However, MdPR also made few such comparisons; if they were made, it tended to be in discussions on whether to include a guarantee of equal pay for equal work.[148]

Most of the early letters of submission to the Parliamentary Council on the subject were a direct response to and vigorous protest against the Main Committee's decision to reject Selbert's motion in the first reading in December 1948, as it had been reported in the media. For example, the Frauenring, Hanover, demanded equal status for women in politics and in law and "lodged the strongest objection to the threat of restriction [of equality] reported by the press."[149] The Überparteilicher Frauenring, Siegerland, protested at the "intended reduction in the legal status of women."[150]

Subsequent letters from female MPs of the various state parliaments demanded the formulation put forward by Selbert that men and women have equal rights. The female MPs of the Lower Saxon *Landtag* included four copies for the four female MdPR

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[146] E. Noelle and E.P. Neumann, *Jahrbuch der öffentlichen Meinung 1947-1955* (Allensbach am Bodensee, 1956), p. 157. Cf. OMGUS noted that only 36% of Germans in the US zone of occupation had indicated an interest in politics in May 1949. Further, "about four in ten (39%) were aware of the fact that the Parliamentary Council had drawn up a constitution for the Federal Republic, and less than half of these (17%) claimed any knowledge of its provisions." Report 191 (9 December 1949), in A.J. and R.L. Merritt, *Public Opinion in Occupied Germany: The OMGUS Surveys 1945-1949* (Urbana, 1970), pp. 314-317.
[147] 18 January 1949, in *Parlamentarischer Rat. Verhandlungen des Hauptausschusses*, pp. 539-540.
[148] See, for example, Nadig on 30 November and 1 December 1948, in *PR. A&P*, V/II, p. 752 and p. 778 respectively; and Renner on 18 January 1949, in *Parlamentarischer Rat. Verhandlungen des Hauptausschusses*, pp. 541-542.
[149] 14 December 1948, EN633, in BA, Z5/95.
[150] 7 December 1948, EN592, in BA, Z5/95. Cf. telegram from Heidelberg Frauenverein, 17 December 1948, EN657, in BA, Z5/110.

to make sure that each pressed the case for full equality.[151] The female members of the Hamburg Parliament argued for full equality "out of responsibility to their electorate."[152] Another letter insisting on Selbert's formulation was signed by the female MPs from all parties of the North Rhine Westphalian parliament, suggesting that in their view it was not a party issue but rather one of fundamental rights for women.[153]

Speaking on the public response to her proposal for full equality in the Main Committee on 18 January, Selbert named some of the women's organizations which had written in support of her proposal.[154] She remarked that letters had come from "all the female MPs of all the *Landtage* with the exception of Bavaria". (Unsure whether Bavaria had any female MPs, although Weber assured her there were some, Selbert stated that Bavarian women had obviously not made a move.) Selbert's speech was motivated by several considerations. She wanted to thank the authors of the letters publicly. She needed to drive home to her male colleagues the extent and breadth of the public support for her proposal for full equality. Finally and most importantly, it was another attempt to secure the unambiguous formulation 'Men and women have equal rights' put forward by the SPD. This formulation was favoured by the majority of letters on the issue and was also, in the words of the Frauenring of the British zone, which Selbert cited, "the clearest formulation, which excluded any misunderstandings, and which could be understood by everybody." On this occasion Selbert was successful: the proposed formulation was accepted unanimously by the Main Committee, although a second sentence, put forward by the CDU/CSU, read 'Legislation must put this into practice in all areas of the law'.[155] (See above, pp. 264-265.)

Several letters stated explicitly that they were written on behalf of organizations which included women of different political persuasions and religious confessions, even

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[151] 29 December 1948, EN712, in BA, Z5/96.
[152] 10 January 1949, EN1316, in BA, Z5/111.
[153] No letter number given, 13 January 1949, in BA, Z5/97.
[154] *Parlamentarischer Rat. Verhandlungen des Hauptausschusses*, p. 540.
[155] Ibid., p. 544.

different classes.[156] This was probably done in the belief that it strengthened their argument in favour of full equality, by making clear that equality was an issue which united women across the political, religious, economic and social spectra. Nevertheless there were differences in the demands made. The letter from the above-party and inter-denominational Süddeutscher Frauenarbeitskreis, Nürnberg, for example, was not only one of the few to draw attention explicitly to the fact that women were in the majority but was also one of a minority which favoured the formulation "Men and women have the same civil rights and duties" put forward by the CDU in December.[157] Else Reventlow (see above, p. 278), on behalf of the above-party and interdenominational Süddeutscher Frauenarbeitskreis, Munich, concurred and cited a similar letter from the Frauenverband Hessen.[158] The vast majority of letters of submission, however, supported Selbert's formulation and were from women's organizations to the left of the political spectrum.

Just as Selbert had declared on 3 December that "in my wildest dreams I did not expect this proposal [for full equality] to be rejected in the Basic Questions Committee",[159] many women expressed amazement that even in 1948/9, the Parliamentary Council's delegates were not prepared to give formal recognition to the full equality of women. This sentiment was articulated very forcefully by Dorothea Groener-Geyer, head of a women's organization in North Württemberg.[160] She was shocked that the motion for full equality was rejected.

> "The bourgeois parties, which rejected the motion, have thereby demonstrated the degree to which they are backward-looking, and trapped in their own world, which does not correspond with the truth and reality. Since Stalingrad, there has de facto been no area of life anymore, in which we German women have been protected from want, misery and poverty by the actions of men. ... The rejection of the provision for the equality of women in the basic rights is de facto a belittlement and an adherence to the '*Herr-im-Hause*' complex, which must fill us women with heavy seriousness and deep concern...."

To cite another example, all the members of the Gemeinschaft der Künstlerinnen und Kunstfreunde 'Gedok', Hamburg, believed that

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[156] For example, letter of submission from Arbeitsgemeinschaft Frauenringe der Französischen Besatzungszone, 9 January 1949, EN1344, in BA, Z5/111.
[157] 21 December 1948, EN742, in BA, Z5/111.
[158] 18 December 1948, EN1191, in BA, Z5/111.
[159] *Parlamentarischer Rat. Verhandlungen des Hauptausschusses*, p. 206.
[160] 2 January 1949, EN1190, in BA, Z5/111. Supplement to earlier telegram, 17 December 1948, EN633, in BA, Z5/110. Cf. further telegram from Dorothea Groener-Geyer and Anna Haag, Stuttgart, 17 December 1948, EN658, in BA, Z5/110.

> "our time does not allow any more for doing without the sustaining and binding powers of women in the shaping of public things and the creation of a true popular culture."[161]

Whilst expressing surprise about the rejection of full equality in 1948, a letter from the Women's Secretariat of the Free Federation of Trade Unions Hessen, Frankfurt, also signalled awareness that full equality on paper would not immediately translate into full equality in practice.[162] It read,

> "even though we as working women know only too well that equality is not secured for us through one paragraph alone, and that we shall still have to fight for equality in practice in all spheres, whether economic or political, we were nevertheless astonished that there are still members in the Parliamentary Council, who reject equality as a matter of form."

It was out of the related concern that equality in theory would not necessarily translate into equality in practice in the political sphere, that Wessel advocated the introduction of a quota system in January and Krüger subsequently sent a letter of submission to this effect. (See above, p. 272.) The Mütterkollegium, Berlin-Frohenau, also made a pertinent point about women in politics in its letter in favour of full equality.[163] It observed,

> "...[in light of the fact] that in the most confused and difficult times in Berlin, a woman [Schroeder] was called upon to assume the office of Mayor, and that she proved herself quite capable in office, it is inconceivable and incomprehensible that in Bonn one could begin to formulate a constitution without embodying equality for women in it as a matter of course."

Conclusion

Separate data for male and female voter turnout on the national level at federal elections are only available from 1953 onwards.[164] Data for some cities and *Länder*, in which separate data were compiled, indicate that on the whole more men than women voted in the first federal election in August 1949 though the difference in the number of votes cast per hundred electors was not substantial.[165] Of the 402 members of the first *Bundestag*, only 27 or 7% were female.[166] The number of women amongst the SPD's members of the *Bundestag* was only slightly higher at 9.6%.[167] The relatively high electoral turnout of 78.5% in August 1949 suggests some degree of satisfaction with the Basic Law amongst the majority of the population, that is including women, although the

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[161] 15 January 1949, EN2037, in BA, Z5/97.
[162] 15 December 1948, EN727, in BA, Z5/96.
[163] 12 February 1949, EN4101, in BA, Z5/115.
[164] E. Kolinsky, *Women in Contemporary Germany: Life, Work and Politics* (Oxford, 1993), p. 195.
[165] Bremme, pp. 240-242.
[166] Notz, p. 36.
[167] Ibid., p. 50.

turnout was higher in 1953 with 83.2%.[168] The relationship between votes cast and engagement in politics is, of course, not easy to determine but casting a vote does not sit easily with a wholly apathetic attitude to politics.

The debate in the press mirrored the debate between the parties/political persuasions. Relatively early in the debate it became clear that those on the left of the political spectrum favoured full equality for women whilst those on the right objected to full equality. The greater the ties to the church, especially the Catholic Church, the lesser the enthusiasm for full equality. For Conservatives and those with closer links to the church, full equality for women threatened the framework of marriage and hence the family. This pattern can also be identified in the letters sent to the Bonn assembly. The letters which came out most strongly in support of Selbert's proposal were written by women on the left of the political spectrum. Yet, unlike on the question of *Elternrecht*, for example, the opponents of the proposal did not write to the Parliamentary Council. Perhaps the opponents of full equality realized that there was little to gain and much to lose from voicing their opposition openly, as the CDU/CSU came to realize during the course of the Council's deliberations.

On the whole, the press coverage of the debate on equality followed the chronology of the deliberations of the Parliamentary Council. The press only called for full equality to be guaranteed in the Basic Law once this demand had been put forward by the SPD in the Bonn assembly. By reporting on the issue, the press contributed to a dialogue between the Council and the public. The press fostered debate, both within the Parliamentary Council and between the assembly and the population. The parties within the assembly, most notably, the CDU/CSU, did react to the press coverage (amongst other things, which included Selbert's persistence as well as the firmness of the SPD and KPD on the subject) and eventually agreed to full equality.

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[168] C. Kleßmann, *Die doppelte Staatsgründung: Deutsche Geschichte 1945-1955*, fifth edition (Bonn, 1991), p. 437.

For the debate about the guarantee of *Elternrecht* in the Basic Law, van Schewick is able to cite correspondence between church representative Böhler and the editors of various newspapers as evidence of the efforts of the Catholic Church and, to a lesser degree, the Protestant churches to 'mobilize' lay organizations and the press on behalf of their case for the securing of *Elternrecht* in the constitution.[169] Such correspondence does not exist on the question of full equality. Consequently, it is more difficult to establish the extent to which the press and women were 'mobilized' by Selbert or the SPD.

Much of the evidence indicates that such a 'mobilization' took place: evidence ranging from the nature of some of the newspaper articles, to the formulation of some of the letters of submission. 'Mobilization' of the public, particularly of women, was certainly threatened by Selbert and some of her colleagues. There is a close chronological link between Selbert's threat(s) and the publication of articles in favour of full equality in the press. There is also a link, however, between the amount of attention devoted to the issue in the Parliamentary Council and the amount of attention given to it in the press and it seems likely that the debate and the expression of opinions on this topic in the press would have increased anyway as a consequence. Arguably, the press can only be 'mobilized' if there is already an interest in the subject, and the possibility of swaying parts of the other party has already been identified and is underway. Conclusive evidence of a direct 'mobilization' of the press remains to be found. The same can be said of the letters written to the Parliamentary Council. However, the very similar formulation of the letters, particularly of those from women's organizations on the left of the political spectrum, suggests some pattern was followed, despite Selbert's denial.

Späth's assessment that the interest of the public was "strikingly great" and its influence decisive on the question of full legal and civil equality for women in comparison with all other deliberations of the Parliamentary Council is only partially accurate.[170] There was much interest in the subject of full equality for women in the press and in the letters of submission sent to the Bonn assembly but not more than on, say, the

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[169] Van Schewick, p. 73 and p. 79.
[170] Späth, p. 160.

question of the flag or the guarantee of *Elternrecht* in the Basic Law. Certainly many more letters have survived on the latter two topics. More attention was also paid to the question of *Elternrecht* in the press. Yet this was partly because the question of the anchoring of *Elternrecht* in the constitution was debated over a longer period of time and was never fully settled to the satisfaction of either side.

On the question of full equality for women, however, the public interest expressed in the press and letters of submission did exert an important and decisive influence. The characterization of the CDU/CSU faction as reactionary, even if only by implication, by the left-leaning press piqued the CDU/CSU faction and its supporters in the press.[171] Selbert's reminder that women were in the majority in the population and her warning that they could easily reject any Basic Law which did not meet their wishes resounded and led the CDU/CSU to reconsider its position. Dr. Walter Strauß (CDU/CSU) remarked in the Main Committee that his faction had mistakenly seen the question of equal rights for women too much from the juridical and too little from the political angle.[172] The political consequences of Selbert's warning had been determined largely by the press, however, which had taken up and publicized the debate. Particularly in light of the documented disregard in which some of the Parliamentary Council's delegates like Prof. Theodor Heuss held letters of submission, it is arguable that the newspapers' portrayal and involvement in the debate played a more significant role than the letters sent to the Parliamentary Council, numerous and unusual in number and authorship though they were.[173] Clearly, however, without the public interest expressed in both the press and letters on the question, evidence of a growing public commitment to democracy, full equality would not have been guaranteed in the Basic Law.

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[171] Cf. CDU-oriented *Westfalen Zeitung*'s objection to the manner in which the debates had been reported by the SPD press, 11 December 1948, in Späth, p. 154.
[172] 18 January 1949, in *Parlamentarischer Rat. Verhandlungen des Hauptausschusses*, p. 538.
[173] See chapter II, pp. 59-60, on Heuss' attitude to letters of submission.

Chapter VII - Conclusion

What has become clear is that substantial public debate took place in West Germany during the formulation of the Basic Law in 1948/9. The public debate focussed on issues of particular concern to sections of the population, such as *Elternrecht*, and did not cover all the topics debated within the Parliamentary Council. Questions of citizenship or the creation of a Constitutional Court, for example, barely featured in the public debate, and other topics, such as the head of state, were discussed from very particular vantage points, in this case the desire for a *Persönlichkeit* above the political fray. Public debate is inherently selective in its choice of foci and, by adopting a 'bottom-up' approach, this thesis has focussed on those topics which most aroused popular engagement in the formulation of the Basic Law. The public debate carried out in the mass media and in the thousands of letters of submission sent to Bonn influenced the debate on many of the most contentious topics in the Parliamentary Council and, in some cases, notably on establishing full equality, its influence was decisive for the course of the deliberations.

Germans faced fundamental challenges in a society in transition from dictatorship to democracy. Unavoidably, the constitutional debate was very much shaped by the conditions in which it was conducted: defeat, total surrender, occupation and the consequent lack of sovereignty, in a divided country with an undefined future. All these factors, as well as the Parliamentary Council's lack of a direct popular mandate, set the formulation of the Basic Law apart from its predecessors in 1848/9, 1867/71 and 1919. Nonetheless, even in the difficult conditions which still prevailed in 1948/9, the extent of the public debate is indicated by the breadth of opinion expressed in the media and letters of submission sent to Bonn. In 1948 the recent past gave Germans the shared objective of preventing by all means possible a recurrence of a National Socialist dictatorship. This was a common starting point and an integrating factor in the public debate, however widely opinions on the democratic parliamentary West German state to be created diverged subsequently.

Experience of the demise of the Weimar Republic and the establishment of the Third Reich, as well as the perceived reasons for the fall of the former and the rise of the latter, figured prominently in the debate, explicitly and implicitly shaping views on the Basic Law and the West German state it was to create. This engagement with the past was especially marked in discussions of the federal structure, when both those advocating greater power for the *Länder* and those favouring more power for the *Bund* sought to ground their arguments in their own interpretations of the past. Not only was the substance of the public debate shaped by the past, so too was its style and presentation, with *Sachlichkeit* a key desideratum. This applies equally to the press coverage of the debate and to the letters of submission.

One of the most visible aspects of post-war German society for contemporaries, namely women's majority in the population, which had led contemporaries to speak of a 'Stunde der Frauen', did not itself obviously shape the broader public debate in 1948/9. The prominent and decisive role played by women in the discussion about full equality was specific to that debate. Grateful for the interest shown in the question of full equality, Dr. Elisabeth Selbert, the leading champion of women's rights in Bonn, nevertheless regretted that women's organizations had not expressed their opinions on other key issues facing the Council.[1] Overall, fewer women than men wrote to the Parliamentary Council, although numerous Catholic women's organizations wrote to demand that *Elternrecht* be guaranteed in the Basic Law, just as several female teachers' organizations wrote to object to such a guarantee. As one would expect, men dominated the debate in the press.

A more significant contemporary factor was the widespread desire to mark a new beginning, evident, for example, in the calls for an *invocatio dei* and *Elternrecht*. This desire to distinguish the new West German state from its past can be linked to the perception of a caesura in 1945.[2] Belief in the depth of this caesura was underlined by the Parliamentary Council when it chose to hold the final reading of the Basic Law four years

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[1] 18 January 1949, in *Parlamentarischer Rat. Verhandlungen des Hauptausschusses. Bonn 1948-1949* (Bonn, [1950]), pp. 539-540.

[2] Cf. A. Doering-Manteuffel, 'Deutsche Zeitgeschichte nach 1945. Entwicklung und Problemlagen der historischen Forschung zur Nachkriegszeit', in *VfZ* 41/1 (1993), pp. 1-29 (pp. 24-25).

to the day after Germany's unconditional surrender on 8 May 1949. Belief in the caesura functioned not only to distance West Germans from their National Socialist past, it also allowed them to differentiate the state being created West of the Elbe from the Communist dictatorship being established in the Soviet zone of occupation.

Developments in the Soviet zone of occupation were frequently held up as warning for developments in the West. The conditions in which the deliberations in the People's Congress were taking place were contrasted with those in the Bonn assembly, as were the nature of the deliberations and the public debate itself. Newspapers often referred to the Soviet-German interaction in the Eastern zone when expressing their views on the Allied-German exchange in the three Western zones, generally doing so when arguing in favour of less intervention by the Western powers. If, in the debate about the federal set-up, the opponent's position could not be weakened with reference to the past (for example, Hitler's centralizing policies), attempts were made to undermine it by comparisons with the Soviet zone (for example, the SED's centralizing tendencies). Analogous arguments were presented by those in favour of the Basic Law being founded on God: this would distinguish the West German state from its Eastern neighbour and from atheist Communism in general.

Turning now to the map of the whole public debate, it is very clear that the design of the flag and the question of the guarantee of *Elternrecht* in the Basic Law were the topics that most aroused the public's attention. Both were emotive issues, relatively easy to understand for a people not versed in constitutional law. Both were also familiar, since both topics had been contested in the Weimar Republic, if not earlier. West Germans were therefore 'practised' on these topics, as were the Churches and teaching organizations on the question of *Elternrecht*, which doubtless contributed to the scale of the response. However, whilst on the question of *Elternrecht* there was substantial press coverage and considerable involvement of organized interest groups, this was not the case on the design of the symbol for the new Germany. It attracted more letters of submission and fewer press reports than most other topics under discussion during the

formulation of the Basic Law, demonstrating direct popular engagement in the debate and a willingness to express opinions to the assembly in Bonn.

The impact of the letters of submission and the press upon the deliberations in Bonn varied. Clearly, letters written by established interest groups and well-known individuals, or individuals in relevant professions, were considered more seriously than letters written by otherwise unknown authors or groups. The contrast is obvious when comparing the responses to the letters of submission on the subject of a guarantee of *Elternrecht*, which were written by various Church and teachers' organizations, both in favour and against, with the letters written by individuals on the subject of the design of the flag. The letters calling for a federal guarantee of *Elternrecht* helped persuade the CDU/CSU to introduce a motion to this effect in the Basic Questions Committee, and subsequently to push for its inclusion in the Main Committee. The letters on the design of the flag, however, did not influence the opinions of the MdPR. The debate on *Elternrecht* also illustrates another point: even a huge number of letters written with the support or at the instigation of the Churches could fail to achieve their objective if a majority of members in the relevant Council committees refused to accede to the demands made. In this case neither the SPD, FDP and KPD factions, nor their supporters in the press and public, were willing to countenance a guarantee of *Elternrecht* in the Basic Law. The authority exercised by the Churches over West German politicians and people in the immediate post-war period had reached its limit.

Obviously, newspapers played an important part in the public debate 1948/9, prompting, shaping, broadening, and refining the discussions. The press both reflected and made opinion, both reported upon and participated in the public debate, influencing the debate by the nature of the coverage itself. It was a powerful medium, which the Parliamentary Council's members could not ignore. This is particularly evident in the debate about full equality for women, when the press coverage decisively influenced the course of the assembly's deliberations. The dearth of opinion polls meant that the press was often a surrogate for public opinion in the minds of many politicians. The coverage given to the guarantee of *Elternrecht* in the Christian and CDU/CSU-leaning press, for

example, helped persuade CDU/CSU MdPR that it was necessary to push for its inclusion in the Basic Law to satisfy their electorate's wishes. On the question of the second chamber, however, almost no letters of submission were written and it only featured in the public debate in the media. Here, the press' role in providing West Germans with information and commentary was evidently more significant.

Through its close scrutiny of the debate as it transmitted it to its readers, the press sought to hold the MdPR to account.[3] It was a learning process for the press and its readers, which was part of the wider democratization process, and which formed the basis for the successful establishment of parliamentary democracy in Western Germany.[4] By providing accurate information and relevant commentary, newspapers furnished their readers with the necessary background to engage in the public debate, as well as providing yardsticks by which the efforts of the Parliamentary Council could be measured. Through the inclusion of commentary and opinion pieces, sometimes written by outsiders, such as a political scientist or lawyer, newspapers, consciously or not, adopted an important didactic stance towards their readership, which included politicians. It is difficult to measure the impact of this practice, but there can be no doubt that it contributed to the breadth of the public discussion.

Party political orientation, if any, and place of publication did matter, but the press provided more or less independent analysis of events for the population, growing into its role as a critic and arbiter in the democratic process. In particular, the press' analysis of the Allied-German exchange makes clear journalists' increasing awareness of their role and the importance of their medium in the process of the Basic Law's formulation. Not only did they seek to inform West Germans of events, they also sought

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[3] The role of the press in a democracy was addressed directly by Dr. Hugo Stenzel, editor of the CDU-leaning *Frankfurter Neue Presse*, in ibid., 30 March 1949. "We [the press] are not there to transmit the interests of the government downwards, but we do consider it our task to inform our readers of what the government is doing and not doing."

[4] Developments 1948/9 certainly formed the basis for the developments described by Münkel: "the relationship of politics to the mass media was subject to a decisive process of change in the first two decades after the foundation of the Federal Republic. Here the basis was laid for the increasing significance of the media in the process of the formation of political opinion, and the network of relationships between politics and the media was redefined.", in D. Münkel 'Die Medienpolitik von Konrad Adenauer und Willy Brandt', in *Archiv für Sozialgeschichte* 41 (2001), pp. 297-316 (p. 315).

to spell out to the politicians, whether German or Allied, what their role should be in the best interests of the development of West German democracy. Newspapers thus not only held delegates of the Parliamentary Council but also the occupying Allies to account, reminding them of their stated objective to learn from the past and hence to ensure that the Basic Law be and be seen to be German in content and formulation. In the debate on full equality, on the other hand, the impact of adverse newspaper coverage was revealed, when the CDU/CSU first felt bound to explain its initial stance, and then reversed its position on the question of full equality. Here the press not only reported upon but shaped the political debate. The press was both mirror and maker of public opinion, a first sign of the changing and increasing role the media were to play in the decades to come.

Democracy was rarely defined *expressis verbis* in the media or in letters of submission. More discussion took place about what democracy was not, rather than working out a general definition of the desired state. Even in the Parliamentary Council democracy was only cursorily defined, notwithstanding the two distinct concepts of democracy, '*soziale Mehrheitsdemokratie*' and '*konstitutionelle Demokratie*', to which the parties adhered.[5] (See chapters II and IV, p. 66 and pp. 155-202.) Yet the expression of opinion on the formulation of the provisional constitution, be it in the press or in a letter of submission, necessarily meant, implicitly or explicitly, and even if only partially, adopting some sort of definition of democracy. The press coverage of the Council's deliberations suggests that many editors adhered to the two concepts of democracy just mentioned, with the newspaper's party-political orientation generally determining allegiance. Editors of newspapers to the left of the political spectrum tended to adhere to a '*soziale Mehrheitsdemokratie*', those to its right to a '*konstitutionelle Demokratie*'. It is more difficult to establish the understandings of democracy held by the authors of the letters of submission. Expectations about the constitution's content and the style in which it ought to be formulated put a high premium on *Sachlichkeit* in the press and the letters of submission. Such expressions of anti-parliamentarianism suggest that West Germans' democratic consciousness was not yet fully developed. Its limited development can be

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[5] Cf. F.K. Fromme, 'Der Demokratiebegriff des Grundgesetzgebers', in *Die Öffentliche Verwaltung* 23 (1970), pp. 518-526.

discerned throughout the public debate, from the discussion on the nature of the second chamber to the discussion about the design of the flag, in which black-red-gold were opposed by some for being too closely linked to the party-political strife of the Weimar Republic. That the aversion to party-political debate expressed in the quest for *Sachlichkeit* might impede the establishment of healthy democracy was not considered. A one-sided, predominantly male, perspective on democracy is evident in the debate on full equality, in which the fact that half the population were not to be given equal rights was initially not a cause for concern, and continued not to be for sections of the press, society, and some politicians until late in the day. However, this perspective on equality was not specific to Germany at this time, even though the question of full equality for women had already been raised there in the late nineteenth century and during the formulation of the Weimar constitution.

The need for Germans to learn more about the nature of democracy is evident in Prof. Theodor Heuss' admonition to the openly Christian political parties and their supporters in the press, not to behave as if they were the sole representatives of the Christian faith in politics. It was a caution he could also have addressed to the authors of the letters of submission in favour of *Elternrecht*: sections of society had to be reminded or to learn that democracy allows for diversity of opinion. The same holds true for some of the advocates of *Länder* rights. Democracy was in such cases invoked almost by default to defend a position, rather than championed *per se*. Overall, however, the public debate on the Basic Law was relatively harmonious and irenic, with no extreme polarization of opinion nor vilification of opponents. Rather than suggesting indifference towards the constitution, all the evidence on the public debate indicates that the majority of West Germans was willing to accept differences in opinion, and respect the necessary balance between the rights of the minority as well as the majority, crucial to the democratic process.

That the press believed, although not always explicitly, that West Germans still had much to learn, is clear from their commentary upon the popular interest shown in the flag's design. Newspapers sought to remind their readers that a symbol is only given

meaning by what it represents. The press neglected, however, to acknowledge sufficiently that most people were not versed in constitutional law and that it was easier to express specific hopes and grievances. This perhaps partly explains the newspapers' sometimes sharp initial criticism that the population was not participating adequately in the constitutional debate. More widely, concern about their readership's democratic engagement was voiced upon completion of the Basic Law, when the papers praised the quality of the constitution on paper but informed their readers that it was now up to them to construct the democracy for which it provided in practice. Several Allied newspapers expressed a similar view. The *Daily Telegraph*, for example, saw no reason why the Basic Law should not work well "provided that the German population play their part honourably and sincerely in its working."[6] The German press was equally prepared to direct criticism towards the occupying powers, reiterating the need for the Allies to let the Germans formulate their own constitution rather than impose an Allied construct, so that democracy might possess the inner authority necessary for its acceptance within Germany. Yet in this very reiteration, the press acknowledged the democratic potential of West Germans.

The debate about the nature and extent of democratization of the German people, which had taken place by the time the Basic Law was promulgated on 23 May 1949, was not new. It had begun whilst the Parliamentary Council was still in session. Dr. Ernst Friedlaender, to name but one example, writing in the independent *Zeit*, addressed this question in a fashion indicative of the self-scrutiny in which many Germans indulged at the time.[7] In part, such writing represented a recognition of past lack of respect for democratic principles and of the need to improve in future. On the other hand, such questions can only be addressed fruitfully by contemporaries - and advice be given - if the process of democratization is already underway. The public debate makes clear that the German population of the Western zones had already begun to think and function in a democratic fashion on the national level. This was recognized at the time, although

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[6] 9 May 1949. Cf. *New York Herald Tribune*, 10 and 11 May 1949.

[7] See, for example, 'Und neues Leben blüht aus den Ruinen', 19 May 1949. Dr. Ernst Friedlaender (1885-1973), businessman and journalist, 1946- journalist for *Die Zeit*. See N. Frei, 'Ernst Friedlaender – eine biographisch-publizistische Skizze', in N. Frei and F. Friedlaender, *Ernst Friedlaender: Klärung für Deutschland. Leitartikel für* Die Zeit *1946-1950* (Munich, 1982), pp. 7-33.

admonitions to do better were always forthcoming, and acknowledged in subsequent historiography, which, however, also proceeded to question - and still questions - the degree of democratization of the West Germans in the immediate post-war years.

Many of the Parliamentary Council's members were sceptical of the people's democratic skills and this, combined with a general fear of the masses, influenced the decision, for example, not to provide for plebiscitary elements in the Basic Law. This scepticism was based on the recent past - or rather the political elite's reading of the political course of the Weimar Republic and the Third Reich - and did not accord with the actual coverage devoted to the constitutional debate in the media, especially in the press, nor with the number of letters of submission sent to the Parliamentary Council. There was a huge discrepancy between the perception of limited public interest and the reality documented in the debate in the press in particular but also in the letters of submission and opinion polls. The scope of the public debate, from which significant Communist or nationalist agitation was absent, did not bear out the Ministers' President concern about holding referenda in the *Länder* to ratify the Basic Law. Indeed it is possible that the prospect of referenda might have increased the level of debate further. Instead the public debate, which contributed to the successful formulation of the Basic Law, vindicated the Allied decision to press ahead with the introduction of democracy at the federal level. That the politicians' scepticism was misplaced and did not further democracy went unrecognized at the time. It could be argued that it was still unrecognized by those in political office in 1990/1, who decided to put neither the question of the manner of the accession of the *Länder* of the former German Democratic Republic to the Federal Republic nor the question of the reformulation of the Basic Law to the German population in referenda after reunification.

The nature of the public debate during the formulation of the Basic Law 1948/9 supports Anselm Doering-Manteuffel's thesis that the *Kanzlerdemokratie* established by Dr. Konrad Adenauer in the initial years of his federal chancellorship satisfied the needs of the post-war German population and was very much the product of its time.[8] Adenauer

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[8] A. Doering-Manteuffel, 'Strukturmerkmale der Kanzlerdemokratie', in *Der Staat* 30/1 (1991), pp. 1-18.

identified with the West and the Christian *Abendland*, to which many Germans adhered because it tied in with their fear of Communism.[9] Adenauer also strove to restore German sovereignty, which the public debate 1948/9 had made clear was desired by the German people, and he portrayed the re-attainment of sovereignty, even in a divided Germany, as the only means to the eventual restoration of German unity. These needs were already articulated during the formulation of the constitution and are themes to which the public debate returned again and again whatever the subject matter. They help explain why the style of government adopted by Adenauer made democracy more palatable to West Germans on the national level after the war. However, the public debate 1948/9 indicates that the process of democratization was already well underway when the Federal Republic came into being on 23 May 1949. The too easy periodization of post-war German history into pre- and post-1949 should be treated with even greater scepticism than heretofore.

The creation of an institutional framework, such as the Basic Law, must not be overemphasized at the expense of the developing democratic culture in post-war Western Germany.[10] Without the gradual democratization of the German people already underway when the provisional constitution came into force, it is very unlikely that the West German republic could have established itself so successfully so quickly. The relatively high voter turnout (78.5%) in the first federal election in August indicates that most Germans agreed with the principles of the Basic Law and accepted the provisional state.[11] Through their participation in the public debate, West Germans claimed the new West German state as theirs and voted accordingly in August. There was arguably too little engagement with the loss of life, especially the Holocaust, and the destruction and horrors of the war by the vast majority of the West German population in the immediate post-war years. First steps were taken, however, to tackle earlier shortcomings in the political culture necessary for the successful functioning of democracy. The public debate

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[9] Cf. A. Schildt, *Zwischen Abendland und Amerika. Studien zur westdeutschen Ideenlandschaft der 50er Jahre* (Munich, 1999), pp. 34-35.

[10] Sa'adah's thesis that the institutional method was adopted in the Western zones after the war requires modification. A. Sa'adah, *Germany's Second Chance: Truth, Justice and Democratization* (Cambridge, MA, 1998), p. 13.

[11] C. Kleßmann, *Die doppelte Staatsgründung: Deutsche Geschichte 1945-1955*, fifth edition (Bonn, 1991), p. 437.

between September 1948 and May 1949 shows that sections of society were engaging in the constitutional process in a manner appropriate to the functioning of a democracy, and that the process of democratization was well underway. The press, in particular, as the Allies had foreseen it would, played a vital role in the successful establishment of parliamentary democracy in West Germany after the war. The "endogenous engagement for democracy in Western post-war Germany" as it manifested itself in the public debate about and contribution to the formulation of the Basic Law was crucial to this success.[12]

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[12] A. Sywottek, 'Wege in die 50er Jahre', in A. Schildt and A. Sywottek, *Modernisierung im Wiederaufbau: Die westdeutsche Gesellschaft der 50er Jahre* (Bonn, 1998), pp. 13-39 (p. 16).

Appendix – Newspaper information

Key on p. 310.

Title of newspaper and town of publication	Occ. zone, licence number (#)	Editor(s)/ licence holder(s)	PR or political correspondent(s)	Political affiliation*	Price	Further information
Aachener Nachrichten, Aachen	GB, #1	Heinrich Hollands, Erwin Stadthagen, Hermann Schäfer		SPD		Published 3/week; 40,000 circ., in Koszyk, p. 479.
Aachener Volkszeitung, Aachen	GB, #8	Dr. Josef Hofmann, Dr. Albert Maas, Jakob Schmitz		CDU-leaning		Published 3/week; 87,000 circ., in Koszyk, p. 480.
Allgemeine Kölnische Rundschau, Cologne	GB, #22	Dr. Fritz Wester, Dr. Fritz Fuchs, Josef Baumhoff, Dr. h.c. Hugo Mönnig, Dr. Reinhold Heinen	Dr. Jan Mella	CDU, Cath.	2DM subscription rate/ month	Published Tues., Thurs., Sat. Details, 10 May 1949, in BA, Z5/Anhang 5. 158,000 circ., in Koszyk, p. 480. Cf. Fischer (1981), pp. 532-533.
Allgemeine Zeitung, Mainz	F	Mainzer Zeitungs-verlags-GmbH		Above party		Published 7/week; 250,000 circ., in Koszyk, p. 485.
Augsburger Tagespost, Augsburg	US	Joh.Wilh. Naumann		CSU		Published 3/week; 51,200 circ., in Koszyk, p. 474.
Badische Zeitung, Freiburg i.Br.	F	Dr. Jos. Knecht, Heinrich Rombach, Oskar Stark		Above party		Published 2/week; 220,000 circ., in Koszyk, p. 486.

Berliner Montagsecho, Berlin	GB sector of Berlin, #170	Carl-Hubert Schwennicke, Rudolf Markewitz, Dr. Hans Reif [Berlin MdPR], E.E. Torenburg		LDP		Published 5/week; 125,000 circ., in Koszyk, p. 477. N.B. misprint in Koszyk, p. 477, *Mittagsecho* should be *Montagsecho*.
Braunschweiger Zeitung, Braunschweig	GB, #2	Hans Eckensberger; Albert Neumann (deputy)	Ts. Fleische, Wolfgang Becker	Indep.		Details, 5 Mar. 1949, in BA, Z5/190. Published 3/week; 100,000 circ., in Koszyk, p. 478.
Darmstädter Echo, Darmstadt	US, #35	Paul Rodemann (SPD), Joh. Seb. Dang (CDU), Hans J. Reinowski (SPD)	Hans J. Reinowski			Published daily except Sundays. Details, 17 Feb. 1949, in BA, Z5/188. 75,200 circ., in Koszyk, p. 474.
Deutsche Volkszeitung, Celle	GB, #115	Dr. H.-C. Seebohm [MdPR]		DP		Published 3/week; 85,000 circ., in Koszyk, p. 479.
Flensburger Tageblatt, Flensburg	GB, #35	Ludwig Iversen, Ts. Andresen, Georg Macknow, Dr. Werner Petersen		Indep.		Published 3/week; 82,000 circ., in Koszyk, p. 483.
Frankfurter Neue Presse, Frankfurt/M.	US, #201	Dr. Hugo Stenzel	Polit. corres. Peter Steinbach; PR corres. Berthold	CDU		Published 6/week. Details, 14 Feb. 1949, in BA, Z5/188. 164,000 circ., in Koszyk, p. 474.
Frankfurter Rundschau, Frankfurt/M.	US, #2	Arno Rudert (no party affil.), Karl Gerold (SPD)	Hans Herholz, Dr. Hans Henrich, Hans Nassauer			Details, 4 Mar. 1949, in BA, Z5/190. Published daily; 186,650 circ., in Koszyk, p. 474.
Freie Presse, Bielefeld	GB, #36	Emil Groß, Paul Eilers, Jakob Triem		SPD	20Pf.	Details, 21 July 1948, in AdsD, NL Walter Menzel, file R3. Published 3/ week; 124,000 circ., in Koszyk, p. 481.

Hamburger Abendblatt, Hamburg	GB	Axel Springer		Above -party		100,000 circ., in OMGUS, ISD document. Koszyk, pp.236-237. Cf. NWDR broadcast on first issue of *Hamburger Abendblatt*, 14 Oct. 1948, NDR Archive No. D21530/1, in NDR Archive, Hamburg.
Hamburger Allgemeine Zeitung, Hamburg	GB, #23	Franz Beyrich, August Haßler		CDU	15Pf.	Published 3/week; 138,000 circ., in Koszyk, p. 477.
Hamburger Echo, Hamburg	GB, #29	Wm. Grabbert, Joh. Richter, Karl Meitmann		SPD		Published 3/week; 230,000 circ., in Koszyk, p. 478.
Hamburger Freie Presse, Hamburg	GB, #21	Prof. Dr. Paul Heile, Hans Sommerhäuser		FDP		Published 3/week; 100,000 circ., in Koszyk, p. 478.
Hannoversche Neueste Nachrichten, Hanover	GB, #116	Rd. Boese, Arnold Fratzscher, Anton Storch		CDU		Published 3/week; 128,000 circ., in Koszyk, p. 478.
Hannoversche Presse, Hanover	GB, #70	Fritz Heine, Egon Franke, Rt Hoffmeister		SPD		Published 3/week; 340,000 circ., in Koszyk, p. 478.
Hessische Nachrichten, Kassel	US, #15	Wolfgang Bartels (SPD), Dr. Wolf-gang Pöschl (no party affil.), Gustav Römer (LPD)				Published 6/week. Details, 23 Nov. 1948, BA, Z5/182. 126,750 circ., in Koszyk, p. 474.

Kasseler Zeitung, Kassel	US, #202	Adolf W. Diehl (SPD)			2.95DM (incl. delivery) subscrip-tion rate/ month to be paid in advance in cash.	Published 6/week. Details, 1 Jan. 1949, in BA, Z5/185. 49,950 circ., in Koszyk, p. 474.
Kieler Nachrichten, Kiel	GB, #30	Willi Koch			CDU	Published 3/week; 130,000 circ., in Koszyk, p. 483.
Der Kurier, Berlin	F sector of Berlin, #2904	Paul Bourdin	Dieter von König	Above party	15Pf.; 25Pf. out of town.	Subtitle: "Die Berliner Abendzeitung". Published daily except Sundays. Details, 14 Aug. 1948, in AdsD, NL Walter Menzel, file R3. 200,000 circ., in Koszyk, p. 484.
Lüneburger Landeszeitung, Lüneburg	GB, #3	Ernst Riggert, Harald Bumann, Walter Bergmann, Ernst Wiesemann		Indep.		Published 3/week; 111,000 circ., in Koszyk, p. 478.
Der Morgen, Berlin	USSR sector of Berlin			LDP		Published 6/week; 125,000 circ., in Koszyk, p. 488.
Mannheimer Morgen, Mannheim	US, #110	L.F. Schilling von Canstatt (CDU), Karl Ackermann (SPD)				Published 4/week; 86,214 circ., in Koszyk, p. 475.
Münchner Allgemeine, Munich	US					

Münchner Merkur, Munich	US, #21	Hans Heinrich, Dr. Felix Buttersack	Werner Runge	CSU		Details, 16 Feb. 1949, in BA, Z5/188. Published 3/week; 171,800 circ., in Koszyk, p. 473.
Neue Ruhr Zeitung, Essen	GB, #76	Dietrich Oppenberg, Wm. Nieswand, Artur Frisch, Franz Feldens		SPD		Published 3/week; 113,000 circ., in Koszyk, p. 481.
Neue Volkszeitung, Dortmund	GB, #1	Heinz Renner [MdPR], Werner Blumenthal, Paul Dastig, Anni Sand		KPD		Published 3/week; 150,000 circ., in Koszyk, p. 482.
Neue Zeit, Saarbrücken	F/ Saarland	Fritz Nikolay, Fritz Bäsel		KPD		Published 3/week; 30,000 circ., in Koszyk, p. 487.
Neue Zeitung, Munich	US		Heinz Medefind	US MG paper		630,000 circ., in OMGUS, ISD document. (Berlin edition 194,000 circ., ibid.) Subtitle: 'An American newspaper for Germany', first published 17 Oct. 1945. Cf. Koszyk, pp. 45-49. OMGUS survey on readership, in BA, Z45F, 5/233-1/14. Cf. Report 154 (3 Feb. 1949), in Merritt, pp. 274-275. Cf. Hurwitz, pp. 100-110 and pp. 260-269.
Neuer Vorwärts, Hanover	GB			SPD		
Neuer Westfälischer Kurier, Werl, NRW	GB, #82	Fritz Erhart, Josef Weiser, Helene Wessel [MdPR]		Z		Published Mon.,Weds., Fri. Details, 15 Nov. 1948, in BA, Z5/181. 115,000 circ., in Koszyk, p. 482.
Niedersächsische Volksstimme, Hanover	GB, #79	Robert Lehmann, Erich Jungmann, Heinrich Heyne	Polit. corres. Willi Oppermann	KPD	20Pf.	Published Mon., Weds., Sat. Details, 21 Mar. 1949, in BA, Z5/192. 66,000 circ., in Koszyk, p. 479.

Norddeutsches Echo, Kiel	GB, #25	Alfred Oertel, Alfred Heitmann, Ludwig Böckmann		KPD		Published 3/week; 30,000 circ., in Koszyk, p. 482.
Nordsee Zeitung, Bremen, Bremerhaven	US, #47	Bruno Stöwsand (SPD), Walter Gong (no party affil.)	Polit. corres. Peter Fischer, Hans Schwab-Felisch.	"unparteilich"		Details, 26 Feb. 1949, in BA, Z5/189. Published 4/week; 85,000 circ., in Koszyk, p. 476.
Nordwestdeutsche Rundschau, Wilhelmshaven	GB, #101	Oskar Hünlich, HansWunderlich, Joh. Kramer		SPD		Published 3/week; 100,000 circ., in Koszyk, p. 479.
Nouvelles de France, Konstanz	F			French MG paper		*Nouvelles de France*, first published on 26 Sept. 1946 in French only. Subsequently published in French and German (Jan. 1947-), with German edition called *West-Ausgabe. Nouvelles de France*, before assuming title of *West Echo* on 3 Nov. 1948, under which it was licensed as a German paper. Cf. Koszyk, pp. 265-266; Schölzel (1986), pp. 180-181.
Rhein Echo, Düsseldorf	GB, #18	Georg Stoever, Leonhard Ingenhut, Ewald Kobusch		SPD		Published 3/week; 152,000 circ., in Koszyk, p. 480.
Rhein Zeitung, Koblenz	F	Walter Twer, Oskar Richardt, Michael Weber		above party		Published 3/week; 250,000 circ., in Koszyk, p. 484.
Rheinisch-Pfälzische Rundschau, Bad Kreuznach	F	F.R. Günter Ringel		liberal		Subtitle: "Organ der Demokratischen Partei für Politik, Wirtschaft und Kultur". Details, 12 Oct. 1948, in BA, Z5/179. Published 3/week; 25,000 circ., in Koszyk, p. 485.

Rheinische Post, Düsseldorf	GB, #12	Dr. Anton Betz, Karl Arnold		CDU		Subtitle: "Zeitung für christliche Kultur und Politik". Details, 20 Nov. 1948, in BA, Z5/182. Published 2/week; 282,200 circ., in Koszyk, p. 480.
Rheinische Zeitung, Cologne	GB, #11	J. Pedrotti, Robert Görlinger, Dr. h.c. Hans Böckler, Dr. med. H. Braubach, H. Reifferscheidt		SPD		Published 3/week; 98,000 circ., in Koszyk, p. 480.
Rheinischer Merkur, Koblenz	F	Franz Albert Kramer	Paul Wm. Wenger	CDU	50Pf.	Subtitle: "Wochenzeitung für Politik, Kultur und Wirtschaft". Details, 19 Feb. 1949, in BA, N1129. Published weekly; 162,040 circ., "hebdomadaire fédéraliste", in OMGUS, ISD document. Cf. M.D. Schneider, 'Partikularismus und Antipreußentum', in C.D. Krohn and M. Schumacher (eds.), *Exil und Neuordnung* (Düsseldorf, 2000), pp. 143-159 (pp. 147-149).
Die Rheinpfalz, Neustadt	F	Rheinpfalz Verlag und Druckerei GmbH		Above party		Published 2/week; 220,000 circ., in Koszyk, p. 484.
Rhein-Ruhr-Zeitung, Essen	GB, #49	Dr. Wm. Hamacher		Z		Published 3/week; 130,000 circ., in Koszyk, p. 481.
Schleswig-Holsteinische Volkszeitung, Kiel	GB, #24	Karl Ratz		SPD		Published 3/week; 96,000 circ., in Koszyk, p. 483.
Schwabenecho, Oberndorf/N.	F	Schwabenwarte GmbH		DVP		Published 2/week; 45,000 circ., in Koszyk, p. 486.
Schwarzwälder Post, Oberndorf/N.	F	Dr. Hermann Biesenberger		Chr.		Published 3/week; 160,000 circ., in Koszyk, p. 485. In OMGUS, ODI document.

Stuttgarter Zeitung, Stuttgart	US, #107	Franz Karl Maier (SPD), Erich Schairer (DVP), Josef Eberle (DVP)				Published 3/week; 155,851 circ., in Koszyk, p. 475.
Süddeutsche Zeitung, Munich	US, #1	A. Schwingenstein (CSU, Cath.), E. Goldschagg (SPD, no rel. aff.), F.J. Schoeningh (CSU, Cath.), W. Friedmann (FDP, Cath.)	Mrs. Tzschaschel		20Pf.	Subtitle: "Münchner Nachrichten aus Politik, Kultur, Wirtschaft und Sport". Details, 3 Feb. 1949, in BA, N1129. Published 3/week; 285,200 circ., in Koszyk, p. 472.
Südkurier, Konstanz	F	Südkurier-Verlag GmbH		Above party		Published 3/week; 165,000 circ., in Koszyk, p. 485.
Südwestdeutsche Volkszeitung, Freiburg i. Br.	F	Christl.-sozialer Verlag GmbH		CDU		Published 3/week; 54,500 circ., in Koszyk, p. 486.
Der Tag, Berlin	GB sector of Berlin, #202	Jakob Kaiser		Dem. Chr.		Subtitle: "Unabhängige Zeitung für Deutschland". Details, 12 November 1948, in BA, Z5/181. Published 6/week; 100,000 circ., in Koszyk, p. 477.
Tagesspiegel, Berlin	US sector of Berlin, #16	Walter Karsch (no party affil.), Edwin Redslob (SPD), Erik Reger (no party affil.)				Published daily; 240,000 circ., in Koszyk, p. 476.Cf. Info. on Reger, in OMGUS, OD1 document. Cf. Report 138 (17 Sept. 1948), in Merritt, pp. 257-258.
Telegraf, Berlin	GB sector of Berlin, #19	Paul Löbe [MdPR], Annedore Leber, Arno Scholz		Indep. Soc.		Published 7/week; 400,000 circ., in Koszyk, p. 477. Cf. Report 138 (17 Sept. 1948), in Merritt, pp. 257-258.
Trierische Volkszeitung, Trier	F	Nik. Koch		Above party		Published 3/week; 85,000 circ., in Koszyk, p. 484.

Das Volk, Freiburg i.Br.	F	Sozialistische Partei Baden, Dr. Leibbrandt, Ph. Martzloff, Fr. Geiler		SPD		Published 2/week; 60,000 circ., in Koszyk, p. 486.
Volksstimme, Cologne	GB, #10	Ismar Heilborn, Kurt Bachmann		KPD		Published 3/week; 60,500 circ., in Koszyk, p. 480.
Die Welt, Hamburg	GB	Rudolf Küstermeier	Fritz Fay	GB MG paper		896,000 circ., in OMGUS, ISD document. Koszyk, pp. 204-226. Cf. Fischer (1978).
Weser Kurier, Bremen	US, #11	Hans Hankmach (SPD, no rel. aff.), Felix von Eckardt (no party affil.)				Published 4/week; 125,000 circ., in Koszyk, p. 476.
West-Ausgabe. Nouvelles de France, Konstanz						See note on *Nouvelles de France* above, p. 305.
West Echo, Konstanz	F					See note on *Nouvelles de France* above, p. 305. Published 6/week; 65,000 circ., in Koszyk, p. 486.
Westdeutsche Allgemeine, Bochum	GB, #192	Erich Brost		Above party		Published 3/week; 250,000 circ., in Koszyk, p. 482.
Westdeutsche Rundschau, Wuppertal	GB, #46	Dr. Friedrich Middelhauve, Carl Wirths, Eugen Richter, Dr. Chr. Gehring	Miss Ludemann	FDP		Published 3/week; 90,500 circ., in Koszyk, p. 481.
Westdeutsche Zeitung, Düsseldorf	GB, #213	Wm Elfes		Above party		Published 3/week; 250,000 circ., in Koszyk, p. 482.
Westdeutsches Tageblatt, Dortmund	GB, #80	Herbert Kauffmann		Close to FDP		Published 3/week; 70,000 circ., in Koszyk, p. 482.

Westfalenpost, Soest, NRW	GB, #38	Dr. Artur Sträter	Dr. Fröhlich	CDU		Published 3/week; 270,000 circ., in Koszyk, p. 481.
Westfalen Zeitung, Bielefeld	GB, #13	Alfred Hausknecht, Dr. Diether Lausenstein		CDU		Published 3/week; 129,500 circ., in Koszyk, p. 480.
Westfälische Rundschau, Dortmund	GB, #14	Fritz Henßler, Paul Sattler, Heinrich Sträter		SPD		Published 3/week; 338,500 circ., in Koszyk, p. 481.
Der Württemberger, Reutlingen	F	Kurt Gall		SPD		Published 2/week; 75,000 circ., in Koszyk, p. 486.
Die Zeit, Hamburg	GB		Dr. Marion Dönhoff, Dr. Ernst Friedlaender, et al.	Indep.	50Pf.	Subtitle: "Wochenzeitung für Politik, Wirtschaft, Handel und Kultur ". Details, 23 Dec. 1948, in N1129. 110,000 circ., in OMGUS, ISD document.

* Definition of political affiliation taken from Allied sources. (If published in US zone, political affiliation of editor(s)/licence holder(s) is given; if published in British or French zones, political affiliation is given for newspaper as whole.)

Key/Abbreviations

Cath.	Catholic
Chefred.	Chefredakteur/ chief editor
Chr.	Christian (Koszyk)
Circ.	Circulation figure daily
Corres.	Correspondent
Dem.	Democratic (Koszyk)
F	French zone of occupation
GB	British zone of occupation
Indep.	Independent (Koszyk)
MG	Military Government
Occ.	Occupation
Polit.	Political
PR	Parliamentary Council
Rel. aff.	Religious affiliation
Soc.	Socialist (OMGUS)
US	American zone of occupation

Sources

i) List of newspapers published in 1948/9 in four zones and Berlin, including title, place of publication, first edition, licence number, number of times published per week, daily circulation figure, licence holder(s) and their positions, political orientation, in K. Koszyk, *Geschichte der deutschen Presse*, vol. IV, *Pressepolitik für Deutsche 1945-1949* (Berlin, 1986), pp. 471-491.
ii) Circulation figures for four zones, in OMGUS, ISD document, BA, Z45F, 5/243-2/20. (N.B. For American zone, information given also includes date licensed, days published, number of pages weekly, format, circulation, licensees, position with paper, age, political affiliation, religious affiliation. For French zone, days published also included.)
iii) Overview of German press giving name, location, political affiliation, editors, responsible publishers, in OMGUS, ODI document, BA, Z45F, 7/31-3/5.

Bibliography

Archival sources

Archiv der sozialen Demokratie, Bonn (AdsD)

i) Nachlaß Carlo Schmid

File 9, correspondence, incl. letter to Balfour on vote of no-confidence

File 468, correspondence and articles on Parliamentary Council

ii) Nachlaß Walter Menzel

File R1, Parliamentary Council

File R2, Parliamentary Council

File R3, Parliamentary Council

Bundesarchiv, Koblenz (BA)

i) Der Parlamentarische Rat: Bestand Z5

Z5/1, General organization of Parliamentary Council's secretariat

Z5/6, Organization of Parliamentary Council's secretariat

Z5/9, Teletyped letters (*Fernschreiben*) of Parliamentary Council's secretariat

Z5/11, Press matters File of Parliamentary Council's secretariat

Z5/94-121, Petitions sent to Parliamentary Council's committees

Z5/122, Parliamentary Council's search aids from register of petitions

Z5/178-201, Collection of press cuttings on activities of Parliamentary Council (Sept. 1948-Aug. 1949)

Z5/202-3, Reproductions of Parliamentary Council's secretariat (*Sekretariatsumdrucke*)

Z5/Anhang 5, Press on Parliamentary Council, misc.

Z5/Anhang 11, Petitions to the Parliamentary Council/ CDU/CSU-faction on *Elternrecht*

Z5/Anhang 12, Inter-factional discussions in Parliamentary Council

Kleine Erwerbung 792 (British files on creation of Basic Law)

ii) Nachlaß Heinrich von Brentano: N1239

N/1239/112

N/1239/113

N/1239/114

N/1239/115

iii) Nachlaß Hermann Höpker-Aschoff: N1129

N/1129/50

iv) Nachlaß Theodor Heuss: N1221

N/1221/419

N/1221/418F

v) Office of the Military Government of the United States: Bestand Z45 F

Civil Administration Division [CAD]

15/147-1/5, Bi-weekly report of CAD, governmental structures branch, on German political affairs

15/147-1/9, Future West German state: proposals by individuals and political groups

15/147-1/18, West German state: suggestions for reconstruction by individuals

15/147-2/1, Correspondence of Branch chief, Hans Simons, pertaining to a wide field of problems. Incl. Walter Menzel, 'Die deutsche Verfassung und die Sicherheit Europas', 27 Oct. 1948

15/147-2/2, Democratization of Germans: basic papers pertaining to a variety of fields

15/147-2/21, Democratization of Germans: basic papers

15/148-2/3, Parliamentary Council, Bonn: highlights, summaries and reports

15/148-2/4, German Politics, government affairs: monthly reports of OMGUS, CAD, Government Structures Branch. Incl. on Parliamentary Council's deliberations

15/148-2/13, Misc. reports and memos on political and economic subjects, such as licensing of new political parties, liaison with German political bodies, Basic Law, 1948 SPD *Parteitag*, interviews with German politicians, etc.

17/254-1/21, German political problems in 1948

17/254-1/25, Political activities, 1948

17/254-2/17, Political reports daily [1948-1949]

17/261-3/28, Reports on Parliamentary Council meetings, for 2 and 4 Sept. 1948, and memo for Clay, 4 April 1949

Information Services Division [ISD]

5/233-1/14, DEM – Deutsches Institut für Erforschung der Öffentlichen Meinung, incl. survey of readership of *Neue Zeitung*

5/236-1/1-22, Scrutiny of German press by ISD Press Branch

5/237-1/11, News of Germany

5/242-2/15, Press (policy etc), permanent file, 1946-1949

5/243-2/20, Circulation of papers in four zones of Germany. Statistical reports, 1948-1949

5/244-3/6, Main trends: weekly newspaper analysis, 16 Sept. 1948-4 April 1949

5/247-2/9-10, Information Centers, 1946-1948

5/265-1/8-9, Information Centers and Exhibitions Branch, 1948-1949

Office of the Director of Intelligence [ODI]

7/20-1/19, German Business News Service, … [incl.] screening of German personnel employed with the *Neue Zeitung*, June-July 1949

7/20-1/21, German press matters, 1947-1948

ODI, 7/20-1/28, Radio information of intelligence interest, 1947-1949

7/21-3/1, Persons of special intelligence interest, 1947-1950

7/31-3/5, Berlin press situation: intelligence material. Erik Reger, editor of the US sector paper *Der Tagesspiegel*, Jan. 1947

7/31-3/6, Press affairs: Walter Hoffmann (Kolbenhoff) 'Observer' in *Die Neue Zeitung*; press law in Bavaria; Soviet press censorship (intelligence information)

Office of the Political Adviser [POLAD]

820/33, Creation of West German state, Bonn Parliamentary Council, Deutsches Büro für Friedensfragen, occupation statute, 1948

Norddeutscher Rundfunk, Hamburg

** About 40 NDR edited abstracts of NWDR radio broadcasts, 1948-1949, for which tapes have survived, were consulted. Only those subsequently heard in the sound archive are listed here.

D17552/1, 'About the Radio', by Dr. Peter von Zahn, 9 Feb. 1949

D21530/1, First edition of *Hamburger Abendblatt*, 14 Oct. 1948

D22661/1, Interview with President of Parliamentary Council, Dr. Konrad Adenauer, 14 Dec. 1948

D22805/1, Speech by British Military Governor, Sir Brian Robertson, New Year's Day, 1949

D24270/1, Discussion with President of *Zentraljustizamt*, Dr. Wilhelm Kiesselbach, 25 March 1949

D24434/1, Statement by Dr. Konrad Adenauer, 5 April 1949

D24933/1, Interview with Dr. Kurt Schumacher, 26 April 1949

D25138, Statement by Max Brauer, 18 May 1949

D24091/1, Recollections on establishment of Radio Hamburg, 14 March 1949

D58181/1, Broadcast by Dr. Kurt Schumacher, 1 May 1949

WR31515/1-2, West Germany in Spring 1949

Parlamentsarchiv des Deutschen Bundestages, Bonn [now Berlin] (PA)

Der Parlamentarische Rat: Bestand 5

PR Drucksachen I-IX

PR Files I-II

PR File VIII-X

PR File 27, Sammlung Selbert

Public Record Office, London (PRO)

i) FO 371/76658-60, British liaison staff reports on work of Parliamentary Council, Bonn.

FO 371/76687, Bonn weekly political reports, Jan.-April 1949. Work of Parliamentary Council

ii) FO 1005/1645-50, Hamburg Monthly Reports, Jan. 1946-Dec. 1950

iii) FO 1005/1668-71, Lower Saxony Monthly Reports, Aug. 1946-Dec. 1949

iv) FO 1014/38-39, Public Safety Reports on Morale and Public Opinion, Hamburg, from Hamburg Public Safety Branch to Regional Commander, May 1947-Dec. 1949

v) FO 1014/104, British Liaison Staff Bonn telegrams, July 1948-22 Oct. 1948
FO 1014/228, British Liaison Staff Bonn telegrams on constitution and Parliamentary Council, 1949

vi) FO 1014/121, German Morale Reports, Public Opinion Research Office, 6 Feb. 1948-24 Sept. 1948

vii) FO 1030/84, Constitutional organization of Germany 1948
FO 1030/85-87, Parliamentary Council and Basic Law, vol. II-IV, 1948-1949

Staatsarchiv der Freien und Hansestadt Hamburg, Hamburg (HHStA)

i) Bestand 622-1, Familie de Chapeaurouge

U283, Minister Presidents' conference, Koblenz, 8-10 July 1948

U285, Indices of members of Parliamentary Council

U286, Press reports on Parliamentary Council

U288, News Information Service for members of Parliamentary Council

U298, Basic Law proposals of Editing Committee, proposals for changes, and newspaper articles

U305, Occupation powers and Basic Law, 1949

U316, Essays, memoranda, and newspaper articles on the Parliamentary Council, on questions relating to policy towards Germany, and on the federal system, 1949

U326, 'Bonner Eindrücke' (1949), unpublished manuscript

ii) Bestand 622-1, Familie Schönfelder

Signatur 1, manuscript of a tape recording of an interview with President Adolf Schönfelder by Dr. Erich Lüth, President of the State Press Office, 18 Feb. 1960. (Also includes series of articles 'Adolf Schönfelder. A life for Hamburg' (partially corrected on Schönfelder's directions) by Lüth in initial and final draft form, 1959-1960.)

iii) Norddeutsches Radio [NDR] Vorläufiges Verzeichnis

Regal 111A/ Fach 5/ Feld 3, Programm (Diverses Schriftgut) [1949]

Regal 112A/ Fach 4/ Feld 3, *Die Ansage*

Regal 112B/ Fach 1/ Feld 3, Radio Bremen

Regal 112B/ Fach 1/ Feld 4, Radio Bremen

Regal 112B/ Fach 2/ Feld 1, NWDR Nachrichtenabteilung

Regal 112B/ Fach 2/ Feld 3, Hörfunk/ Politisches Forum/ Manuskripte

Regal 112B/ Fach 4/ Feld 3, Bonner Büro NWDR

iv) Staatliche Pressestelle V

I c I d, Parliamentary Council in Bonn. Basic Law for the Federal Republic of Germany

I c II a 6, Political re-organization of Western Germany

II b IV b, Six-Powers Conference in London 1948

Printed primary sources

Akten zur Vorgeschichte der Bundesrepublik Deutschland 1945-1949, edited by the Bundesarchiv and the Institut für Zeitgeschichte, 5 volumes (Munich, 1976-1983).

Apelt, W., *Geschichte der Weimarer Verfassung* (Munich, 1946).

Aretin, E. von, *Krone und Ketten. Erinnerungen eines bayerischen Edelmannes* edited by K. Buchheim and K.O. von Aretin (Munich, 1955).

Das Bonner Grundgesetz commented upon by H. von Mangoldt, first edition (Berlin and Frankfurt/M., 1953).

Brentano, H. von, and C. Schmid, 'Betrachtungen zum Bonner Grundgesetz', in *Die Wandlung* 4/7 (August 1949), pp. 646-669.

Bundesgesetzblatt

Bürgerliches Gesetzbuch (Beckische Kurz Kommentare) edited by O. Palandt, 14th edition (Munich and Berlin, 1955).

Die CDU/CSU im Parlamentarischen Rat: Sitzungsprotokolle der Unionsfraktion introduced and edited by R. Salzmann (Stuttgart, 1981).

Clay, L.D., *Decision in Germany* (London, 1950).

Control Council legislation, in Federal Research Division, Library of Congress, http://www.loc.gov/rr/frd/Military_Law/Enactments/03LAW18.pdf (last accessed 7 July 2004).

Deutschland-Jahrbuch 1949 edited by K. Mehnert and H. Schulte (Essen, 1949).

Documents on Germany under Occupation 1945-1954 selected and edited by B. Ruhm von Oppen (London, 1955).

Dokumente des geteilten Deutschland: Quellen zur Rechtslage des Deutschen Reiches, der Bundesrepublik Deutschland und der Deutschen Demokratischen Republik selected and edited by I. von Münch (Stuttgart, 1976).

Dokumente zur Deutschlandpolitik, II/2, *1949*, edited by the Bundesministerium des Innern and the Bundesarchiv (Munich, 1996).

Die Entstehung der Hessischen Verfassung von 1946. Eine Dokumentation edited and introduced by H. Berding and K. Lange (Wiesbaden, 1996).

Foreign Relations of the United States. Diplomatic Papers. 1948, vol. II, *Germany and Austria* (Washington, DC, 1973).

Foreign Relations of the United States. Diplomatic Papers. 1949, vol. III, *Germany and Austria* (Washington, DC, 1974).

Die Gegenwart (1946-1949).

Gesetzblatt der Deutschen Demokratischen Republik (1949).

Grundgesetz für die Bundesrepublik Deutschland vom 23. Mai 1949, in *Bundesgesetzblatt* 1 (23 May 1949), pp. 1-20.

Jahrbuch der öffentlichen Meinung 1947-1955, edited by E. Noelle and E.P. Neumann (Allensbach am Bodensee, 1956).

Jahrbuch des Öffentlichen Rechts der Gegenwart. Neue Folge, vol. I, *Entstehungsgeschichte der Artikel des Grundgesetzes* compiled by K.-B. von Doemming,

R.W. Füsslein and W. Matz (Tübingen, 1951).

Keesing's Contemporary Archives, vol. VII, *1948-1950.*

Keesings Archiv der Gegenwart, vol. I, *April 1948-September 1953.*

Meinecke, F., *1848. Eine Säkularbetrachtung* (Berlin, 1948).

Merritt, A.J. and R.L., *Public Opinion in Occupied Germany: The OMGUS Surveys 1945-1949* (Urbana, 1970).

Merritt, A.J and R.L, *Public Opinion in Semi-Sovereign Germany: The HICOG Surveys 1949-1955* (Urbana, 1980).

Die Öffentliche Verwaltung (1948-1949).

Der Parlamentarische Rat 1948-1949. Akten und Protokolle, edited by the Bundestag and Bundesarchiv, 13 vols. (Boppard am Rhein and later Munich, 1975-2002).

Volume I, *Vorgeschichte* edited by J.V. Wagner (Boppard, 1975).

Volume II, *Der Verfassungskonvent auf Herrenchiemsee* edited by P. Bucher (Boppard, 1981).

Volume III, *Ausschuß für Zuständigkeitsabgrenzung* edited by W. Werner (Boppard, 1986).

Volume IV, *Ausschuß für das Besatzungsstatut* edited by W. Werner (Boppard, 1989).

Volume V, *Ausschuß für Grundsatzfragen* edited by E. Pikart and W. Werner (Boppard, 1993).

Volume VI, *Ausschuß für Wahlrechtsfragen* edited by H. Rosenbach (Boppard, 1994).

Volume VII, *Entwürfe zum Grundgesetz* edited by M. Holtmann (Boppard, 1995).

Volume VIII, *Die Beziehungen des Parlamentarischen Rates zu den Militär-regierungen* edited by M. Feldkamp (Boppard, 1995).

Volume IX, *Plenum* edited by W. Werner (Boppard, 1996).

Volume X, *Ältestenrat, Geschäftsordnungsausschuß und Überleitungsausschuß* edited by M. Feldkamp (Munich, 1997).

Volume XI, *Interfraktionelle Besprechungen* edited by M. Feldkamp (Munich, 1997).

Volume XII, *Ausschuß für Finanzfragen* edited by M. Feldkamp and I. Müller (Munich, 1999).

Volume XIII, *Ausschuß für Organisation des Bundes, Ausschuß für Verfassungsgerichtshof und Rechtspflege* edited by E. Büttner and M. Wettengel (Munich, 2002).

Parlamentarischer Rat. Verhandlungen des Hauptausschusses. Bonn 1948-1949 (Bonn, [1950]).

Pollock, J.K., *Besatzung und Staatsaufbau nach 1945: Occupation Diary and Private Correspondence* edited by I. Krüger-Bulcke (Munich, 1994).

Pommerin, R., 'Die Mitglieder des Parlamentarischen Rates. Portraitskizzen des britischen Verbindungsoffiziers Chaput de Saintonge', in *Vierteljahrshefte für Zeitgeschichte* 36 (1988), pp. 557-588.

Quellen zur Programmgeschichte des deutschen Hörfunks und Fernsehens edited by K. Dussel and E. Lersch (Göttingen, 1999).

Reichsgesetzblatt

Schmid, C., *Erinnerungen* (Bern, Munich, Vienna, 1979).

Schumacher-Hellmold, O., 'Bonn – Eine Entscheidung des Herzens. Warum sie Bonn zur Hauptstadt wählten', in *Bonner Geschichtsblätter. Jahrbuch des Bonner Heimat- und Geschichtsvereins* 26 (1974), pp. 193-272.

Simons, H., 'The Bonn Constitution and its Government', in H. Morgenthau (ed.), *Germany and the Future of Europe* (Chicago, 1951), pp. 114-130.

Smith, J.E., *The Papers of General Lucius D. Clay. Germany 1945-1949* (Bloomington, 1974).

Der Spiegel (1947-1949).

Statistisches Jahrbuch für die Bundesrepublik Deutschland edited by Statistisches Bundesamt (Stuttgart, 1953).

Troeger, H., *Interregnum: Tagebuch des Generalsekretärs des Länderrats der Bizone 1947-1949* edited by W. Benz and C. Goschler (Munich, 1985).

Verhandlungen der verfassunggebenden Deutschen Nationalversammlung, volumes. 326-336 (Berlin, 1920).

Verhandlungen des Deutschen Bundestages. Stenographische Berichte, vols. I-XX

(Bonn, 1950-1954).

Die Wandlung (1945-1949).

Wer ist Wer? 1100 Kurzbiographien aus Politik, Wirtschaft und Kultur (Berlin, 1948).

Women in the House of Commons, Factsheet M4: Members Series (House of Commons, January 2003).

Zahn, P. von, *Stimme der ersten Stunde: Erinnerungen 1913-1951* (Stuttgart, 1991).

Printed secondary works

Abelshauser, W., 'Zur Entstehung der 'Magnet-Theorie' in der Deutschlandpolitik: Ein Bericht von Hans Schlange-Schöningen über einen Staatsbesuch in Thüringen im Mai 1946', in *Vierteljahrshefte für Zeitgeschichte* 27 (1985), pp. 661-679.

Altendorf, H., 'SPD und Parlamentarischer Rat – Exemplarische Bereiche der Verfassungsdiskussion', in *Zeitschrift für Parlamentsfragen* 10/3 (1979), pp. 405-420.

Anderson, M.L., *Practicing Democracy. Elections and Political Culture in Imperial Germany* (Princeton, NJ, 2000).

Anthes, H.W., 'Kilo-Hertz mit Herz. Die Anfänge des Rundfunks in Rheinland-Pfalz', in F.-J. Heyen (ed.), *Rheinland-Pfalz entsteht. Beiträge zu den Anfängen des Landes Rheinland-Pfalz in Koblenz 1945-1951* (Boppard am Rhein, 1984), pp. 315-328.

Auerbach, H., 'Die politischen Anfänge Carlo Schmids: Kooperation und Konfrontation mit der französischen Besatzungsmacht 1945-1948', in *Vierteljahrshefte für Zeitgeschichte* 36 (1988), pp. 595-648.

Baumgart, W., 'Adolf Süsterhenn (1905-1974)', in *Zeitgeschichte in Lebensbildern*, vol. VI, *Aus dem deutschen Katholizismus des 19. und 20. Jahrhunderts* edited by J. Aretz *et al.* (Mainz, 1984), pp. 189-199.

Bausch, H., *Rundfunkpolitik nach 1945*, vol. I, *1945-1962* (Munich, 1980).

Benz, W. (ed.), *"Bewegt von der Hoffnung aller Deutschen". Zur Geschichte des Grundgesetzes. Entwürfe und Diskussionen 1941-1949* (Munich, 1979).

Benz, W., 'Föderalistische Politik in der CDU/CSU. Die Verfassungsdiskussion im "Ellwanger Kreis" 1947/48', in *Vierteljahrshefte für Zeitgeschichte* 25 (1977), pp. 776-820.

Benz, W., *Von der Besatzungsherrschaft zur Bundesrepublik: Stationen einer Staatsgründung 1946-1949* (Frankfurt/M., 1984).

Benz, W. (ed.), *Deutschland unter alliierter Besatzung 1945-1949/55. Ein Handbuch* (Berlin, 1999).

Beyer, J. and E. Holtmann, '"Auch die Frau soll politisch denken – oder "Die Bildung des Herzens". Frauen und Frauenbild in der Kommunalpolitik der frühen Nachkriegszeit 1945-1950', in *Archiv für Sozialgeschichte* 25 (1985), pp. 385-419.

Beyer, J. and E. Holtmann, '"Sachpolitik", Partizipation und Apathie in der Nachkriegsgesellschaft', in *Politische Vierteljahresschrift. Sonderheft* 18 (1987), pp. 144-153.

Birke, A., *Britain's Influence on the West German Constitution* (London, 1995).

Birke, A., *Bundesrepublik Deutschland: Verfassung, Parlament und Parteien*, vol. 41, *Enzyklopädie deutscher Geschichte* edited by L. Gall (Munich, 1997).

Birke, A., *Deutschland und Großbritannien. Historische Beziehungen und Vergleiche. Britain and Germany: Historical Relations and Comparisons* (Munich, 1999).

Birke, A., 'Das konstruktive Mißtrauensvotum in den Verfassungsverhandlungen der Länder und des Bundes', in *Zeitschrift für Parlamentsfragen* 8/1 (1977), pp. 77-92.

Birke, A., and K. Kluxen (eds.), *Deutscher und Britischer Parlamentarismus. British and German Parliamentarism* (Munich, London, 1985).

Blank, B., *Die westdeutschen Länder und die Entstehung der Bundesrepublik: Zur Auseinandersetzung um die Frankfurter Dokumente vom Juli 1948* (Oldenburg, 1995).

Boehling, R., '"Mütter" in der Politik: Amerikanische Demokratisierungsbemühungen nach 1945', in *Geschichte und Gesellschaft* XIX/4 (1993), pp. 522-529.

Bolz, R., *Rundfunk und Literatur unter amerikanischer Kontrolle. Das Programmangebot von Radio München 1945-1949* (Wiesbaden, 1991).

Böttger, B., *Das Recht auf Gleichheit und Differenz. Elisabeth Selbert und der Kampf der Frauen um Art. 3 II Grundgesetz* (Münster, 1990).

Bracher, K. *et al.* (eds.), *Die Weimarer Republik 1918-1933* (Bonn, 1998).

Bremme, G., *Die politische Rolle der Frau in Deutschland. Eine Untersuchung über den*

Einfluß der Frauen bei Wahlen und ihre Teilnahme in Partei und Parlament (Göttingen, 1956).

Briggs, A., *The History of Broadcasting in the UK*, vol. IV, *Sound and Vision*, revised edition (Oxford, 1995).

Broszat, M. (ed.), *Zäsuren nach 1945. Essays zur Periodisierung der deutschen Nachkriegsgeschichte* (Munich, 1990).

Broszat, M., K.-D. Henke and H. Woller (eds.), *Von Stalingrad zur Währungsreform. Zur Sozialgeschichte des Umbruchs in Deutschland* (Munich, 1988).

Buchanan, T. and M. Conway, 'The Politics of Democracy in Twentieth-Century Europe: Introduction', in *European History Quarterly* 32/1 (2002), pp. 7-12.

Bucher, P., (ed.), *Wochenschauen und Dokumentarfilme 1895-1950 im Bundesarchiv-Filmarchiv* (Koblenz, 1984).

Bundesrat (ed.), *50 Jahre Herrenchiemseer Verfassungskonvent – Zur Struktur des deutschen Föderalismus* (Bonn, 1999).

Confino, A. and R. Koshar, 'Regimes of Consumer Culture: New Narratives in Twentieth-Century German History', in *German History* 19/2 (2001), pp. 135-161.

Deighton, A., *The Impossible Peace: Great Britain, the Division of Germany, and the Origins of the Cold War* (Oxford, 1993).

Doering-Manteuffel, A., 'Deutsche Zeitgeschichte nach 1945. Entwicklung und Problemlagen der historischen Forschung zur Nachkriegszeit', in *Vierteljahrshefte für Zeitgeschichte* 41/1 (1993), pp. 1-29.

Doering-Manteuffel, A., 'Eine politische Nationalgeschichte für die Berliner Republik. Überlegungen zu H.A. Winklers *Der lange Weg nach Westen*', in *Geschichte und Gesellschaft* 27/3 (2001), pp. 446-462.

Doering-Manteuffel, A., 'Strukturmerkmale der Kanzlerdemokratie', in *Der Staat* 30/1 (1991), pp. 1-18.

Doering-Manteuffel, A., 'Turning to the Atlantic: The Federal Republic of Germany's Reorientation, 1945-1970', in *Bulletin* 25 (German Historical Bulletin, Washington, D.C., 1999), pp. 3-21, with commentary by C. Maier, pp. 22-28.

Doering-Manteuffel, A., 'Wie westlich sind die Deutschen? Überlegungen zum Verhältnis von Amerikanisierung und Westernisierung in der westdeutschen Gesell-

schaft', in *Potsdamer Bulletin für zeithistorische Studien* 17 (1999), pp. 7-19.

Dolezel, S., '*Welt im Film* 1945 and the Re-education of Occupied Germany', in K.R.M. Short and S. Dolezel (eds.), *Hitler's Fall: The Newsreel Witness* (New York and London, 1988), pp. 148-157.

Dowe, D. *et al.* (eds), *Europe in 1848. Revolution and Reform* translated by D. Higgins (New York, Oxford, 2001).

Düding, D., 'Ehard, Menzel und die Staatsform: der Kompromiß über den Föderalismus', in *Geschichte im Westen* 4 (1989), pp. 135-144.

Eisenberg, C., *Drawing the Line: The American Decision to Divide Germany, 1944-1949* (Cambridge, 1996).

Eley, G., *Forging Democracy. The History of the Left in Europe, 1850-2000* (Oxford, 2002).

Ellwein, T. and E. Holtmann (eds.), *50 Jahre Bundesrepublik Deutschland. Rahmenbedingungen – Entwicklungen – Perspektiven* (Opladen, 1999).

Erdmann, H. (ed.), *Drei Hamburger im Parlamentarischen Rat: Adolph Schönfelder und Paul de Chapeaurouge, Hermann Schäfer* (Hamburg, 1999).

Eschenburg, T. *et al.*, *Geschichte der Bundesrepublik Deutschland*, vol. I, *Jahre der Besatzung, 1945-1949* (Stuttgart and Wiesbaden, 1983).

Fait, B., *Demokratische Erneuerung unter dem Sternenbanner: Amerikanische Kontrolle und Verfassunggebung in Bayern 1946* (Düsseldorf, 1998).

Fait, B., 'In einer Atmosphäre von Freiheit: Die Rolle der Amerikaner bei der Verfassunggebung in den Ländern', in *Vierteljahrshefte für Zeitgeschichte* 33 (1985), pp. 420-455.

Feldkamp, M., *Der Parlamentarische Rat 1948-1949: Die Entstehung des Grundgesetzes* (Göttingen, 1998).

Fehrenbach, E., 'Ludwig Bergsträsser', in H.-U. Wehler (ed.), *Deutsche Historiker*, vol. VII (Göttingen, 1980), pp. 101-114.

Fehrenbach, E., 'Über die Bedeutung der politischen Symbole im Nationalstaat', in *Historische Zeitschrift* 213 (1971), pp. 296-357.

Fischer, H.-D., *Reeducations- und Pressepolitik unter britischem Besatzungsstatus. Die Zonenzeitung* Die Welt *1946-1950. Konzeption, Artikulation und Rezeption*

(Düsseldorf, 1978).

Frei, N., *Amerikanische Lizenzpolitik und deutsche Pressetradition. Die Geschichte der Nachkriegszeitung Südost-Kurier* (Munich, 1986).

Frei, N. and F. Friedlaender, *Ernst Friedlaender: Klärung für Deutschland. Leitartikel für* Die Zeit *1946-1950* (Munich, 1982).

Frevert, U., *Frauen-Geschichte zwischen Bürgerlicher Verbesserung und Neuer Weiblichkeit* (Frankfurt/M., 1986).

Frevert, U., *Women in German History: From Bourgeois Emancipation to Sexual Liberation* (Oxford, 1989).

Friedrich, C.J., 'Rebuilding the German Constitution', in *The American Political Science Review* 43/3 (1949), pp. 461-482 and part II in 43/4 (1949), pp. 704-720.

Friedrich, C.J., 'Military Government and Dictatorship', in *The Annals of the American Academy of Political and Social Science* 267 (1949), pp. 1-7.

Friese, E., 'Helene Wessel (1898-1969)', in *Zeitgeschichte in Lebensbildern*, vol. VIII, *Aus dem deutschen Katholizismus des 19. und 20. Jahrhunderts* edited by J. Aretz *et al.* (Mainz, 1997), pp. 107-122.

Fromme, F.K., 'Der Demokratiebegriff des Grundgesetzgebers', in *Die Öffentliche Verwaltung* 23 (1970), pp. 518-526.

Fromme, F.K., *Von der Weimarer Verfassung zum Bonner Grundgesetz: Die verfassungspolitischen Folgerungen des Parlamentarischen Rates aus Weimarer Republik und nationalsozialistischer Diktatur* (Tübingen, 1960).

Führer, K.C., K. Hickethier and A. Schildt, 'Öffentlichkeit – Medien – Geschichte. Konzepte der modernen Öffentlichkeit und Zugänge zu ihrer Erforschung', in *Archiv für Sozialgeschichte* 41 (2001), pp. 1-38.

Gelberg, K.-U., *Hans Ehard: Die föderalistische Politik des bayerischen Ministerpräsidenten 1946-1954* (Düsseldorf, 1992).

Giles, G. (ed.), *Stunde Null* (Washington, DC, 1997).

Gimbel, J., 'Die Konferenzen der Ministerpräsidenten 1945-1949', in *Aus Politik und Zeitgeschichte* B31/71 (1971), pp. 3-28.

Golay, J.F., *The Founding of the Federal Republic of Germany* (Chicago, 1958).

Grabbe, H.-J., 'Die deutsch-alliierte Kontroverse um den Grundgesetzentwurf', in

Vierteljahrshefte für Zeitgeschichte 26 (1978), pp. 393-418.

Gröschl, J., *Die Deutschlandpolitik der vier Großmächte in der Berichterstattung der Deutschen Wochenschauen 1945-1949. Ein Beitrag zur Diskussion um den Film als historische Quelle* (Berlin, 1997).

Grosse, P., 'The Boss of Occupied Germany: General Lucius D. Clay', in *Foreign Affairs* 77/4 (1998), pp. 179-185.

Gruner, W. D., 'Die Londoner Sechsmächtekonferenz von 1948 und die Entstehung der Bundesrepublik Deutschland', in O. Kuhn (ed.), *Großbritannien und Deutschland. Festschrift für John Bourke* (Munich, 1974), pp. 139-165.

Habermas, J., *Strukturwandel der Öffentlichkeit*, fifth edition (Frankfurt, 1996).

Hachmeister, L. and F. Siering (eds.), *Die Herren Journalisten. Die Elite der deutschen Presse nach 1945* (Munich, 2002).

Heil, P., *"Gemeinden sind wichtiger als Staaten": Idee und Wirklichkeit des kommunalen Neuanfangs in Rheinland-Pfalz* (Mainz, 1997).

Heineman, E., *What Difference Does a Husband Make? Women and Marital Status in Nazi and Postwar Germany* (Berkeley, CA, 1999).

Herbst, L. (ed.), *Westdeutschland 1945-1955: Unterwerfung, Kontrolle, Integration* (Munich, 1986).

Hessische Landesregierung (ed.), *'Ein Glücksfall für die Demokratie'. Elisabeth Selbert (1896-1986). Die große Anwältin der Gleichberechtigung* (Frankfurt/M., 1999).

Hochstein, B., *Die Ideologie des Überlebens. Zur Geschichte der politischen Apathie in Deutschland* (Frankfurt/M., 1984).

Hoffmann, C., *Stunden Null? Vergangenheitsbewältigung in Deutschland 1945 und 1989* (Bonn, 1992).

Höhn, M, 'Frau im Haus und Girl im *Spiegel*: Discourse on Women in the Interregnum Period of 1945-1949 and the Question of German Identity', in *Central European History* 26 (1993), pp. 57-90.

Holtmann, E., *Politik und Nichtpolitik: Lokale Erscheinungsformen politischer Natur im frühen Nachkriegsdeutschland: Das Beispiel Unna und Kamen* (Opladen, 1989).

Holtmann, E. (ed.), *Wie neu war der Neubeginn? Zum deutschen Kontinuitätsproblem nach 1945* (Erlangen, 1989).

Huber, E.R., *Deutsche Verfassungsgeschichte seit 1789*, vol. II, *Der Kampf um Einheit und Freiheit 1830-1850*, third revised edition (Stuttgart, 1988).

vol. III, *Bismarck und das Reich*, third revised edition (Stuttgart, 1988).

vol. V, *Weltkrieg, Revolution und Reichserneuerung 1914-1919* (Stuttgart, 1978).

vol. VI, *Die Weimarer Reichsverfassung* (Stuttgart, 1981).

vol. VII, *Ausbau, Schutz und Untergang der Weimarer Republik* (Stuttgart, 1984).

Hucko, E.M. (ed.), *Von der Paulskirche zum Museum Koenig: Vier deutsche Verfassungen* (Cologne, 1984).

Hucko, E.M. (ed.), *The Democratic Tradition: Four German Constitutions* (Leamington Spa, 1987).

Huffmann, U., D. Frandsen and A. Kuhn (eds.), *Frauen in Wissenschaft und Politik* (Düsseldorf, 1987).

Hurwitz, H., *Die Stunde Null der deutschen Presse. Die amerikanische Pressepolitik in Deutschland 1945-1949* (Cologne, 1972).

Hüttenberger, P., *Nordrhein-Westfalen und die Entstehung seiner parlamentarischen Demokratie* (Siegburg, 1973).

John, M., *Politics and the Law in Late Nineteenth-Century Germany: The Origins of the Civil Code* (Oxford, 1989).

Kettenacker, L., *Germany since 1945* (Oxford, 1997).

Kettenacker, L., *Krieg zur Friedenssicherung: Die Deutschlandplanung der britischen Regierung während des Zweiten Weltkrieges* (London, 1989).

Kirby, D., 'Divinely Sanctioned: The Anglo-American Cold War Alliance and the Defence of Western Civilisation and Christianity, 1945-1948', in *Journal of Contemporary History* 35/3 (2000), pp. 385-412.

Klemperer, V., *LTI* (Leipzig, 1947).

Kleßmann, C., *Die doppelte Staatsgründung: Deutsche Geschichte 1945-1955*, fifth edition (Bonn, 1991).

Klotzbach, K., *Der Weg zur Staatspartei. Programmatik, praktische Politik und Organisation der deutschen Sozialdemokratie 1945-1965* (Berlin, Bonn, 1982).

Koerfer, M., 'Louise Schroeder', in W. Mühlhausen and C. Regin (eds.), *Treuhänder des deutschen Volkes. Die Ministerpräsidenten der westlichen Besatzungszonen nach*

den ersten freien Landtagswahlen. Politische Porträts (Kassel, 1991), pp. 139-162.

Köhler, J. and D. van Melis, *Siegerin in Trümmern. Die Rolle der katholischen Kirche in der deutschen Nachkriegsgesellschaft* (Stuttgart, 1998).

Kolinsky, E., *Women in Contemporary Germany: Life, Work and Politics* (Oxford, 1993).

Kommentar zum Bonner Grundgesetz (*Bonner Kommentar*) first edition edited by B. Dennewitz *et al* (Hamburg, 1950-), second edition (Hamburg, 1964-).

Koszyk, K., *Geschichte der deutschen Presse*, vol. IV, *Pressepolitik für Deutsche 1945-1949* (Berlin, 1986).

Krohn, C.-D., and A. Schildt (eds.), *Zwischen den Stühlen? Remigranten und Remigration in der deutschen Medienöffentlichkeit der Nachkriegszeit* (Hamburg, 2002).

Krohn, C.-D., and M. Schumacher (eds.), *Exil und Neuordnung. Beiträge zur verfassungspolitischen Entwicklung in Deutschland nach 1945* (Düsseldorf, 2000).

Küppers, H., 'Zwischen Koblenz and Bonn: Rheinland Pfalz und die Gründung der Bundesrepublik', in *Geschichte im Westen* 4 (1989), pp. 160-180.

Kuhn, A., 'Power and Powerlessness: Women after 1945, or the Continuity of the Ideology of Femininity', in *German History* 7/1 (1989), pp. 35-46.

Kunze, R.-U., 'Reconsidered: "Der Mensch ist nicht für den Staat, sondern der Staat für den Menschen da." Der Parlamentarische Rat und die Entstehung des Grundgesetzes', in *Der Staat* 40/3 (2001), pp. 383-404.

Lange, E.H.M., 'Die Diskussion um die Stellung des Staatsoberhauptes 1945-1949 mit besonderer Berücksichtigung der Erörterungen im Parlamentarischen Rat', in *Vierteljahrshefte für Zeitgeschichte* 26 (1978), pp. 601-651.

Lange, E.H.M., 'Entstehung des Grundgesetzes und die Öffentlichkeit: Zustimmung erst nach Jahren', in *Zeitschrift für Parlamentsfragen* 10/3 (1979), pp. 378-404.

Lange, E.H.M., *Gestalter des Grundgesetzes. Die Abgeordneten des Parlamentarischen Rates: 15 historische Biografien* (Brühl, 1999).

Lange, E.H.M., 'Die Länder und die Entstehung des Grundgesetzes', in *Geschichte im Westen* 4/1 (1989), pp. 145-159, and part II in *Geschichte im Westen* 5/1 (1990), pp. 55-68.

Lange, E.H.M., 'Theodor Heuss und die Entstehung des Grundgesetzes', in *liberal - Vierteljahresheft für Politik und Kultur* 35/3 (1993), pp. 61-69.

Lange, E.H.M., 'Viel Skepsis und wenig Interesse. Die öffentliche Meinung und die Entstehung des Grundgesetzes', in *Das Parlament* 15 (7 April 1989), p. 10.

Lange, E.H.M., *Wahlrecht und Innenpolitik. Entstehungsgeschichte und Analyse der Wahlgesetzgebung und Wahlrechtsdiskussion im westlichen Nachkriegsdeutschland 1945-1956* (Meisenheim am Glan, 1975).

Lange, E.H.M., *Die Würde des Menschen ist unantastbar: Der Parlamentarische Rat und das Grundgesetz* (Heidelberg, 1993).

Langewiesche, D., *Nation, Nationalismus, Nationalstaat in Deutschland und Europa* (Munich, 2000).

Lattard, A., 'Zielkonflikte französischer Besatzungspolitik in Deutschland. Der Streit Laffon-Koenig 1945-1947', in *Vierteljahrshefte für Zeitgeschichte* 39/1 (1999), pp. 1-35.

Laufer, J., 'Die Verfassung in der SBZ 1946-1949', in *Aus Politik und Zeitgeschichte* B32-33/98 (1998), pp. 29-41.

Lee, S., '"Erziehung zur Demokratie". Post-war German Reconstruction in Biographical and Historical Writing', in *German History* 18/3 (2000), pp. 364-374.

Loth, W. (ed.), *Die deutsche Frage in der Nachkriegszeit* (Berlin, 1994).

Loth, W., *Stalins ungeliebtes Kind* (Berlin, 1994).

Marßolek, I., 'Radio in Deutschland 1923-1960. Zur Sozialgeschichte eines Mediums', *Geschichte und Gesellschaft* 27/2 (2001), pp. 207-239.

Mathy, H., 'Adolf Süsterhenn (1905-1974)', in *Geschichte im Westen* 3 (1989), pp. 203-217.

Matz, K.J., *Reinhold Maier (1889-1971): Eine politische Biografie* (Düsseldorf, 1989).

Mergel, T., *Parlamentarische Kultur in der Weimarer Republik. Politische Kommunikation, symbolische Politik und Öffentlichkeit im Reichstag* (Düsseldorf, 2002).

Merkl, P., *The Origin of the West German Republic* (New York, 1963).

Merkl, P., review of D.E. Rogers, *Politics after Hitler: The Western Allies and the German Party System* (New York, 1995), in *Central European History* 29/4 (1996), pp. 602-604.

Meyer, S. and E. Schulze (eds.), *Wie wir das alles geschafft haben: Alleinstehende Frauen berichten über ihr Leben nach 1945*, third edition (Munich, 1985).

Mitchell, M., 'Materialism and Secularism: CDU Politicians and National Socialism, 1945-1949', in *Journal of Modern History* 67 (1995), pp. 278-308.

Moeller, R.G., *Protecting Motherhood: Women and Family in the Politics of Postwar West Germany* (Berkeley, 1993).

Möller, H., *Parlamentarismus in Preußen 1919-1932* (Düsseldorf, 1985).

Mommsen, K., 'Bonn – Ein Beamtenparlament', in *Die Wandlung* 4/3 (1949), pp. 250-254.

Morsey, R., 'Der politische Aufstieg Konrad Adenauers 1945-1949', in R. Morsey and K. Repgen (eds.), *Adenauer-Studien I* (Mainz, 1971), pp. 20-57.

Morsey, R., 'Die Rolle Konrad Adenauers im Parlamentarischen Rat', in *Vierteljahrshefte für Zeitgeschichte* 18 (1970), pp. 62-94.

Morsey, R., 'Föderalismus im Bundesstaat: Die Rolle des bayerischen Ministerpräsidenten Hans Ehard in der Vor- und Frühgeschichte der Bundesrepublik Deutschland', in *Historisches Jahrbuch* 108 (1988), pp. 430-447.

Morsey, R., 'Verfassungsschöpfung unter Besatzungsherrschaft: Die Entstehung des Grundgesetzes im Parlamentarischen Rat', in *Die Öffentliche Verwaltung* 11 (1989), pp. 471-482.

Morsey, R., *Von Windhorst bis Adenauer: Ausgewählte Aufsätze zu Politik, Verwaltung und politischem Katholizismus im 19. und 20. Jahrhundert* edited by U. von Hehl *et al.* (Paderborn, 1997).

Morsey, R., 'Helene Weber (1881-1962)', in *Zeitgeschichte in Lebensbildern*, vol. III, *Aus dem deutschen Katholizismus des 19. und 20. Jahrhunderts* edited by J. Aretz *et al.* (Mainz, 1979), pp. 223-234.

Morsey, R., 'Die letzte Krise im Parlamentarischen Rat und ihre Bewältigung (März/April 1949)', in *Staat, Kirche, Wissenschaft und Gesellschaft. Festschrift zum 65. Geburtstag von Paul Mikat* edited by D. Schwab *et al.* (Berlin, 1989), pp. 393-410.

Mühlhausen, W., *Hessen 1945-1950. Zur politischen Geschichte eines Landes in der Besatzungszeit* (Frankfurt/M., 1985).

Münkel D., 'Die Medienpolitik von Konrad Adenauer und Willy Brandt', in *Archiv für Sozialgeschichte* 41 (2001), pp. 297-316.

Myers Feinstein, M., 'Deutschland über alles? The National Anthem Debate in the Federal Republic of Germany', in *Journal of Central European History* 33/4 (2000), pp. 505-531.

Myers Feinstein, M., *State Symbols. The Quest for Legitimacy in the Federal Republic of Germany and the German Democratic Republic, 1949-1959* (Boston, 2001).

Nave-Herz, R., *Die Geschichte der Frauenbewegung in Deutschland* (Hanover, 1997).

Nicholls, A.J., *The Bonn Republic: West German Democracy 1945-1990* (London, 1997).

Niclauß, K., *Demokratiegründung in Westdeutschland: Die Entstehung der Bundesrepublik Deutschland von 1945-1949* (Munich, 1974).

Niclauß, K., *Der Weg zum Grundgesetz* (Paderborn, 1998).

Niclauß, K., 'Politische Kontroversen im Parlamentarischen Rat', in *Aus Politik und Zeitgeschichte* B32-33/98 (1998), pp. 20-28.

Niclauß, K., 'Der Parlamentarische Rat und die plebiszitären Elemente', in *Aus Politik und Zeitgeschichte* B45 (1992), pp. 3-15.

Oermann, N.O. and J. Zachhuber, *Einigkeit und Recht und Werte. Der Verfassungsstreit um das Schulfach LER in der öffentlichen und wissenschaftlichen Diskussion* (Münster, 2001).

Notz, G., *Frauen in der Mannschaft. Sozialdemokratinnen im Parlamentarischen Rat und im Deutschen Bundestag 1948/49-1957* (Bonn, 2003).

Offen, K., *European Feminisms 1700-1950: A Political History* (Stanford, CA, 2000).

Otto, V., *Das Staatsverständnis des Parlamentarischen Rates. Ein Beitrag zur Entstehungsgeschichte des Grundgesetzes für die Bundesrepublik Deutschland* (Bonn, 1971).

Pfetsch, F.R., *Ursprünge der Zweiten Republik: Prozesse der Verfassungsgebung in den Westzonen und in der Bundesrepublik* (Opladen, 1990).

Plato, A. von, and A. Leh, *"Ein unglaublicher Frühling". Erfahrene Geschichte im Nachkriegsdeutschland 1945-1948* (Bonn, 1997).

Pünder, T., *Das bizonale Interregnum. Die Geschichte des Vereinigten Wirtschaftsgebiets 1946-1949* (Waiblingen, 1966).

Rauh, M., *Föderalismus und Parlamentarismus im Wilhelminischen Reich* (Düsseldorf, 1973).

Rauscher, A. (ed.), *Der soziale und politische Katholizismus. Entwicklungslinien in Deutschland 1803-1963*, 2 volumes (Munich, 1981-1982).

Recker, M.L., 'Westminster als Modell? Der Deutsche Bundestag und das britische Regierungssystem', in G.A. Ritter and P. Wende (eds.), *Rivalität und Partnerschaft. Studien zu den deutsch-britischen Beziehungen im 19. und 20. Jahrhundert. Festschrift für Anthony J. Nicholls* (Paderborn, 1999), pp. 313-335.

Reusch, U., 'Sir Brian Robertson (1896-1974)', in *Geschichte im Westen* 5/1 (1990), pp. 69-80.

Reynolds, S., 'Lateness, Amnesia and Unfinished Business: Gender and Democracy in Twentieth-Century Europe', in *European History Quarterly* 32/1 (2002), pp. 85-109.

Richter, L., *Kirche und Schule in den Beratungen der Weimarer Nationalversammlung* (Düsseldorf, 1996).

Ritter, G.A., *Über Deutschland. Die Bundesrepublik in der deutschen Geschichte* second edition (Munich, 2000).

Rogers, D.E., *Politics after Hitler: The Western Allies and the German Party System* (London, 1995).

Rölli-Alkemper, L., *Familie im Wiederaufbau. Katholizismus und bürgerliches Familienideal in der Bundesrepublik Deutschland 1945-1965* (Paderborn, 2000).

Rothstein, S., *Die Vorraussetzungen der Gründung der BRD 1948/49* (Eichholz, 1969).

Rupieper, H.-J., 'Bringing Democracy to the Frauleins: Frauen als Zielgruppe der amerikanischen Demokratisierungspolitik in Deutschland 1945-1952', in *Geschichte und Gesellschaft*17/1 (1991), pp. 61-91.

Rupieper, H.-J., *Die Wurzeln der deutschen Nachkriegsdemokratie: der amerikanische Beitrag 1945-52* (Opladen, 1993).

Sa'adah, A., *Germany's Second Chance: Truth, Justice and Democratization* (Cambridge, MA, 1998).

Säcker, H., 'Verfassungskonvent 1948', in *Die Öffentliche Verwaltung* 18 (1998), pp. 784-792.

Schewick, B. van, *Die katholische Kirche und die Entstehung der Verfassungen im Westdeutschland 1945-1950* (Mainz, 1980).

Schewick, B. van, 'Wilhelm Böhler (1891-1958)', in *Zeitgeschichte in Lebensbildern*, vol. IV, *Aus dem deutschen Katholizismus des 19. und 20. Jahrhunderts* edited by J. Aretz *et al.* (Mainz, 1980), pp. 197-207.

Schick, R., *Petitionen. Von der Untertanenbitte zum Bürgerrecht*, third revised edition (Heidelberg, 1996).

Schildt, A., 'Das Jahrhundert der Massenmedien. Ansichten zu einer künftigen Geschichte der Öffentlichkeit', in *Geschichte und Gesellschaft* 27/2 (2001), pp. 177-206.

Schildt, A., 'Von der Aufklärung zum Fernsehzeitalter. Neue Literatur zu Öffentlichkeit und Medien', in *Archiv für Sozialgeschichte* 40 (2000), pp. 487-509.

Schildt, A., *Zwischen Abendland und Amerika. Studien zur westdeutschen Ideenlandschaft der 50er Jahre* (Munich, 1999).

Schildt, A. and A. Sywottek, *Modernisierung im Wiederaufbau: Die westdeutsche Gesellschaft der 50er Jahre* (Bonn, 1998).

Schmid, S., *Journalisten der frühen Nachkriegszeit. Eine kollektive Biografie am Beispiel von Rheinland-Pfalz* (Cologne, 2000).

Schölzel, S., 'Die Pressepolitik in der französischen Besatzungszone 1945 bis 1949', in *Jahrbuch für westdeutsche Landesgeschichte* 8 (1982), pp. 227-249.

Schölzel, S., *Die Pressepolitik in der französischen Besatzungszone 1945 bis 1949* (Mainz, 1986).

Schulz, A., 'Der Aufstieg der 'vierten Gewalt'. Medien, Politik und Öffentlichkeit im Zeitalter der Massenkommunikation', in *Historische Zeitschrift* 270/1 (2000), pp. 65-97.

Schwarz, H.-P., *Adenauer*, vol. I, *Der Aufstieg 1876-1952* (Munich, 1994).

Schwarz, H.-P., *Vom Reich zur Bundesrepublik. Deutschland im Widerstreit der außenpolitischen Konzeptionen in den Jahren der Bezatzungsherrschaft 1945-1949* (Stuttgart, 1980).

Sörgel, W., *Konsensus und Interessen: Eine Studie zur Entstehung des Grundgesetzes* (Opladen, 1985).

Späth, A., 'Vielfältige Forderungen nach Gleichberechtigung und 'nur' ein Ergebnis: Artikel 3 Absatz 2', in *Frauen in der Geschichte*, volume V, *'Das Schicksal Deutschlands liegt in der Hand seiner Frauen'. Frauen in der deutschen Nachkriegsgeschichte* edited by A.-E. Freier and A. Kuhn, (Düsseldorf, 1984), pp. 122-167.

Spevack, E., *Allied Control and German Freedom. American Political and Ideological Influences on the Framing of the West German Basic Law (Grundgesetz)* (Münster, 2001).

Spotts, F., *The Churches and Politics in Germany* (Middletown, CN, 1973).

Stüber, G., 'Zonales Provisorium und demokratisches Experiment: Der Zonenbeirat der britischen Besatzungszone 1946-1948', in *Geschichte im Westen* 5/1 (1990), pp. 162-187 and part II in *Geschichte im Westen* 6/1 (1991), pp. 30-61.

Trittel, G.J. *Hunger und Politik. Die Ernährungskrise in der Bizone (1945-1949)* (Frankfurt/M, 1990).

Tyrell, A., *Großbritannien und die Deutschlandplanung der Alliierten 1941-1945* (Frankfurt/M., 1987).

Umbach, M. (ed.), *German Federalism: Past, Present, Future* (Basingstoke, 2002).

Weber, P., *Carlo Schmid 1896-1979: Eine Biografie* (Munich, 1996).

Wehner, G., *Die Westalliierten und das Grundgesetz 1948-9: Die Londoner Sechsmächte konferenz (*Freiburg i. Br., 1994).

Wengst, U., *Thomas Dehler 1897-1967: Eine politische Biografie* (Munich, 1997).

Werner, W. (ed.), *Findbüchern zu Beständen des Bundesarchivs*, vol. 35, *Der Parlamentarische Rat. Bestand Z5*, second expanded edition (Koblenz, 1994).

Werner, W., 'Quellen zur Entstehung des Grundgesetzes. Ein Überblick', in F.P. Kahlenberg (ed.), *Aus der Arbeit der Archive: Beiträge zum Archivwesen, zur Quellenkunde und zur Geschichte. Festschrift für Hans Booms* (Boppard, 1989), pp. 646-661.

Wilke, J. (ed.), *Mediengeschichte der Bundesrepublik Deutschland* (Bonn, 1999).

Wilke, J. (ed.), *Unter Druck gesetzt. Vier Kapitel deutscher Pressegeschichte* (Cologne, 2002).

Williamson, D., *A Most Diplomatic General: The Life of General Lord Robertson of*

Oakridge (London, 1996).

Willis, F.R., *France, Germany, and the New Europe 1945-1963* (Stanford, CA., 1965).

Wilms, H., *Ausländische Einwirkungen auf die Entstehung des Grundgesetzes* (Stuttgart, 1999).

Winkler, H.A., *Der lange Weg nach Westen*, 2 vols. (Munich, 2000).

Witetschek, H., 'Die Haltung des Parlamentarischen Rates zum Verhältnis von Staat und Kirche', in *Politische Studien* 25 (1974), pp. 283-297.

Wittreck, F., 'Die Todesstrafe in den deutschen Länderverfassungen', in *Jahrbuch des Öffentlichen Rechts der Gegenwart* 49 (2001), pp. 158-214.

Unpublished theses

Fulda, B., 'Press and Politics in Berlin, 1924-1930' (unpublished Ph.D. thesis, University of Cambridge, 2003).

Zeidler, W., 'Auswirkungen der westdeutschen Landesverfassungen auf das Bonner Grundgesetz' (unpublished Diss. jur., University of Hamburg, 1951).