

## Dokumentation

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### DIE ANFANGSJAHRE DER BUNDESREPUBLIK DEUTSCHLAND

Eine amerikanische Bilanz 1954

Die Bundesrepublik Deutschland ist seit ihrer Gründung Kernstück der amerikanischen Europapolitik. Diese für Washington zentrale Bedeutung Westdeutschlands hatte sich bereits kurz nach der militärischen Niederlage abgezeichnet. Vor allem ökonomische Sachzwänge und die Verschärfung des Ost-West-Konfliktes hatten die amerikanischen Führungsspitzen von Politik und Wirtschaft spätestens 1947 davon überzeugt, daß es zu einer wirtschaftlichen und politischen Stabilisierung Westdeutschlands aus amerikanischer Perspektive eine Alternative nicht gab. Es lag auf der Linie dieses Kalküls, daß Westdeutschland von Anfang an integraler Bestandteil des European Recovery Program war. Die Einbeziehung des westdeutschen Wirtschaftspotentials in den Marshallplan wurde in Washington zunächst als unabdingbare Voraussetzung für eine dauerhafte Rekonstruktion Europas und der Weltwirtschaft betrachtet. Hinzu kamen politische Dimensionen. So hat die wirtschaftliche Stabilisierung Westdeutschlands die Voraussetzung auch für eine politische Stabilisierung geschaffen und damit eine Immunisierung Westdeutschlands vor sowjetischen Einflüssen einleiten und den Demokratisierungsprozeß konsolidieren können. Die mit dem Marshallplan intendierte und zum großen Teil auch in Gang gesetzte westeuropäische Integration hat überdies die außenpolitische Orientierung maßgeblich beeinflusst, denn auf diese Weise wurde die Außenpolitik der Bundesrepublik bereits in ihrer Gründungsphase auf den Westen „eingepolt“. Mit der Erweiterung des westdeutschen Handlungsspielraums wurde dann die Sicherheit vor Deutschland ein weiteres wichtiges Motiv für eine dauerhafte Westorientierung der Bundesrepublik<sup>1</sup>.

<sup>1</sup> Vgl. z. B. Manfred Knapp, Deutschland und der Marshallplan. Zum Verhältnis zwischen politischer und ökonomischer Stabilisierung in der amerikanischen Deutschlandpolitik nach 1945, in: Claus Scharf/Hans-Jürgen Schröder (Hrsg.), Politische und ökonomische Stabilisierung Westdeutschlands. Fünf Beiträge zur Deutschlandpolitik der westlichen Alliierten, Wiesbaden 1977, S. 19–43; ders., Die Anfänge westdeutscher Außenwirtschafts- und Außenpolitik im bizonalen Vereinigten Wirtschaftsgebiet (1947–1949), in: ders. (Hrsg.), Von der Bizonengründung zur ökonomisch-politischen Westintegration. Studien zum Verhältnis zwischen Außenpolitik und Außenwirtschaftsbeziehungen in der Entstehungsphase der Bundesrepublik Deutschland (1947–1952), Frankfurt/Main 1984, S. 13–94; Werner Link, Der Marshallplan und Deutschland, in: Aus Politik und Zeitgeschichte B 50/80 (13. Dezember 1980), S. 3–18; ders., Die amerikanische Deutschlandpolitik



Angeichts dieser Situation überrascht es nicht, daß in den Berichten der Hohen Kommission allen erkennbaren und potentiellen Veränderungen in der politischen Konstellation der Bundesrepublik, die die Position des Kanzlers in irgendeiner Weise tangieren konnten, besondere Aufmerksamkeit gewidmet wurde.

Ungeachtet gelegentlicher transatlantischer Irritationen, die sich aus deutschen Neutralisierungsängsten einerseits und andererseits aus dem amerikanischen Rapallo-Trauma ergaben, zieht sich die insgesamt positive Einschätzung Adenauers wie ein roter Faden durch die in den amerikanischen Akten dokumentierten Diskussionen innerhalb der amerikanischen Regierung. So heißt es etwa Anfang 1959 in einem zusammenfassenden Bericht der amerikanischen Botschaft in Bonn über die wichtigsten Entwicklungen in der Bundesrepublik: „The broad elements of stability in the Federal Republic described in similar surveys in past years [...] remained constant in 1958. The leadership and policies of Adenauer continued to dominate and were again endorsed in major elections.“<sup>5</sup>

Zu den besten Analysen der Rolle Adenauers in der deutschen Innen- und Außenpolitik gehört der im folgenden abgedruckte Bericht vom Juli 1954. Der Verfasser, Edward Tudor Lampson, Jahrgang 1912, promovierte 1939 an der Harvard Universität mit einer Arbeit über „The Royal Prerogative in England, 1485–1603“. Nach Lehrtätigkeiten am Trinity College und am Southwestern College trat er 1942 in den Dienst des State Department. Nach Auslandserfahrungen in Ankara (Second Secretary) und Düsseldorf (Political Officer) wurde er im November 1952 an die Amerikanische Hohe Kommission nach Bonn versetzt, wo er am 4. Juli 1954 die Leitung der für deutsche Innenpolitik zuständigen Abteilung (Division of German Internal Affairs) übernahm. Am 5. Mai 1955 wurde er Erster Sekretär an der jetzt in den Rang einer Botschaft erhobenen amerikanischen Mission in Bonn. Seit August 1955 widmete er sich überwiegend Aufgaben in der Zentrale in Washington.

In der Deutschlandabteilung des State Department fand der Bericht eine über die Routinebehandlung hinausgehende Beachtung, weil es Lampson verstanden hatte, allgemeine Betrachtungen mit einer Detailanalyse zu verknüpfen. Eine leicht (um die drei Abschnitte 1. Federalism, 2. The CDU and the Trade Unions und 3. The Information Ministry in Teil F) gekürzte Fassung wurde daher als Grundlage für „briefing papers“ über Westdeutschland zu den Akten genommen<sup>6</sup>. Dort trug sie die Überschrift „The Role of the Chancellor in West German Political Developments“.

<sup>5</sup> Amerikanische Botschaft Bonn an State Department, 2. Februar 1959 (The Main Trends in 1958 and the German Scene at the Turn of the Year), in: NA, RG 59, 762A.00/2–259.

<sup>6</sup> Vgl. Memorandum Williams vom 5. August 1954, in: NA, RG 59, 762A.00/7–1254: „Here is a very useful effort by Lampson. I think he does very well in giving the broad scale treatment to the West German political scene and that there is, at the same time, enough of detail and specific example to keep the casual reader from thinking he is reading just ‚general‘ statements. Aside from the fact that you will all be interested in many of the items discussed, I think it will be valuable to keep the despatch in mind as a desirable base for briefing papers that may be required of us and for quick instruction of officers who come to see us for a day or two before proceeding to Germany on assignment [...] I will shortly get a more complete copy of the report.“

## Dokument

Some Observations on West German Political Developments  
(The Role of the Chancellor in West German Political Developments)  
U.S. HICOG, Bonn to The Department of State,  
Washington Despatch No. 82, July 12, 1954<sup>7</sup>

### I. Introduction

At the end of this week will adjourn the first session of the Bundestag in which Chancellor Adenauer controls through his coalition more than two-thirds of the seats. Simultaneously, because of events occurring outside of Germany the whole question of the success of the Chancellor's policy of western integration is hanging in the balance. Most observers of the German scene agree that its success or failure within the immediate future will exercise a profound influence upon the course of western German development. At such a time, it may be useful to reflect upon some of the outstanding characteristics of the German political scene as it has evolved in the first five years of the Federal Republic's existence.

The executive branch of the German government under the skillful and forceful leadership of Chancellor Adenauer has overshadowed the legislature. Major policies and legislative programs initiated by the Government have with few exceptions been accepted by the parliament without significant change. Thus any review of the German political system should properly begin with a consideration of the Office of the Chancellor and of his administrative apparatus.

### II. The Federal Chancellor

The West German chancellor enjoys a greater degree of practical independence from parliamentary control than is the case in other European democracies where a premier can be removed if a parliamentary majority disavows him in a vote of confidence. The German constitution was purposely drawn with a view to preventing the recurrent cabinet crises which have done so much to destroy the effectiveness of French and Italian democratic government. Thus the German Basic Law provides that the chancellor cannot be removed from office until the Bundestag has selected his successor by a majority vote. Under the conditions obtaining in German politics during the term of the first Bundestag, it proved a practical impossibility to muster a majority in favor of any parliamentary leader who was not the head of the CDU party. Thus, despite the fact that he was chosen as chancellor by a majority of one, Adenauer found himself from 1949 to 1953 as firmly

<sup>7</sup> Der Bericht mit der Klassifizierung „confidential“ befindet sich in: NA, RG 59, 762A.00/7–1254. Vor dem Postabgang am 16. Juli 1954 wurde der Abschnitt IV.A.2. noch um den Hinweis auf den Bericht Nr. 114 vom 15. Juli 1954 ergänzt, vgl. unten, Anm. 15. Die Kommentierung beschränkt sich auf den Nachweis der von Lampson zitierten Quellen; das gilt insbesondere für die in den Akten der

seated in his office as a president of the United States\*. The 243 seats which the CDU/CSU party now commands\*\* in the Bundestag as a result of the September 6 elections has further increased the strength of the Chancellor's hold on his office. Moreover, because the members of the cabinet are appointed and dismissed by the federal president on the proposal of the chancellor, there is no practical method by which the Bundestag can force the resignation of individual cabinet members against the chancellor's will unless the latter himself is removed.

The result of this system of choosing and replacing a chancellor has been to give great practical power to his office. Moreover, this constitutional power is enhanced by German traditions and attitudes which favor the development of a strong executive. Although the German legislature under the constitution has wide powers, it is the chancellor, his cabinet and the executive branch of the government he directs which provide direction and drive to the German governmental machinery.

#### A. Influence of Adenauer

Working from the vantage point of this strong office, Adenauer has been able to exert a decisive influence upon the development of the Federal Republic up to the present. Time and again he has shown his qualities of courage, skill, realism, and leadership. The fixity with which he has followed his major objectives has contributed greatly to the coherence of government policy and to the development of the self-confidence of the administration. His strength of character as well as his remarkable success have commanded respect in a country whose political heroes have been characterized by their iron wills.

The Chancellor has influenced the character of the administration in numerous ways. At times, particularly in the areas which he considers of primary importance, his policy has had a personal quality. For example, during the preliminary planning for the Berlin Conference, it was the official position of the German Government to support a plan for the administration of Germany after all-German elections\*\*\* which was widely attacked throughout the German press, opposed by the leaders of the CDU/CSU party, resisted by a number of Cabinet ministers, including the Minister for all-German Affairs, and criticized by German Foreign Office experts on the USSR. The official position was that of the Chancellor and a small number of his close advisers. Another indication of his influence is the lack of direction which is apparent when Adenauer is out of the country.

\* In this connection, it is interesting to note that up to the present the German constitution is developing along lines reminiscent of the American presidential system. For example, in 1953 the Bundestag elections had more of the characteristics of an American presidential election than of a European parliamentary one. It was chiefly a contest between Ollenhauer and Adenauer. (But this competition between contenders for the office of chancellor as the outstanding feature of the election may be a temporary phenomenon in German political life since after the dominating personality of Adenauer disappears from the German political scene, it seems likely that German politics will return to more normal multi-party patterns.)

\*\* Up to mid-June the party had an absolute majority of 244 but at that time, Deputy Kather left the CDU party and joined the BHE faction, because he held that the CDU/CSU was not doing enough for refugee groups.

\*\*\* This plan called for the simultaneous operation of an all-German Constituent Assembly, and East German and West German Governments.

(This situation is enhanced by the fact that Adenauer has kept in his own hands the portfolios of chancellor and minister for foreign affairs.) An example was the hesitancy with which the German Government handled certain difficult foreign policy questions during the three-week period when Adenauer was on a trip to Greece and Turkey\*.

#### B. The Chancellory

As is so often the case with strong executives, the personal quality of the Chancellor's government also expresses itself in the role of his "kitchen cabinet". There has been a tendency in the Federal Republic for the small number of men who have the Chancellor's ear to exercise a great influence in the shaping of major political decisions. Their influence is derived from access rather than authority. The symbol of this development is the importance of the Office of the Federal Chancellory. In observing the power of such men as Globke and Blankenhorn, one is reminded of the role of Hopkins and Corcoran in the administration of F.D. Roosevelt.

It is a source of weakness in this relatively unseasoned democracy that this small influential group has shown no sign of a desire to widen the basis of participation. This tendency has reduced chances for training a new generation of competent administrators and of drawing into the area of responsibility a widening circle of capable and interested citizens.

Another expression of the personal side of the Adenauer administration has been the Chancellor's tendency to keep his colleagues in the dark on major questions of policy, particularly foreign policy. His coalition partners, especially the CSU party, and even leaders of the CDU Bundestag fraction, frequently complain that they are neither consulted nor informed. Likewise, he made no attempt effectively to bring the opposition into the planning of foreign policy despite numerous meetings between SPD leaders and himself.

#### C. The Wuermeling Ministry

It is difficult to assess accurately what role the Chancellor plays in the current increase of clerical influence in German political life. This development is typified by the activities and objectives of Minister of Family Affairs, Wuermeling. The continuation in office for over five years of a predominantly Catholic party has naturally begun to have some effect upon the character of the government. The clearest expression of that influence is this newly created Ministry which exercises certain functions in the supervision of morals.

Such tendencies up to the present have been limited by criticism of the German public, the pressure of Protestants within the CDU (it should be noted, however, that some Protestants approve of the activities of the Wuermeling Ministry) and presumably the common sense of the Chancellor. Numerous Germans, particularly among anti-clerical circles, look with foreboding at such developments and warn that a government so strongly Catholic in orientation is, under clerical influence, taking on with disquieting speed the characteristics of the Salazar government in Portugal. They prophesy that Western Germany will shortly be an authoritarian regime strongly under church influence strictly controlling the morals, if not the faith, of the population. Such forecasts seem exaggerated when one considers the strength of protestantism, anti-clericalism and materialism in Germany.

\* The Saar issue and the question of the amendment of the German Constitution.

#### D. The Chancellor's Outlook

The experience of recent years has given no reason to revise an estimate made of the Chancellor in 1949. In the light of recent events, it still seems fair to say that he "has no deep sympathy for popular government in the American sense nor for democracy in practice as we understand it. He is the product of German officialdom with its belief in the authority of the state over the people and in the professional civil servant as against the untrained legislator; and in the right of the government (the state) to take action which it considers to be in the best interests of the German people unhampered by reference to public opinion."<sup>8</sup>

In short, Adenauer is the product of the conservative tradition of the German Civil Service and of the philosophy of the German Rechtsstaat. In his outlook today, as in his opposition to Nazism from 1933 to 1945, he represents the best elements of this tradition. Given the political inexperience of the German people, one can make out a strong case for the thesis that Adenauer's enlightened pro-European leadership combined with his respect for law and civilized values provide the best guidance for the German people which can be expected under present circumstances.

Although Adenauer's influence on the development of German institutions was strong in the period 1949-1953, the smashing victory of September 1953 - unprecedented in German parliamentary history - has greatly increased it. Control of the lower house, where his party had up to June, 1954, 59% of the seats (and his coalition more than ⅔), gives Adenauer unusually broad powers. With this two-thirds majority, combined with two-thirds of the votes in the Bundesrat in coalition hands, the coalition can amend the German Basic Law except in respect to basic civil liberties (Articles 1-20) and federal-Laender relationships. In view of this situation, it is of value to estimate what are the practical limits of the Chancellor's power.

#### E. Factors Limiting the Chancellor's Power

The first limit is set by Adenauer's personal awareness that the success of his major policies requires moderation. Despite his autocratic cast of mind, there are many indications that Adenauer clearly understands the nature of his present position. His policy of European integration will oblige him to take into consideration public opinion outside of Germany. This public opinion is highly sensitive to the fear of the return of German absolutism. Soviet propaganda and British, French and U.S. Germanophobes constantly bring this danger before the peoples of Europe and of the United States.

Both in private conversation and in public utterances Adenauer has clearly indicated his awareness that if Germany is to succeed in playing an important role in a United Europe, it must not overreach itself. This moderation has been reflected, for example, in the behavior of the German delegation to the CSC which, although it fought hard against a tax decision which worked to Germany's disadvantage, accepted its defeat with a good grace which can best be explained in terms of strong government directives. It has

<sup>8</sup> Office of the Political Adviser of the United States High Commission and State Department, 8. Dezember 1949 (Prospects of Democratic Development of the German Federal Government), in: NA, RG 59, 862.00/12-849. Der hier gekürzt wiedergegebene Abschnitt ist in der Vorbemerkung (Text zu Anm. 3) vollständig zitiert.

also been revealed in the way in which the Chancellor handled last fall's crisis over the formation of an information ministry. It has again exhibited itself in the caution with which the Federal Chancery is handling the question of the wearing of German military decorations, and the proposal of an FDP Bundestag deputy that a Bundestag delegation should make a trip to Russia.

Secondly, the nature of the Chancellor's own party imposes certain limitations. German political parties are generally highly disciplined and party lines are seldom broken, but the CDU/CSU is not a normal European political party; it is a loose conglomeration of interest groups. There are certain issues which might split the CDU and make it impossible for the Chancellor to maintain his parliamentary majority. The presence of the labor wing, for example, puts a definite limit upon the extent to which the Chancellor would be able to put through anti-labor legislation. Adenauer's past record itself is an indication that he clearly recognizes the importance of satisfying labor's responsible demands and the necessity of winning labor support for major government policies. For example, it was he who put through the first and most sweeping "codetermination" law. That act made it possible for him to win at least tacit support of the labor unions for the Schuman Plan even against the most vociferous opposition of the SPD.

It is significant that the Chancellor has chosen a labor leader to handle defense questions. It is axiomatic that it would be difficult to build up German military contingents if trade unions and industrial labor in general lined themselves up strongly against such a development. Furthermore, given the present intensity of feeling created by allusions to "Prussian militarism", it would be greatly to Germany's advantage to enter a European defense community in a position in which it could represent the new German army as one developed under the liberal leadership of a man like Blank.

The fact that approximately 40 percent of CDU/CSU deputies are Protestants places another limitation upon the Chancellor's freedom of action in matters which touch upon denominational issues.

#### F. Illustrative Issues Since September 1953

Several events following the elections have borne out the view that there are numerous forces which tend to hold the present German government to a moderate course, in addition to the basic fact that the Chancellor and his associates are moderate and reasonable men. Directly after the elections, moves were made which suggested that the Government might use its victory to increase its control over the *Laender*, the trade unions, and the information media. However, in each case the Government modified its initial line of action. These developments are discussed briefly below.

##### 1. Federalism

The issue of the distribution of powers between the central government and the *Laender* became of primary importance to the Chancellor because of the constitutional issue involved in the defense treaties. During the constitutional debate of December and January, 1952-1953, there were indications that the government attempted to bring down one or more of the *Laender* governments in order to increase the pro-Adenauer group in the Upper House. In these maneuvers, the Chancellor was unsuccessful and the attempt at least temporarily reduced his popularity. Following the September elections several changes in *Laender* Governments to the advantage of the CDU/CSU occurred.

On October 7, a new government, with the CDU in possession of a majority of the cabinet seats, was formed in Baden-Wuerttemberg. In this case, however, no clear-cut constitutional issue was at stake because the CDU, which was the largest party in Baden-Wuerttemberg before the September election, had not even been represented in the previous government. There was, therefore, a good case to be made for the formation of a new government in Baden-Wuerttemberg.

The local election held in Hamburg on November 1 brought in a new state legislature with a narrow pro-Government majority and has assured a two-thirds majority on the Bundesrat for Adenauer. Despite certain SPD charges, there is no evidence of improper pressure exerted from Bonn to influence the outcome of the Hamburg election.

In the case of Lower Saxony, however, the issue between federalism and centralism was clearly drawn. The Land government was a reasonable one in which the majority parties were properly represented. It was not the intention of the Basic Law that properly constituted Land governments should be forced out every time a federal election occurred if they were not similar in political orientation to the central government. However, there were indications that certain officials in the Chancellor's office seriously considered means of forcing the SPD-dominated government to fall by inducing the BHE members of the Lower Saxony coalition to cast a vote of no-confidence in a government of which they were members. The BHE refused to do this, and the plan failed. If it had succeeded, it would have been a serious infringement of federal principles.

Past experience indicates that this is not a question upon which the Chancellor has scruples. The strongest limiting factor in such matters is the Bavarian CSU, which is strongly committed to federal principles because it wishes to preserve as much self-government for Bavaria as possible.

## 2. The CDU and the Trade Unions

The election results were barely in before rumors began to circulate charging that the CDU/CSU was planning to use its newly-won power to "gleichschalten" the trade unions (i.e. to "integrate" them). The *New York Times*<sup>9</sup> carried an article suggesting that the Minister of Labor would hold a top union job and would direct the government domination of the trade unions along the model of a corporative state. Such rumors, although stirring up opinion abroad, proved groundless. But shortly thereafter Catholic labor leaders precipitated a crisis in the West German labor movement. On September 17, a joint committee consisting of representatives of the CDU/CSU Social Committees, the party's labor wing, and Catholic and Evangelical employee associations sent the German Federation of Labor (DGB) an eight-point program avowedly aimed at ensuring future DGB neutrality in the political sphere\* by providing greater Christian (i.e. pro-CDU) representation and influence on the governing bodies of the DGB and its member unions. It also proposed a basic revision of DGB social and economic policy in the light of the current political situation.

These demands were firmly rejected by the highest DGB policy-making body, the Executive Council, but the DGB Chairman, Walter Freitag, arranged for conversations between himself and the two prominent Catholic labor leaders Kaiser and Arnold.

Although the issue, if pressed to the limit, might have resulted in splitting apart the SPD and CDU elements now combined in a single labor organisation, Catholic hotheads found it advisable to withdraw from their extreme position. Although no evidence is available to indicate whether Adenauer played a role in this affair behind the scenes, moderates won out so that the CDU victory was not used to bring the trade unions under CDU party domination.

In his statement of government policy, Chancellor Adenauer's remarks on the trade unions were brief and restrained. The Government urgently desired the unions to pursue an "independent and positive course in the interest of labor and the entire people". The Government was "far from wanting to interfere with the independence of the unions" but expected in return that the unions would respect "non-partisanship and tolerance as fundamental principles of their existence"<sup>10</sup>.

It is interesting that German public opinion was critical of the CDU moves. Influential German journals, including the conservative *Deutsche Zeitung* and *Industrie Kurier*, normally critical of the DGB, condemned attempts of a political party to enforce its demands in the labor movement on the basis of a victory in political elections. While considering some reform in the trade unions necessary, they believed that changes should come democratically from within the trade union membership. Properly speaking, such changes as the CDU demanded can only be put through at a general assembly scheduled to meet in October, 1954<sup>11</sup>.

## 3. The Information Ministry

In connection with the ability of the administration to impose its will on the Bundestag the history of the Information Ministry is revealing. Immediately after the election, State Secretary Lenz, top assistant to the Chancellor in domestic political affairs, advocated the creation of a Super-Information Ministry to combine in one cabinet ministry all the information-disseminating agencies as well as the agencies engaged in collecting information for government use. There is no doubt that the public relations work of the German Government could be improved, and a coordination of various scattered agencies concerned with public relations and propaganda activities might be useful in many ways.

Despite these advantages, many observers were deeply disturbed when news of this plan was publicized. There was concern in many quarters that the scheme, if realized, would mean the almost complete throttling of the independent press and radio. The Chancellor's irritation at the behavior of the press on various occasions was known, and it was commonly believed he would not be averse to some measure of press control. Furthermore, the combination of information collection and dissemination had ugly connotations. It raised fears that German organizing genius, if united with pre-1945 habits of thought and a suspected feeling on the Government's part that an election victory entitled it to mould public opinion along lines useful to the implementation of its policies, might run away with such a project.

In the first days after revelations about the Information Ministry which appeared in the sensational weekly *Der Spiegel* there was remarkably little comment in the press<sup>12</sup>. Preliminary caution may have been due to fear that the plan would really be imple-

\* During the campaign, the DGB had widely distributed a pamphlet favorable to the SPD.

<sup>9</sup> Vel. *New York Times* vom 18. September 1953.

<sup>10</sup> Verhandlungen des Deutschen Bundestages. Stenographische Berichte, Bd. 18 (1953/54), S. 14.

<sup>11</sup> Vgl. *Deutsche Zeitung* vom 19. September 1953; *Industriekurier* vom 24. September 1953.

<sup>12</sup> *Der Spiegel* vom 22. September 1953, S. 5 f.

mented with dire results for any papers who criticized it. If German papers were at first quiet, the foreign press pointed out all the possibilities of such a Ministry with gusto, and public opinion abroad reacted violently. Moreover, in German liberal circles there was strong opposition.

After a preliminary period of silence, an almost solid negative front in the West German press formed against the plan\*. By Friday September 24 the Federal Press Conference, an association of German journalists accredited to Bonn, with an almost unanimous vote adopted a resolution appealing to the Federal Government and the Bundestag to oppose the formation of an Information Ministry. Later in the same day certain critical Allied views became known. In the evening, the Government issued a release that Chancellor Adenauer had from the very beginning taken a negative position on the creation of a Federal Information Ministry. Later, in response to a query from Lenz, Adenauer personally stated that he had carefully considered the proposals for the creation of such a Ministry. There were a number of things to be said in favor of the plan and also a number of reasons against it. He had decided that the unfavorable aspects outweighed the advantages and that the creation of such a Ministry would therefore not be advisable. As a consequence of these developments Lenz resigned.

By June 14, possibly because he was afraid of popular reactions to the course of foreign affairs (see below) and felt the need for a stronger control over government propaganda, the Chancellor resurrected the idea of putting Lenz in charge of propaganda in a new form – a Coordinating Committee for News Releases of the Federal Government, to be headed by his former State Secretary. The announcement of this plan “evoked a storm of criticism. The press almost unanimously warmed up its objections of last fall, when a similar proposal was advanced that this would result in press control and eventual establishment of a Propaganda Ministry. Resistance to this development extended to all parties. The SPD waged the most virulent attack and alluded to great dangers menacing the freedom of press and opinion in West Germany. The FDP announced its refusal to cooperate in the committee, objecting that it was an improper combination of the legislative and executive branches of the Government.” (Bonn despatch 3254, June 18, 1954)<sup>13</sup>. The DP also objected to the plan and critical voices were raised from the CDU’s left wing. Three weeks later the Chancellor withdrew his plan. It is significant that in this second defeat of this scheme the foreign press and diplomatic opinion did not play an important role.

Simultaneous with the Lenz episode the Chancellor received a bad press because former Minister President of Baden-Wuerttemberg, Reinhold Maier, charged that the Chancellor was using unconfirmed reports prepared by the Office for the Protection of the Constitution (an office for the collection of information on activities endangering

\* Several defensive editorials appeared in the Chancellor’s organs, the *Koelnische Rundschau* and the *General Anzeiger*, while the CDU press service *DUD* carried a sharp statement on the resolutions of the Bonn correspondents charging them with creating an “unfavorable effect on the favorable impression created by the election results” and charging them with party partisanship<sup>14</sup>.

<sup>13</sup> In den Akten des State Department nicht aufgefunden.

<sup>14</sup> Vgl. *Koelnische Rundschau* vom 26. September 1953; *General Anzeiger* vom 24. September 1953; *Deutschland-Union-Dienst* 25. September 1953

democratic government in Germany) to damage the reputation of his political opponents.

The story of the relationship of the Government with the press has been told in considerable detail because the behavior of the German Government in this affair is revealing. It illustrates that public opinion, in particular foreign public opinion, exercises a certain restraining influence upon the present German Government, but that it does not necessarily deflect it from trying at a later time to gain its objectives in another way.

#### G. Success as a Factor in Adenauer’s Power

An important factor in the strength of the Chancellor’s control has been the success of his policy. In the economic field Germany has prospered brilliantly during his administration. In the foreign policy field the transformation in West Germany’s international position and the degree to which her good name has been restored, taken in the perspective of history, is no less striking. However, the test by which Germans measure success in this second field is whether the Chancellor has kept his promises to win back Germany’s sovereignty and her power to defend herself, and to advance Western European integration so as to open up to Germans new avenues for development. The promises of 1952 when the EDC and Bonn Conventions were signed are still unfulfilled.

It was partly the magnetism generated by his record of success which enabled Adenauer with compelling clarity and common sense to make Germans accept the power relations of the new world and to close their ears to the “siren calls” of unity through neutralism. But if this enlightened realism begins to appear impractical, the spell will be broken. The apparatus of control, the party machinery, the parliamentary majority, the faction organization and the civil service will remain, but the power of leadership will wither.

There are already signs that this is beginning to happen. The Chancellor had won his smashing victory in the September elections on the basis of a “three-legged” program – prosperity, reunification (which he could fight for better than the SPD), and western integration. The first leg, prosperity, is still firm. The second, reunification, is loose. Berlin showed there is no realistic chance of success on this score for the immediate future. The Chancellor can say “I told you so. We should not discuss unity until EDC is a going concern. One can only talk with the USSR successfully from a position of strength.” But Berlin revealed the Chancellor’s inability to produce unity now. This failure has awakened old doubts as to the depth of his interest in the East. He has countered by the argument that the road to unity leads through German participation in western defense. Thus, he is forced to brace the second leg of his policy by binding it to the third leg – western integration. If this also is unsuccessful, the entire platform upon which the Chancellor has based his reputation will become unstable.

#### H. The Halt of Progress in Foreign Affairs

As a result of the standstill in the western integration movement, there are already signs of growing impatience, disillusion, and incipient anti-Americanism, not only in the SPD opposition, but even in circles which have previously been staunch supporters of major U.S. policy objectives in Germany. Indications of this trend are the great difficulty the



Chancellor had in maintaining CDU and coalition support for a Saar settlement along the lines of the van Naters Plan and the growing interest in the renewal of direct West German-Russian diplomatic relations. Another indication is the current vulture-like optimism of SPD leaders.

The Chancellor personally is gravely concerned over these developments. He has said privately on several occasions recently that he would be in serious political difficulties if no progress were made in the restoration of German sovereignty and the development of western defense plans by the fall.

It is hard to foresee exactly what the results will be if EDC fails and no acceptable substitute is found for it. It is possible that the Chancellor will yield to pressure and, trimming his sails to new winds, abandon the program for integration. In view of his character, background, and commitments, it seems more likely that he will continue to fight for his pro-western program even against mounting odds.

In any event, the continued stagnation of the pro-western policy would certainly result in a drastic reorientation of German thinking. It may be anticipated that a prolonged isolation of Germany, through refusal to accept her into EDC or NATO, will gravely weaken pro-European forces throughout the country. In such a situation, the temptation will be great to make a virtue of necessity and to turn demilitarization imposed by the West into an argument that neutralization should be used to buy unity. Such a situation would make Germany much more susceptible to Russian lures on reunification than they were at Berlin. The Russians sense this opportunity, and at the present time there are signs that Moscow is planning to call a conference on German unity in the fall.

The stagnation of the policy of western integration will greatly strengthen the influence of German nationalists who are already recalling the Bismarck policy and the Rapallo policy of exploiting Germany's position between Russia and the West to play off one against the other for what they take to be Germany's advantage.

In such circumstances, Germany may be tempted (Herr Pfeleiderer and others are already tempted) to strengthen political and economic ties with the East – possibly even to the point of direct German-Soviet collaboration.

Because of these foregoing considerations, therefore, it is imperative, if the Chancellor is to maintain his strong control over German affairs, that he justifies his foreign policy by concrete results, i.e. by regaining German sovereignty, by bringing West Germany into a western defense system and by opening outlets for the expression of German energies.

### I. The Succession

The present operation of the German administration depends to an undesirably great extent upon one man. The Chancellor, despite his age, has apparently made no serious attempt to choose and train a suitable successor. His stature has dwarfed his associates, and there is no obvious successor although several able men such as Schaeffer or Ehlers are mentioned as possible candidates. The nature of the Chancellor's successor will play a vital role in determining the future of the German government.

## III. The Civil Service

The character of the Chancellor, the traditions of the country, and the structure, powers, and practices of the legislature have combined to make the executive branch of the government the dominant one. The permanent element in the executive branch is the German civil service. Despite efforts at reform on the part of the occupation authorities, the federal *Beamtenschaft* has succeeded in reconstituting itself along traditional lines.

### A. The Federal Civil Service Law

In June, 1953, the Bundestag enacted a new Federal Civil Service Law with a broad majority against the votes of the Communists and with a few abstentions on the part of the SPD. By the enactment of this law, the traditional forces in Germany succeeded in establishing the legal basis for the desired restoration of the German civil service, which they view as a body of impartial, objective, uncorruptible, efficient and loyal servants of the state. Dr. Kleindinst (CSU), the chairman of the Civil Service Committee of the Bundestag, was certainly sincere when he stated that he was not defending group interests of the civil servants, but solely the interests of the state and, thus, of the public at large. What he had in mind was the establishment of such conditions of civil service as to attract to the public service the best candidates available and to make them officials whose interests are, and have to be, so tightly knit with those of the state that they will not pursue anything but the clear interests of the state. In these circles it is believed that this law and its strict implementation will help reduce all kinds of political influence on the civil servants, including existing partisan domination in some agencies or areas.

The enactment of the Federal Civil Service Law put an end to Allied reform endeavors. If the Federal Government contends that most of the Allied demands have more or less been complied with by the new law, such compliance must be recognized as being only superficial. With regard to spirit, the Allied demands for civil service reform were simply disregarded or neglected. In some cases, such as the principle of free and equal access to the public service, it seems that neither side ever understood what the other side actually meant. In other cases, the Federal Government intentionally and successfully perverted the character of the Allied proposals. For example, in the case of a proposal for an impartial personnel committee, the committee of outsiders originally envisaged by the Allies was made into an advisory board composed of top ministerial officials and representatives of civil service organizations taking care of their group interests.

### B. Characteristics of the Civil Service

Likewise, the development of the personnel administration of the federal civil service since 1949 has resulted in a gradual but almost complete return to the *status quo ante* and thus toward traditional authority rather than in the more democratic direction that had been the aim of U.S. policy.

The vast majority of government employees belong to the old German career civil service, either as „*Beamte*“ (officials) or „*Angestellte*“ (contract employees). Many of the top-level officials, (e.g. state secretaries), are career civil servants and as such they favor the system of coming up through the ranks. As a result, „lateral entries“ are very rare.



though officially possible, and new blood has not been and probably will not be injected by this means.

On the levels below state secretary, a large proportion of the names read like a roster of officials of the old Reich ministries. To be sure, many of these people are "technicians" or experts who have no political proclivities, but they are steeped in the old civil service tradition, which includes serving implicitly the regime in power and maintaining their own distinct position as a class. Up to a point, of course, this attitude is desirable insofar as it represents an element of stability, but it also carries with it the danger of unquestioning support of unscrupulous regimes, and in view of German traditions it increases the authoritarian cast of the government.

Thus, after four years of federal government, it appears that the German civil service, aided by factors like the Reinstatement Act of 1951 and the German Civil Service Act of 1953, has very nearly returned to its traditional character. Conscientious, generally efficient, non-political career people, its members are aware of their special position and are prepared to defend it against individual outsiders and against the "inferior" public.

#### IV. The Legislature

In the first five years of government the authority and prestige of the executive have overshadowed the legislature. Because of Adenauer's ability to dominate his coalition, major policy has been decided by the administration and this policy has been enacted without significant modification.

##### A. The Bundestag

As pointed out above, one reason for this has been the structure of parliamentary representation. Since the direct method of asserting parliamentary control over the executive is the removal of the Chancellor, the unlikelihood of this happening is perhaps the single most important fact of current German constitutional development. A consideration of this situation leads directly to a discussion of the present political composition of the Bundestag.

##### 1. The Coalition Parties

The government coalition is composed of four parties.

##### a. The CDU/CSU

The CDU/CSU is the first party in German parliamentary history to win a majority of the seats (244) in the Bundestag in a free election. However, this very large party is afflicted with more internal divisions than any other. The CSU delegates from Bavaria, who number 52, are opposed to centralist tendencies and are very conscious of their special position. Although they support the government on economic and foreign policy questions they are jealous of their prerogatives. Their insistence on "fair representation" in the cabinet caused the Chancellor a great deal of trouble in forming a government after the September election. The labor wing of the combined CDU/CSU faction in the Bundestag represents the 22

total. Thus it seems clear that the Chancellor cannot press hard for a policy which would be injurious to labor interests, federalist principles or Protestant interests without running the risk of splitting his party. He will be able presumably, however, to carry the entire party along the moderately conservative and pro-European line which he has favored on the ground that it was this policy which was so successful in the election campaign, provided the French make it possible for him to do so.

##### b. The Free Democratic Party

The FDP suffered great losses in the last election and now have only 47 seats in the Bundestag. Party leaders found that their support of the Chancellor from 1949-1953 contributed to the increase of the latter's stature and presumably strengthened his party at their own expense. Therefore, it seems probable that in the future the FDP will attempt to follow an increasingly independent line and be much more critical than in the past. This has already been shown in the attack of the Chancellor's Saar policy by FDP Chairman Dehler and other leading FDP deputies, their discussion of the advisability of increasing contact with Moscow, and their attacks on CDU/CSU cultural policies.

##### c. The Deutsche Partei

Both sections of this party are still firmly tied to the government through Minister Hellwege who represents the moderately conservative element and Minister Seehofer, the leader of the nationalist wing. As a result of the September 6th elections the DP has shrunk to insignificant size with only 15 seats in the Bundestag and its only chances of playing a role in governmental affairs is as a member of the coalition. Since, in general, it favors the Chancellor's foreign policy and domestic policies, it will probably continue to support him staunchly.

##### d. The Bund der Heimatvertriebenen und Entrechteten

The Refugee Party (BHE) has emerged as the fifth strongest party\* in the Bundestag with 27 (now 28) seats. It holds two portfolios in the new Cabinet. It seems likely that the Chancellor can count on its support in return for these positions in the Cabinet if he endorses a program favorable to the resettlement of refugees and assistance to the war damaged. The presence of the BHE will be a definite limitation on the ability of the government to curtail the payment of relief benefits. Its leadership in the past has played an opportunistic role.

##### 2. The Opposition

The exclusion of the Communist Party and the parties of the extreme right from the Bundestag has left the SPD as the only parliamentary opposition party with 151 seats. Its electoral campaign, which appeared to many independent German voters to be obstructionist, cost it its chances of increasing its size in the Bundestag. At present, it is not clear whether the party will succeed in reorienting itself and adopting a more constructive program. It seems probable that the party will continue its opposition to government policy in all possible ways but unless the coalition breaks apart it will control less than one-third of the votes in the Bundestag. Gestures of rapprochement between the FDP and SPD have, up to the present, been unproductive because the deep cleavages in outlook and

platform have made it impossible for the two parties to work together except for the purpose of harassing the Chancellor on isolated issues. (For a discussion of SPD policy, see Bonn despatch No. 114 of July 15, 1954.)<sup>15</sup>

### 3. *Effects of the September Landslide*

As pointed out in Bonn despatch 3004 of May 13, 1954<sup>16</sup>, "the fact that the Adenauer coalition now has more than a ⅔ majority has considerably weakened coalition unity. The SPD is no longer a real menace and the spirit of uniting against a strong political enemy is absent." Furthermore, "the Chancellor's power to enforce coalition discipline is restricted by the necessity to avoid the appearance of political monopoly and one-party rule and by his desire to avoid a crisis which might lead to a realignment of political forces along religious lines – the Catholics in government and the Protestants in opposition". (The FDP and BHE are overwhelmingly Protestant; approximately 40 percent of the CDU deputies are Protestant.)

### 4. *Denominational Issues*

"The problem which poses the greatest domestic threat to coalition solidarity is the religious issue. There is always a possibility that Catholic and Protestant components of the CDU/CSU will fall out and break up the party. There have been increasing indications of religious tension in the CDU. The main reason for this appears to be increasing pressure from the Catholic Church since the CDU election success to realize some of its more important long-range social aims, and the inevitable Protestant reaction to these efforts. This has become more apparent in issues like the establishment of a Family Ministry, headed by Dr. Wuermeling, an aggressive Catholic layman; religious favoritism in civil service personnel policy; representation of Catholics and Protestants on the federal cabinet, equality of the sexes and parents' rights in education for their children (connected with the parochial school issue). The religious tension within the CDU arising from these problems has been heightened by the strongly partisan attitude of many prominent Protestant and Catholic leaders outside the Bundestag. This tension can be observed in the cooling relations between the Chancellor and Bundestag President Ehlers as well as between other (Protestant and Catholic) lay leaders in the CDU. The SPD and FDP have not been slow to take advantage of the situation to attempt to exacerbate Catholic-Protestant relations. Both parties continually warn the Protestant element of the CDU that the party is in danger of being completely taken over by clericalism. Part of the difficulty arises from the differing Catholic and Protestant attitudes toward involvement in politics, since the German Protestant churches are still largely committed to a hands-off policy where politics are concerned, whereas Catholic social theory supports personal involvement. That the party has taken the issue seriously is shown by the fact that it has recently established a CDU committee on inter-church matters, with both Ehlers and Wuermeling as members. Though these religious problems within the CDU are serious and create increasing political difficulty for the Chancellor, it is not believed that they will result in an open breach in the party as long as Chancellor Adenauer is politically active. Even if the Chancellor should die suddenly, it is reasonable to expect that the Adenauer legend and the party's past success as a party will hold the religious

factions in the CDU together for at least a couple of years. As the situation now appears, the only situation likely to lead to serious chances of division within the CDU would be insistence by extremist Catholic elements in the CDU on a successor to Adenauer in his offices as Chancellor and party leader who was unacceptable to the Protestant elements. This possibility now seems remote."<sup>17</sup>

This brief survey indicates that, although it would theoretically be possible for a split to occur in the CDU leading to the formation of a new government it seems highly unlikely under present circumstances.

### 5. *The Chancellor's Control of the Bundestag*

The importance of maintaining parliamentary support not only of the several coalition parties but of the several factions within the coalition parties themselves has been a governing consideration in the formation of the first and second Adenauer cabinets. Thus portfolios in the second cabinet were given to both Seebohm, leader of the nationalist wing of the Deutsche Partei and to Hellwege, leader of the moderate wing. Absence of top leaders of the liberal and right wings of the FDP (Dehler, Middelhaue, and Euler are excluded) leaves that party freer to take an independent line. The CDU/CSU ministers likewise had to be selected to give proper consideration to the wings of the party – with labor represented by former labor leaders Storch, Kaiser and Blank, the Protestants represented by Schroeder, Erhard, Balke and Tillmanns, and the CSU by Schaeffer and Strauss\*.

The Chancellor's policy of placing in his Cabinet the leaders not only of his coalition parties but also of each important group within them has helped him in putting through most of his major legislative programs. However, some legislation was considerably redrafted because of opposition in the Bundestag. Conspicuous examples were the *Lastenausgleich* Law, and the Electoral Law. The former was thoroughly reworked in committee. The original CDU draft of the latter was rewritten under the pressure of the smaller parties in the coalition.

### 6. *The Role of the Factions*

Five years of experience in the Bundestag have tended to strengthen the role of the faction or party caucus in the parliament. Individual deputies still have no effective method of expressing their personal views except inside faction meetings. Entire parliamentary groups vote customarily as a block on major issues, and the party positions are worked out in faction meetings. There have been only four or five cases in which a deputy has transferred from one party faction to another. In these cases the deputies involved, with two exceptions\*\*, were members of very small parties.

Only as a member of a faction can a deputy exert any significant influence. Membership on committees is dependent thereon, and it is chiefly in committee meetings that legislation is redrafted.

The result of the new electoral law has been to increase the control of all the parties

\* Balke and Erhard are both Franconians, although Erhard was elected in Baden-Wuerttemberg.

\*\* Stegner resigned from the FDP faction and sits as an independent because he was disciplined by the FDP; Kather left the CDU in June to join the BHE faction.

<sup>17</sup> Ebenda.

<sup>15</sup> SPD Foreign Policy on the Eve of the Party Convention, in: NA, RG 59, 762A.00/7-1554.

<sup>16</sup> The New Federal Legislature, in: NA, RG 59, 762A.2/5-1354.

except the CDU over its members. This law provided that (except in unusual circumstances) half of the total number of deputies are elected according to proportional representation from Land lists, i.e., from party lists prepared by party headquarters. This means that such deputies in the Bundestag owe their position directly to the party hierarchy rather than to the voters. This system clearly strengthens the control of the party bureaucracy and partly explains the strength of party discipline. It is interesting that the CDU has considerably more directly-elected deputies (172 out of 244) than the other parties, (SPD 45 out of 151, FDP 14 out of 47, BHE 0, DP 10 out of 15). This may mean that the party discipline in the Chancellor's party may prove to be less stringent than in the case of the other parties. (However, this has not proved to be the case up to the present.) The practice of selecting so many deputies from party lists may in part explain the weakness of the relationship between the deputy and his constituents.

#### 7. Voting Procedures

Bundestag procedure provides for three kinds of votes (1) the secret ballot, (2) the vote by hand, and (3) a division in the British sense of the word. It has been the tendency in the Bundestag to depend more and more on votes in which the individual vote of the deputy is not made a matter of record. It is interesting that this was first introduced in the hope that it would persuade party members to vote against their faction without having to pay the penalty for it. In point of fact, this has not proved to be the case. However, this practice weakens the accountability of a member to his constituency. It should be noted, nevertheless, that in cases of legislation of the highest importance (for example, approval of the Schuman Plan, and the ratification of the Bonn and Paris Conventions) voting was taken by name.

In general it is true that members of the Bundestag do not feel a strong sense of obligation to their constituents. However, this can be somewhat exaggerated. For example, Bundestag members have been under pressure from their constituents to settle such questions as the release of prisoners of war and have been anxious to prove that they have been active in this question. Likewise, the present Minister of Housing, Dr. Preusker, for example, is anxious to initiate a building program which will relieve the pressure on housing in his district, Wiesbaden, where the United States Army is occupying a large number of houses. Such pressures exist and Bundestag members are clearly aware of them but nevertheless the direct relationship between member and constituent is certainly much weaker than is the case in the United States.

Despite the practical predominance of the executive branch, the legislative still has very strong independent powers if it wishes to exert them. It has the power of the purse and the power to introduce legislation. However, most legislation in Germany, including tax legislation, is prepared by the government as draft government bills. In this connection, it should be pointed out that the increasing technicalities of governmental problems have resulted in a similar development, although on a lesser scale, in the United States. This suggests that if such a trend is developing even in the United States where legislative dominance is so strong a tradition, the pressures of modern governmental problems in Germany may result in the atrophy of the legislature.

To protect itself the Bundestag will have to build up its own experts and be in a position to write important legislation itself or at least to criticize government legislation along constructive lines. It must be in a position to be able to talk back to government

experts on their own level. Bundestag committees do a great deal of work but do not have technical supporting staffs. The Bundestag committees as presently constituted are not able to compete in skill and experience with the experts of the Civil Service.

#### B. The Bundesrat

The Bundesrat has not played as important a role in German legislation as the Lower House. It has, however, acted as an effective protector of the federal principle and has on several occasions caused the Federal Finance Minister to reduce the size of the contributions which the government proposed the Laender should make to meet federal expenses. During the first Bundestag the problem of being able to count on a majority in the Upper House for the Bonn and Paris Conventions was a major problem for Chancellor Adenauer. The Hamburg election of November 1, however, gave the coalition parties a two-thirds majority in the Upper House. This meant that the Chancellor could count on its full support in matters of major policy, particularly foreign policy. The Landtag elections occurring in 1954 in four of the Laender may, however, change the composition of the Bundesrat.

The first of these elections, which took place in North Rhine-Westphalia on June 27, has already created political difficulties. The previous coalition parties, CDU and Zentrum, failed by two votes to win a majority in the Landtag. This leaves the CDU party with the unpleasant choice of forming a CDU-FDP coalition along the pattern of the federal coalition – a possibility highly unpalatable to the left-wing CDU Minister President Arnold because of the strength of the influence of active Nazis in this branch of the FDP – or joining in a coalition with the SPD which might later create difficulties concerning the North Rhine-Westphalia vote in the Bundesrat, or forming a minority government with the agreement of the FDP and SPD parties – a solution which would result in a weak government in the largest and most powerful *Land* in West Germany.

### V. The Federal Constitutional Court

A basic part of the plan for the new German government worked out in 1948–49 by the Parliamentary Council and approved by the three High Commissioners was the creation of a Federal Constitutional Court. This was conceived as an important element in the development of German constitutional government. It would fall outside the scope of this paper to examine in any detail the history of this court. It is pertinent to note, however, that being a novelty in German constitutional law, the Court has not achieved in the few years of its existence a prestige strong enough to prevent the Government from attempting to override the opposition of the Court to major administration policy. The story of the court's involvement in the issue of the constitutionality of the Contractual Agreements and the EDC Treaty illustrates this situation.

#### A. The Federal Constitutional Court Law

The Basic Law makes provision for a court to decide on the constitutionality of federal legislation. In 1951 the Bundestag enacted a law which established a Federal Constitu-

tional Court composed of 24 judges who normally sit in two panels or "Senates" of 12 judges each. Except in three types of cases in which the two panels sit together in combined session, each Senate has its own specially assigned field of competency. The Federal Constitutional Court Law also provided for a complicated method of selecting the judges. Half of the judges of each Senate are elected by the Bundesrat and half by the Bundestag. The judges elected by the Bundestag must be confirmed by a  $\frac{3}{4}$  majority in a special committee of twelve Bundestag members who are themselves chosen by the Lower House on the basis of proportional representation of the parties. The President of the Court and his deputy are to be selected by the Bundestag and Bundesrat respectively.

The unusual structure of the court and the method of selecting the judges were the results of compromises between the government and the SPD. These features were to play an important role in the later history of the court. The method of selection gave rise to rumors and suspicions that judges were political appointees and their decisions in burning political issues would be made on the basis of political affiliation. Although the history of the court does not bear out this charge, the rumor circulated that the First Senate contained a majority of judges who would decide cases in favor of the SPD whereas the Second Senate had a CDU-majority. This being a widely held belief, the division of the court into two panels was an invitation to a lawyer handling a case for a political party to try to maneuver his case into that section of the court where he thought he had the best chances of success.

#### *B. The Court and the EDC Treaty*

The issue of the constitutionality of the Contractual Agreements and the EDC Treaty brought the Federal Constitutional Court into the center of a major political fight. The fact that prior to the September 1953 elections the SPD had more than  $\frac{1}{3}$  of the seats in the Bundestag meant that the party could block the coming into force of these treaties if the Constitutional Court ruled them unconstitutional. In the spring of 1952 the SPD filed with the court a suit questioning the validity of the treaties framed so as to come within the jurisdiction of the First Senate.

In December 1952, the Chancellor apparently became alarmed that the First Senate would rule against the government and he initiated a series of complicated maneuvers which involved a request by the Federal President for a so-called advisory opinion (a request later withdrawn) in an attempt to have the case decided either in the full plenum or in the Second Chamber. In fact, the court delayed action and in the end, on the basis of  $\frac{2}{3}$  majorities which he controlled in both houses as a result of the September election, Adenauer was able to have the Constitution amended.

The hesitancy of the Court to act and the spectacle of the government and the opposition trying to jockey the case from one section of the Court to the other severely injured the prestige of the Court. Although the public was confused by the agile maneuverings, which were too complicated for anyone except an expert to follow, persons who follow political affairs were left with the feeling that both the Federal Presidency and the Constitutional Court had been subject to very rough handling and that the Chancellor would not have hesitated to apply the severest pressure to the Court if it was necessary to save the Contractual Convention and the EDC Treaties from annulment. Fortunately the September elections provided another way out.

On the whole, however, the decisions of the Court which have been characterized by sound reasoning, have gained a high reputation among lawyers in Germany. An illustration of the independence shown by the Court and its statesmanlike action is the decision handed down in the suit brought by a member of former Reich officials to challenge the constitutionality of federal law denying pension rights to former Reich officials. In the face of considerable opposition the Court ruled that the political collapse of the German Government in 1945 also resulted in terminating legal rights acquired by former officials in their service with the Third Reich Government.

#### *VI. Success of Allied Reforms*

The features of government discussed above are marked by a strongly indigenous character. Of the programs for the reorientation of Germany initiated by the Allied Powers after the war, the most successful portions have been those for which there were precedents in German history. The federal principle, which in allied planning was viewed as an important check upon dangerous concentration of political power, was written into the Basic Law and has found stout German defenders, particularly among the CSU party, church leaders and the Hanseatic cities of Bremen and Hamburg. There are, of course, many precedents for federalism in German history. On the contrary, as we have seen above, the attempt to reform the German Civil Service ended in failure. Likewise attempts profoundly to alter the organization, and methodology of the German educational system so as to mould them, for example, along American lines were largely unavailing. The purely American attempt to introduce free competition into German handicrafts and skilled trades (*Gewerbefreiheit*) was defeated last year when the Bundestag passed a law reintroducing restrictions in these economic fields similar to those which were in force before 1945. The deconcentration of German iron and steel and certain other industries under the provisions of Allied Control Law 27 is almost complete but the enactment of an anti-trust law has not yet taken place. There is some support in German circles for a stringent cartel law, the leading figure among whom is of course Economics Minister Erhard but German heavy industry is strongly opposed to legislation in this field along the lines of the American anti-trust laws. Enactment of a cartel law is on the agenda of the present Bundestag, but it is not anticipated that a law will be passed in this session.

Perhaps it is not surprising that defeat and a short occupation failed to transform western Germany into an American, British and French democracy. The tenacity of national characteristics is one of the strongest forces in history. In particular, changes introduced under an occupation are likely to be impermanent. Such an occupation, especially if following an unconditional surrender, creates a climate unfavorable for the remoulding of national patterns unless a policy of ruthless force is applied, such as transformed Bohemia from a predominantly Protestant into a predominantly Catholic country in the 17th Century.

## VII. *Dangers of Totalitarianism*

The development of the German constitution in the past five years has been towards a moderate authoritarian government in which the executive is the dominant branch of the Government. Such development towards highly centralized government as has taken place is potentially alarming because it might result in placing the apparatus of state power at the disposal of a small number of men who are opposed to American objectives; an obedient bureaucracy\*, a docile population and an ineffectual parliament might make it possible for another dictator to rise again to power. At time of writing there is no "clear and present danger" and the requisite decrees of obedience, docility and ineffectualness are potential rather than actual.

The dangers implicit, then, in the recent German development lie in the possibility that the centralization of power will facilitate the re-emergence of dictatorship. The dangers were discussed at some length in Bonn despatch No. 3559 entitled "The Radical Right"<sup>18</sup>. In the following paragraphs some of the points made in that report which are relevant to the present discussion will be recapitulated\*\*.

Many of the elements which made possible the rise of extremism in Germany are still present. The psychological insecurity of defeat, although reduced still exists, as does the possibility that in time of "normalcy" it will be difficult to find effective outlets for the restlessness and dynamism of the Germans. The longings and frustrations of the middle classes which provided a large part of the motive power of Nazism have not been eliminated.

### A. *Possible Difficulties*

In the economic sphere it may be difficult to continue the rate of progress which has characterized the post-war years and which has given a satisfactory outlet for German energies. The striking rate of economic advance since 1948 has been due largely to the low level from which reconstruction commenced. In view of the highly complicated and sensitive structure of the European economy, it will require wisdom and technical skill on the part of the Germans and the West to assure the continuation of an "aggregate demand" sufficient to maintain the present rate of German economic development. It is generally agreed that any severe economic crisis in Germany would greatly increase the influence of the extremists.

Likewise in the political sphere the goal of German unity will call for great patience,

\* That a civil service should be obedient is not to be wondered at. It is the nature of the institution to be obedient. Since the days of the French religious wars, when French officials claimed the right to act in their official capacities against a tyrant, the tide has run in the opposite direction. In judging the German civil service then it is only fair to remember that the weight of modern practice and theory in all civilized countries moulds a bureaucracy into an obedient instrument in the hands of the executive. Since the Seventeenth Century there have been no instances of bureaucracy as such resisting an established government.

\*\* The following paragraphs are taken from parts of the despatch under reference subject to some condensation and modification.

<sup>18</sup> The Radical Right. in: NA. RG 59. 762A 00/5-1253.

the virtue which the Germans most lack. Up to the present the German government has functioned well but there are occasional signs of stress and strain in the constitutional system which point up the difficulty of assessing its durability without greater experience and perspective. It is still questionable whether the constitution, especially the parliamentary legislative process, has succeeded in establishing itself as a form of government to which the Germans at large are emotionally attached. The present constitution contains a number of innovations, notably the constitutional courts, which under certain circumstances the Germans might denounce as reflections of alien influence.

Similarly, the political party system may not prove as stable as it appears to be on the basis of our short experience. Many German observers are worried about the apparent inability of the two most thoroughly democratic parties – SPD and CDU – to work together for the furtherance of basic national interests. Evidences of a willingness to cripple essential national policy for the sake of political advantage and a reluctance to sacrifice secondary objectives for the sake of fruitful compromise have created doubts in some minds which will facilitate extremists' attempts to discredit democracy.

Also significant shifts may occur within the parties. An important factor which must have an influence on internal German politics will be the establishment of an army in Western Germany. Irrespective of what individual soldiers or individual commanders may think, the emergence of an entirely new power factor in society must have an influence beyond itself even though it is under international control and is scrupulous in maintaining neutrality in German domestic politics.

At present the discrediting of the extreme leftist position which results from collaboration of the German Communist Party (KPD) with the Soviet Union has strengthened moderate forces within the SPD. However, the prospect of years of barren opposition, fears of the reestablishment of a German army, and economic and social discontent possibly arising in future hard times might at a later date reverse the present direction of the party and swing it far to the left. Any radicalization of German socialism under the SPD or an offshot of the SPD would presumably result in a radicalization of the right and possibly the emergence of a situation similar to that which existed immediately preceding the Nazi accession to power. While under current conditions, given the present temper of SPD leadership, such a radicalization of the non-Communist left is not likely, its possibility under a different set of circumstances cannot be ruled out.

### B. *Other Possibilities*

At present no potential Hitler or Rosa Luxemburg seems to have arisen on the political horizon. But, if the leadership of the extremist groups seems unimpressive, we must not overlook the fact that the leadership potential in the ranks of the moderates is also problematical. A further unknown factor which might contribute to later political instability is the future character of the Nazi generation (age group 30-45) which must assume leadership with the passing of the elder statesmen.

A repetition of the Nazi phenomenon would necessitate mass support for a radical rightist leader. Such a development would be unlikely to occur except if a large part of the population were discontented and turned to rightist demagogues for leadership. Factors militating in favor of extreme rightism would be mass unemployment, a deterioration in the standard of living and political frustration. All of these factors are also highly

favorable for the development of the extreme left. Thus, granted the existence of discontented masses, the further question arises whether the rightists can develop a program which can compete successfully with that of the extreme left. This type of competition may well inject into a radical right movement with a mass following an element of revolutionary dynamism with a strongly leftist coloration.

Finally the future of the radical right in Germany will be influenced by external factors. Under present power relations, Germany has ceased to be a world power and to the extent that this is so the course of her history will be shaped by outside forces. A decision on the part of the United States to play a less influential role in Europe or a change in Russian policy might at a later time increase the importance of Germany in the balance of world power but under present circumstances radical rightist leaders would have less chance for cheap but flashy triumphs that was the case in the isolationist period of the 1930's.

At present, infiltration is more likely than an open march to power. Nazism and with it political demagoguery are still unpopular. The results of the investigations of the Naumann group, tenuous and unsuitable for prosecution though they were, clearly showed that leading unregenerate ex-Nazis were aiming at the infiltration of the conservative parties such as the FDP as a first step in gaining control of the Government. The younger (now middle aged) Nazis like Naumann were not "alter Kaempfer" but of the "first fruits" of the Nazi system; they have manipulated the Nazi power apparatus but had not seized it. As products and, during the Nazi period beneficiaries, of the managerial revolution, their forte is manipulation of political instruments.

#### *C. Dangers of Nazi Penetration of Conservative Parties*

As pointed out in Bonn despatch No. 3169 of June 10, 1954, "The more notable role played by rightists on the German scene during the past year, however, has been not so much by subversive groups as by former Nazis who have not attained positions of prominence under the present government. It is admittedly somewhat disconcerting to find three federal ministers (Oberlaender, Kraft and Preusker) who were not only party members but also belonged to the SA or the SS. Oberlaender has been singled out for special criticism, even by the CDU, because of the fact that he has been staffing his Refugee Ministry with a number of individuals whose pasts are even shadier than his own (including a former Nazi propaganda speaker and recipient of the party's golden badge). This is not to imply that the presence of these men in the cabinet represents any real threat to the government. It will be recalled that Oberlaender and Kraft owe their appointments entirely to the fact that the Chancellor was anxious to have a two-thirds majority in the parliament, and it was their party, the BHE, that tipped the scales. However, the very fact that they were accepted at all does represent a change in the climate of German opinion, since it would have been unthinkable to suggest men with such records for cabinet posts in the first Bundestag."<sup>19</sup>

Although there are a few Nazi party officials in high offices there is no indication whatsoever at present that such men have yet gained a dangerous influence. But one of the ominous potentialities of the developments which would seem likely to follow the

stagnation of the Chancellor's policy of western integration (outlined above) would be that it will presumably create conditions in Germany favorable to the increase of influence and power of such individuals.

#### *D. Resistance to Nazi Ideas*

The last election shows that the appeal of extremists when last measured, was on the wane. Furthermore, against their influence one must set the uncalculable yet nevertheless real potential force of Germans who knew Nazism firsthand and do not want to see that political mistake repeated. Firsthand experience may have strengthened the fibre of many German anti-Nazis. The number of antibodies which the German body politic built up as a result of the disease of Nazism cannot be measured. However, there certainly are those who can be counted on to counteract radical tendencies in the future as they have up to the present.

In this connection, however, it should be noted that there is a strong tendency in German society to bury a deep feeling of guilt about the crimes and failures of Nazism by a total disclaimer of responsibility – a sort of amnesia about this chapter in German history. This was recently indicated in a recent announcement by the Ministry of the Interior that soldiers in the Condor Legion in the Spanish Civil War would be given pensions for their service in Spain. Yet at the same time – an indication of the curious ambivalence which is characteristic of Germany today – the Federal Government will celebrate the July 20 plot against Hitler and President Heuss will deliver the main speech.

#### *VIII. Other Considerations*

In reflecting on the future of Germany there are certain general considerations worth mentioning briefly.

The Junkers have been eliminated as a strongly organized class with vested interests. The Russian occupation has deprived them completely of their property and has scattered them – those who escaped – throughout the length and breadth of Western Germany where they still have certain connections and a certain influence, but where most of them lead a threadbare existence. The basis of their influence, their Eastern estates, has been swept away. There is little likelihood of their playing again the dubious role they played in the 20's and 30's.

Secondly, the position of the German military leaders, at least for the present, is still unclear. The German general staff still exists as a class and the creation of German troops will advance their influence and prestige among the German population. The German army successfully exonerated themselves for German defeat by shifting blame on to Hitler's shoulders. But the role of the general staff in the Hitler period was an ignoble one and it is difficult to estimate to what extent, if any, some of the former luster has worn off. This period prior to the creation of German troops, presumably represents a low point in the influence and reputation of the German military.

Thirdly, there seems to be some reason to hope that the new German Republic will awaken a deeper sense of allegiance from the German people than that evoked by the Weimar Republic.

<sup>19</sup> Recent Rightist Developments in Germany. ebenda. 762A.00/6-1054.

The political scientist Ferrero has viewed as the greatest weakness in European affairs since 1789 the disappearance of "legitimacy" as a principle of government. Artificial as was the Hohenzollern Empire, yet when the Empire and the petty German princes were swept away many of their subjects felt that government consecrated by age and tradition had disappeared. Von Papen in his MEMOIRS expressed the view of his class when he wrote:

"The world which I had known and loved belonged to the past. All values which it had realized and for which we had served, fought and bled, had become worthless. The empire and the Prussian monarchy, which we considered imperishable had given place to a shadowy republic."<sup>20</sup>

These sentiments found echoes among far wider circles of society – soldiers, civil servants, conservative people of all walks of life.

The newly created Weimar Republic could not awaken a deep devotion among large segments of the population, to whom the ancient regime, which was overthrown not as a result of a domestic revolution but of a military defeat, symbolized legitimacy. The situation today is somewhat different. After the intoxication of Nazism most Germans have drawn aloof from politics but it is important to note that no other symbols compete seriously with the Federal Republic for their loyalty. With the discrediting of Nazism the ground has been swept bare. It still remains to be seen whether the new government will awaken a new loyalty. The overwhelming endorsement of Adenauer was an encouraging sign. If the Federal Republic succeeds in developing into a "legitimate" government it may create a sense of patriotism to replace the extreme nationalism which the previous German government has created to take the place of the genuine article.

Lastly, the drastic currency revaluation of 1948, combined with the reorganization of German industry and political life caused by the Allied policies of deconcentration, decartelization and denazification resulted in a general shaking up of German society more drastic than occurred in the other European countries. This has given contemporary Germany a certain fluidity which it would not otherwise have known and produced in its business leaders in particular, a more adaptable and modern viewpoint than is the case in France or Italy. Under reasonably stable conditions this greater social flexibility may exert a healthy influence in German life.

### *IX. Conclusion*

The previous pages touched upon some of the outstanding features of the evolution of German politics in the first five years of the Federal Republic. They have depicted a system in which the average citizen limits the exercise of his constitutional rights to approving or disapproving the federal government in four-year elections, in which the majority is generally apathetic to political issues, and in which the elected members of the Bundestag do not form the dynamic element in the government though they have the authority to check misrule if they choose to exercise their prerogatives. This has resulted in executive domination. Under favorable circumstances this system represents as promising a development as seems consistent with German history and traditions. Up to the present it

has proved remarkably responsible, restrained, and patient in handling its internal problems and in dealing with other nations. In recent elections the voters have rejected the extremist parties overwhelmingly. The Federal Republic today is the only major European country in which the government can command a sizeable parliamentary majority for western integration and defense. Despite these encouraging signs, however, moderate pro-Western leaders in the Federal Republic are deeply concerned at any signs of stagnation or retrogression in the process of knitting Germany into the Atlantic community because they view such an association as essential to the nurturing of the shallowly rooted democratic forces in Western Germany.

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<sup>20</sup> Franz von Papen. *Der Wahrheit eine Gasse*. München 1952. S. 116.