



CONSTITUTIONAL SYSTEMS OF THE WORLD

The Constitution of Germany

A Contextual Analysis

Werner Heun

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THE CONSTITUTION OF GERMANY

The German Basic Law, enacted in 1949 after total defeat and the experience of totalitarian barbarism, has become a model for constitutions around the world and a prominent example of modern constitutionalism. It features five fundamental principles—democracy, rule of law/*Rechtsstaat*, the social state, republican government and federalism—each expressly guaranteed and protected against constitutional amendment. As such the German Basic Law is a prime example of a cooperative and predominantly executive federalism characterised by a high degree of unitarianism and equality of its member states. The institutional structure, featuring the principle of the separation of powers, is a parliamentary system of government, in which the Chancellor and the political parties play leading roles. The Bundestag remains a powerful Parliament, while the Bundesrat and the Prime Ministers of the *Länder* act as an important counterweight. The Constitutional Court, as interpreter of the Constitution and possessor of a broad range of competences, occupies an especially important position, acting as arbiter between the different Federal institutions as well as between the Federation and the *Länder*. In the field of fundamental rights the Court has achieved far-reaching constitutionalisation and juridification of the whole political system, while at the same time creating a strong and consistent system of individual freedom and the liberalisation of society.

Constitutional Systems of the World
General Editors: Peter Leyland and Andrew Harding
Associate Editors: Benjamin L Berger and Alexander Fischer

In the era of globalisation, issues of constitutional law and good governance are being seen increasingly as vital issues in all types of society. Since the end of the Cold War, there have been dramatic developments in democratic and legal reform, and post-conflict societies are also in the throes of reconstructing their governance systems. Even societies already firmly based on constitutional governance and the rule of law have undergone constitutional change and experimentation with new forms of governance; and their constitutional systems are increasingly subjected to comparative analysis and transplantation. Constitutional texts for practically every country in the world are now easily available on the internet. However, texts which enable one to understand the true context, purposes, interpretation and incidents of a constitutional system are much harder to locate, and are often extremely detailed and descriptive. This series seeks to provide scholars and students with accessible introductions to the constitutional systems of the world, supplying both a road map for the novice and, at the same time, a deeper understanding of the key historical, political and legal events which have shaped the constitutional landscape of each country. Each book in this series deals with a single country, and each author is an expert in their field.

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Preface

The project to write a concise account of the Constitutional System of Germany was suggested by the editors of the series. There is no equivalent to this book in the German language since one may find many books on constitutional law in the strict sense but none with the perspective of the constitutional system. It was a pleasure writing the book and I am therefore grateful that I was given this opportunity.

I have many people to thank for their support and I want to start with my thanks to the editors Andrew Harding and Peter Leyland. They both not only read the draft but also made many invaluable comments and suggestions. I am sure the final version has profited from these outside perspectives. What seems a matter of course for a German constitutional lawyer may need explanations for someone not familiar with the German system.

I would particularly like to thank both of my assistants Pia Lange and Dr Alexander Thiele who read the manuscript several times and made corrections and suggestions that were very helpful.

In addition I would like to thank the whole staff of the Institute for General Theory of State and Political Sciences that was involved in the project in one way or another.

Abbreviations

Quoted as

§	Paragraph— <i>Paragraph (in other statutes)</i>
Art	Artikel— <i>Article (in the Basic Law)</i>
BL	GG (Grundgesetz)— <i>Basic Law</i>
BGHZ	Entscheidungen des Bundesgerichtshofs— <i>Decisions of the Federal Supreme Court of Justice</i>
BVerfGE	Entscheidungen des Bundesverfassungsgerichts— <i>Decisions of the Federal Constitutional Court</i>
BVerwGE	Entscheidungen des Bundesverwaltungsgerichts— <i>Decisions of the Federal Supreme Administrative Tribunal</i>
Decisions	English translations of the decisions of the Federal Constitutional Court in: <i>Decisions of the Bundesverfassungsgericht—Federal Constitutional Court</i> , 4 vols (Baden-Baden, Nomos, 1992–2007)
HStR	Isensee J and Kirchhof P (ed) <i>Handbuch des Staatsrechts—Handbook of the Law of the State</i> , 10 vols, 1st ed vol I–X (Heidelberg, CF Müller, 1987–2000), 3rd ed vol I–VII (to date) (Heidelberg, CF Müller, 2003–2009)
Kommers	Kommers D B <i>The Constitutional Jurisprudence of the Federal Republic of Germany</i> 2nd edn (Durham, Duke University Press, 1997)
RGZ	Entscheidungen des Reichsgerichts in Zivilsachen— <i>Decisions of the Imperial Court of Justice in Civil Law Matters</i>

Note on texts and translations

The Articles of the Basic Law are quoted according to the most common citation form in the following way: 'Art 20 II 2 BL' for Art 20, paragraph 2, sentence 2.

There are two official translations of the Basic Law, one by the Press and Information Office of the Federal Government, last revised edn 2001, and one by the Bundestag that is available online at <http://www.bundestag.de>. The second is often but not always better. I have used both, sometimes in combination and sometimes even modifying both translations.

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