

La volontà di trasformare il tribunale in istituzione tutelare fu alla base dei progetti successivi sul tribunale minorile russo fino a quello proposto dal Governo provvisorio. A differenza, però, degli altri tribunali minorili europei, questo aspetto rimase lettera morta in quanto necessitava di un sostegno da parte di strutture di assistenza statale⁷³: cosa che emergeva costantemente dai resoconti della magistratura locale allarmata dall'aumento dell'abbandono minorile causato dalla guerra⁷⁴.

L'apparato giudiziario zarista venne abolito dal primo decreto sul tribunale il 24 novembre 1917, ma fino alla pubblicazione del Codice penale e di Procedura penale (1922-1923) le leggi zariste vennero applicate nei tribunali popolari secondo il criterio della «coscienza rivoluzionaria». Le competenze della giustizia di pace nei confronti dei minori furono inglobate nel sistema amministrativo delle «commissioni specializzate negli affari dei minori accusati di azioni pericolose per la società» del Commissariato del Popolo all'Assistenza Sociale (e dal 1920 del Commissariato del Popolo all'Educazione) che rivendicava la funzione della tutela statale sui minori⁷⁵.

⁷³ *Zakonoproekt o merach popečenija nad besprizornymi maloletnimi i o lišentii roditel'skoj vlasti i objasnitel'naja k nemu zapiska* (Progetto legislativo sulle misure di tutela sui minori abbandonati e sulla privazione della patria potestas e appunti esplicativi), in «Osobyje sudy dlja maloletnich i bor'ba s detskoj besprizornost'ju» (I tribunali speciali dei minori e la lotta contro l'infanzia abbandonata), IV, 1915, pp. 3-6.

⁷⁴ *Deti i vojna. Sbornik statej* (I bambini e la guerra. Raccolta di articoli), Kiev 1915, pp. 18-20.

⁷⁵ Ho presentato un'introduzione a queste problematiche in D. CAROLI, *Enfreindre la loi au temps du bolchevisme (1918-1924): le cas d'un enfant abandonné*, in «Rechtshistorisches Journal», XIV, 1995, pp. 444-458.

Political Leadership in German History

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I. Introductory Remarks

The following article on the «political leadership» phenomenon in German history does not primarily focus on the role of individuals, their careers, their skills in the craft of politics or in gathering the electorate behind them; these aspects will be referred to only in order to sustain the analysis. Rather this reflection will address the broader questions of political leadership by tracing its development under the aspects of the historical and constitutional conditions, that finally led to the establishment of what German historians and political scientists have got used to call «modern *Kanzlerdemokratie*»¹.

Among the different terms for the characterization of the constitutional reality of the FRG this one has become the most popular. The constitutional conception, political development and personal factors have all contributed to the evolution of the German constitutional reality after 1949. The strong position of the head of the government is the most significant feature of the political system and makes the German «Chancellor democracy» so different from the «pure» parliamentary democracy in the french-continental tradition as well as from the American presidential system or the parliamentary-presidential mixture of the *Weimarer Republic*. The term «Chancellor democracy» is not mentioned in any sciences of types of states. It can be compared with what is called «cabinet democracy» or «prime ministerial government». Anyway it seems to be a realistic characterization of the Bonner system.

There were obvious reasons for that. The constitutional political discussion in Western Germany after 1945 was determined by a dazzling variety of diverging meanings and proposals for a future constitution, which, above all, reflected the experiences of the fail-

¹ K.H. NICLAUSS, *Kanzlerdemokratie. Bonner Regierungspraxis von Konrad Adenauer bis Helmut Kohl*, Stuttgart 1988.

ure of the Weimar republic and the resistance against the Nazi system. All, however, agreed on one point: The second German republic needed several modifications of the parliamentary democratic system. Of the many political mistakes and structural problems of Weimar, three were the most obvious:

1. The dualistic construction of the Weimar democracy with its strong position for the presidential power.
2. The resulting weakness and instability of the parliamentary basis.
3. The fatal juxtaposition of the government between the president and parliament with the consequences of a further confusion of the political process and the political responsibility.

As a matter of fact the Bonner democracy put the main emphasis on the curtailment of the presidential power, a changed relationship between parliament and government, and on the strong position of the head of the government. In this context the special feature of the «Chancellor democracy» as a modification of parliamentary democracy is of course also the result of an (incidental) personal constellation. It is, however, in the first place the result of several historical preconditions which shaped the constitutional political framework of the FRG.

In other words, both the development and structure of the FRG are predominantly characterized by a mutual interconnection of historical and current conditions, insistent historical experience and close integration into the prevailing international constellation, and, last but not least, a strong will to secure freedom and stability.

II. Historical and constituent moments

The historical background of the *Bonner* governmental system, which influenced the constitutional understanding of the *Parlamentarische Rat* (Parliamentary Council) – the framers of the Constitution – in 1948/49 so deeply after the shattering experiences of the past, had finally become effective with the redefinition of the relationship between parliament and government². Today's strong position and function of the Chancellor in the political process has been the result of the intention of the Constitution to provide for more stability and continuity in the second German democracy compared with the *Weimarer Republik*. This was realized by strengthening the position of the head of the government and making him more independent in a threefold way: towards the parliament, the president and the cabinet.

² E. PIKART, *Auf dem Weg zum Grundgesetz*, in R. LÖWENTHAL-H.P. SCHWARZ (edd), *Die zweite Republik. 25 Jahre Bundesrepublik Deutschland. Eine Bilanz*, Stuttgart 1979, pp. 149-176.

1. Destabilizing elements and the role of personality in the crisis of Weimar

The weak position of the Chancellor was seen as being the main reason for instability and frequent changes of governments during the *Weimarer Republik*: remember, there were not less than twenty cabinets within fourteen years. There was a general contradiction between the restricted position of the *Reich* Chancellor on the one hand and his burdening with the political responsibility as head of the government on the other hand. According to the *Weimarer* constitution the Chancellor determined the political guidelines of the government – a formulation, which had been borrowed by the *Grundgesetz* («Richtlinienkompetenz»). The constitution of 1949, however, tried to provide the necessary requirements for the realization of this function.

Besides the pressures due to foreign policy matters, economic problems, and an extremely fragmented party system, those factors, which finally caused the failure of Weimar and in a way also threatened the Federal Republic, there were indeed the frequent changes of government, that, politically and psychologically, counteracted to the establishment of a democratic tradition in Germany after 1918³. Apart from that there was a widespread belief – indeed a philistine belief – that «the best government is a good administration». In the words of the famous German writer Thomas Mann: «I don't want the trafficking of Parliament and Parties that leads to the infection of the whole body of the nation with the virus of politics»⁴. This was not a very good foundation for a democratic republic.

Of course the drafters of the constitution of 1919 tried hard to achieve the fullest possible expression of democratic government. At least this was what the constitution in its first article proclaimed the German *Reich* to be – a «democratic republic», adding, «Political authority derives from the people»; and the latter articles underlined the people's powers and rights and guaranteed them as far as words were capable of doing so. They were to elect the *Reichspräsident* by secret, direct, and universal suffrage; their will was to be given legislative expression in the Reichstag, whose powers were more considerable than those of its imperial counterpart, whereas

³ G. SCHEELE, *The Weimar Republic*, London 1946, p. 29; P.C. WITT, *Kontinuität und Diskontinuität im politischen System der Weimarer Republik*, in G.A. RITTER (ed), *Regierung, Bürokratie und Parlament in Preußen und Deutschland von 1848 bis zur Gegenwart*, Düsseldorf 1983, pp. 117-148.

⁴ T. MANN, *Betrachtungen eines Unpolitischen*, Frankfurt a. M. 1956 (first ed. 1918), p. 253.

those of the *Reichsrat*, which represented the member states, were purely nominal. All legislation was to originate in the *Reichstag*, and before its members the Chancellor and other cabinet ministers had to defend their policies.

Besides that the framers also provided for the use of proportional representation in elections to the *Reichstag* and introduced the wholly untried practice of popular initiative and referendum.

Paradoxically, the result from these innovations, as Gordon Craig writes, was «much disruption». The new electoral method complicated «the legislative process by increasing the number of parties and making it unlikely that any single party would command a majority. This made coalition governments inevitable»⁵. In the same way the institution of initiative and referendum had unfortunate results: The conditions for making them necessary were too easy to fulfil so that enemies of the republic could use the instrument for purposes of obstruction.

Anyway, most of the drafters as well as the great majority of the German people were in their hearts monarchists, who adopted democracy as «a means of persuading the Allies to grant Germany lighter peace terms» (Gordon Craig). They had not been prepared by the course of their country's history or the example of their great men to understand or desire democratic government. Thus, democracy was identified with defeat and inflation, with ineffectiveness of the state and permanent government crises. And it was identified with unpredictability: many persons, who even believed that their country deserved to be punished, were shocked by what appeared to them to be the Entente's flagrant violation of their own declarations (e.g. in plundering of Germany's colonial empire), of the facts of history (in their attribution of exclusive responsibility for the war to Germany and its allies), and the rules of economic reason (in the horrendous load of reparations); having placed so much faith in the American President and thus in the spirit of democracy, they were now left in great doubts about what were the real interests and intentions of the victorious powers and whether they wanted Germany to become a viable democracy.

Above all, the establishment and proving of democratic leadership and authority was impossible because of the rapid changes of cabinets; only few republican-democratic politicians improved their image as political leaders at that time – never, however, as Reich Chancellor as far as they happened to become head of the government. Friedrich Ebert, though successful as «Reichspräsident», was unable to control the continuous alarms and excursions of left-

⁵ G. CRAIG, *Germany 1866-1945*, Oxford 1978, p. 416.

wing Independents and Spartacists which indicated that violence might become prevalent enough to dissolve the fabric of society in December 1918/January 1919. In this situation he made the fatal decision to ally himself with the Supreme Army Command against the threat of the extreme left. It is understandable that, in the confusion that reigned in the moments after his assumption of office, Ebert grasped at the implied recognition of the new government by the Supreme Command⁶. His mistake was, however, that he remained true to his telephonic pact with General Wilhelm Groener in the subsequent period with great stubbornness, although it became more and more difficult to justify it. Besides that the Chancellor took an extreme view of the red menace and thus missed the opportunity or lacked the political instinct and courage to exploit the energy and will represented by the soldiers' and workers' councils in order to mobilize working-class enthusiasm for the new regime.

Rathenau, as another example, despite his personal shortcomings when it came to hold firm to established political schemes, had the courage to recognize and advocate the necessary as Minister of Reconstructions, but he never succeeded in demonstrating his qualifications for dealing with Germany's economic problems as Chancellor⁷.

Even Stresemann, undoubtedly the dominant and most popular figure in German politics during the *Weimarer Republik*, despite the achievements of his Chancellorship was finally forced to relinquish it after he could not balance the particularist interests of the parties in 1923. Despite his convincing appearance, he was not the kind of political leader, who would have tried to accomplish his political goals with quasi-dictatorial means. This was partly because after the murders of Erzberger and Rathenau he was so shocked that he became completely disillusioned with the so-called national opposition. He became a supporter of the republic because he gradually convinced himself that the alternative was dictatorship of the right, or more likely, the left. The paradoxical result was, that on the one hand he threw himself wholeheartedly into the struggle with the Communists in Saxony and Thuringia to save constitutional government; on the other hand he could not convince the

⁶ On Ebert's famous telephone call, see W. GROENER, *Lebenserinnerungen*, Göttingen 1957, p. 467; on Ebert's motives H. SCHULZE, *Weimar. Deutschland 1917-1933*, Berlin 1982, pp. 166-170.

⁷ For Rathenau: W. STRUVE, *Elites against Democracy: Leadership Ideals in Bourgeois Political Thought in Germany 1890-1933*, Princeton 1973, pp. 149-185; P. BERGLAR, *Walther Rathenau. Seine Zeit, sein Werk, seine Persönlichkeit*, Bremen 1970; T. BUDDENSIEG-T. HUGHES-J. KOCKA, *Ein Mann vieler Eigenschaften. Walther Rathenau und die Kultur der Moderne*, Berlin 1990.

SPD that a similarly hard line against the Bavarians, who in late October 1923 required all Reichswehr troops in their land to take an oath of allegiance to the Munich government. A *Reichsexekution*, in the south, Stresemann argued without success, might lead to Civil War. Nevertheless the SPD ministers, on 2 November, resigned from the cabinet⁸.

Stresemann's Chancellorship, however, indicates, one thing very clearly: A strong political authority, as was certainly the case with Stresemann, was possible even at the peak of any crisis situation during the *Weimarer Republik*. It certainly needed the will to execute political power with uncompromising hardness. One reason for that was that the military instrument despite the political preferences of the generals was always at the disposal of the political force, if it emphasized its power position. This in turn required the political will of the executive to implement it, if the state was to be secured against any attack from the radical right or left. Undoubtedly this made the execution of political leadership extremely difficult and risky. Nevertheless, Stresemann's Chancellorship proved, that the collapse of Weimar was not only a question of the political structures of the Republic, but of its political personalities. Too many of the important figures of the *Weimarer Republik* not only lacked the political fortune, but also the political instinct to lead the nation⁹.

The drawback of these developments was the restoration of pre-democratic symbols such as the *Ersatzkaiser* – as in the case of *Reichspräsident* Hindenburg – or the emergence of anti-democratic idols (*Führeridol*) such as Hitler, who could finally take up the political-psychological vacuum and lead the *Weimarer* system ad absurdum. That this could happen by the abuse of presidential power and its fusion in the omnipotent position of the «leader and Reich Chancellor» (August 1934) proved the fatal consequences of the dualistic construction of Weimar, which after all weakened the position of the head of the government.

Again, the strong position of the *Reichspräsident* on the other hand was of course regarded as the plebiscitary counterpoise to parliamentary power; the president was elected by direct vote of the people for a period of seven years. He was given such extensive powers, however, for reasons that were not considered to be un-

⁸ On Stresemann: K.D. ERDMANN, *Gustav Stresemann. Sein Bild in der Geschichte*, in «Historische Zeitschrift», 227, 1978, pp. 599-616; K. KOSZYK, *Gustav Stresemann. Der kaisertreue Demokrat. Eine Biographie*, Köln 1989; W. MICHALKA-M.M. LEE (edd), *Gustav Stresemann*, Darmstadt 1982.

⁹ T. ESCHENBURG, *Die Rolle der Persönlichkeit in der Krise der Weimarer Republik: Hindenburg, Brüning, Groener, Schleicher*, in «Vierteljahrshefte für Zeitgeschichte», 9, 1961, pp. 1-29.

democratic, but which provided for the necessary means to act or govern exactly this way. In addition to the constitutional right of the command of the armed forces, these powers included the traditional right to appoint and dismiss the Chancellor, to dissolve the Parliament and order new elections, and, in certain contingencies, to call for national referenda. But even the old Emperor had never been specifically authorized to set aside the basic law of the land, as was true in the case of the *Reichspräsident*. Article 48 of the *Weimarer* constitution stated explicitly, that «the President may take the necessary measures to restore public order and safety», if both were «seriously disturbed or threatened»; and, «in case of need», he was granted to «use armed force... and... for the time being, declare the fundamental rights of the citizen to be wholly or partly in abeyance»¹⁰.

The majority undoubtedly approved this grant of power because of the troubles that had filled the first six months of the Republic's existence; they wanted to make sure that the executive had enough power to deal with renewed Communist disorders and thought it would be a sensible provision for exceptional conditions. As it turned out, the exceptional became the normal and representative government vulnerable to attack by an extra-parliamentary force that was supported by the President's emergency powers. After 1930 this constitutional anomaly became critical. Nevertheless, this development, as has been already noted and will subsequently be proved, primarily was not the result of reactions to certain inner and outer circumstances and conditions, but rather the result of specific – one should rather say unifying but undemocratic – principles rooted in the traditional political issue of *centralization* versus *particularism*.

There was intermittent discussion on this point throughout the history of the Republic, on the idea of re-ordering the federal structure of Germany in such a way as to centralize power in the national government and *vice versa* to reduce the rest of the country to homogeneous and identical units with uniformly subordinate institutions. Although this idea remained an aspiration because of the enduring strength of the states this everlasting inherent contradiction furthered the intention of having a strong national executive from the very beginning of the Republic.

2. The monarchic-authoritarian construction of the Bismarck-Reich

This leads us to another aspect which has to be mentioned here and which must be seen in an even broader historical context. As

¹⁰ For the *Weimarer* Constitution: H. BOLDT, *Deutsche Verfassungsgeschichte*, II: *Von 1806 bis zur Gegenwart*, München 1990, pp. 230-242.

in any modern governmental system, where government evolved from monarchic dependency into parliamentary responsibility, the position of the chancellor was the result of an ambivalent tradition from which he either derived his political strength or weakness, his leadership role or his political dependence. It was the medieval position of the Chancellor as the assistant and first court secretary of the monarch that moulded the understanding of its institution during the Second *Reich* of 1871¹¹. It is remarkable that this could happen in contrast to the never realized democratic *Reichsverfassung* of the National Assembly of 1849. It was the monarchic-authoritarian construction of the Bismarck-*Reich*, «the revolution from above», as Bismarck himself called it¹², that finally reestablished the institution of the Chancellor in the old tradition of the *Reich*: as Chancellor of the North German Confederation (*Norddeutscher Bund*, 1867) and as Chancellor of the Empire of 1871, who was appointed by the King of Prussia and independent towards Parliament (*Reichstag*).

The constitution of 1867/71 was another compromise between the revolutionary transformed conservative monarchy and the junior partner of the national and liberal movement of the bourgeoisie. Bismarck wanted a monarchy of Prussian provenance; he wanted to secure the authoritarian state (*Obrigkeitsstaat*), the privileged position of the gentry and the military and the Prussian hegemony in the *Reich*; he certainly opposed a strong parliament, but he also wanted a modern state that worked in agreement with the strongest forces of the time and the civil society, the national and moderate-liberal movement; he wanted to move with the times, and he wanted to control it; he wanted to modernize the past and at the same time strengthen the monarchy. In other words, he wanted to operate between Prussian reaction and liberal-parliamentary revolution.

In this sense the «red reactionary» (Friedrich Wilhelm IV) had found his new role, had become a statesman: He enjoyed a popularity, that had almost a plebiscitarian character, and was yet a politician, who could depose kings and overthrow dynasties with ex-

traordinary cold-bloodedness. He was a Caesarian domineering person and yet the last European statesman of his epoch, who limited the rights of the power state to legitimize its lasting existence. He was a man of decision and of the extreme. He was a compromiser only in terms of great European power politics, but not in domestic issues; a conservative, who tried to change the world by the principle of creative anti-revolution; a pragmatist and realist, who nevertheless worried about Prussia's and Germany's future. Bismarck was neither a loyal monarchist nor was he a liberal *bourgeois* – he despised their belief of progress. In this political climate he could gain political importance and raise it to an almost constitutional rank, although he had – not without a sarcastic undertone – his own interpretation of his political leadership role: «Mein Einfluß auf die Ereignisse, die mich getragen haben, wird zwar wesentlich überschätzt, aber doch wird mir gewiß keiner zumuten, Geschichte zu machen; das, meine Herren, könnte ich selbst in Gemeinschaft mit ihnen nicht... Die Geschichte können wir nicht machen, wir können nur abwarten, daß sie sich vollzieht»¹³.

With Bismarck the *Reich* was not a new edition of the previous conservative system of government, no «old Reich», no «German confederation» or «Great Prussia». It was indeed something new, the German nation state, in which conservative monarchy and civil society coincided, a state, in which the *Reichstag* had nevertheless become an integral part of the constitution.

The ambivalence of Bismarck's character was reflected in the constitution and his constitutional politics. This became most obvious with the introduction of general suffrage: Bismarck did not intend to allow the Parliament to be filled with genuine members of the lower classes, who might try to correct the condition of their fellows. He never wanted to strengthen parliamentary power. By democratizing universal suffrage he hoped to weaken the strong position of the liberal-civil elites in Parliament instead. He was convinced that the «artificial system of indirect and class elections (was) much more dangerous than that of direct and general suffrage»¹⁴ – and he was right. He succeeded in using universal suffrage to strengthen the monarchy and his own power position towards Parliament in an almost autocratic manner. The *Reichstag's* assent was required for all legislation, but it had few powers of initiative and for the most part merely acted upon matters brought before it by the Chancellor and the Federal Council. Draft legislation that it disliked it

¹¹ T. NIPPERDEY, *Deutsche Geschichte 1866-1918*, II: *Machtstaat vor der Demokratie*, München 1992, pp. 100 ss. For the institutional structure of the Empire: H. BOLDT, *Deutscher Konstitutionalismus und Bismarckreich*, in M. STÜRMER (ed), *Das kaiserliche Deutschland. Politik und Gesellschaft 1870-1918*, Darmstadt 1970, pp. 119-142; W.J. MOMMSEN, *Die Verfassung des Deutschen Reiches von 1871 als dilatorischer Herrschaftskompromiß*, in O. PFLANZE (ed), *Innenpolitische Probleme des Bismarck-Reiches*, München-Wien 1983, pp. 195-216.

¹² O. VON BISMARCK, *Runderlaß an die preußischen Missionen*, 27. 5. 1866, in O. VON BISMARCK, *Die gesammelten Werke*, Berlin 1924-1932, V, n. 359.

¹³ O. VON BISMARCK, *Die gesammelten Werke*, cit., XI, p. 46.

¹⁴ *Ibidem*, V, pp. 429-457.

might amend or delay or even defeat, although in the last case, if the matter was considered important by the government, it could do so only at the cost of a dissolution of the *Reichstag*. The Parliament had no legal control over the Chancellor, for, although the constitution declared that official to be the «responsible» minister, this did not mean that he was responsible to the *Reichstag* or that a defeat of his policies would necessarily lead to his retirement. Indeed, some important areas of policy were closed to the members of the *Reichstag*. Bismarck regarded the fields of foreign affairs and military policy as lying exclusively within the competence of the Chancellor's Office and the Crown; in the latter case, indeed, even the *Reichstag's* power of the purse was meaningless during most of the Bismarck period. This was, however, the political price for the sake of a general parliamentarization that was modeled on the British example¹⁵.

Nevertheless, there is no doubt that Bismarck regarded the *Reichstag* as an important part of his constitutional system. It certainly was a symbol of the nation's hard-won unity. And for Bismarck it was a convenient and effective sounding-board, by means of which German attitudes and objectives could be given resonant expression. On many occasions during his chancellorship Bismarck resorted to the technique of using parliamentary debate to impress foreign opinion and to demonstrate to the Emperor his indispensability. For him Parliament was indeed a kind of insurance policy.

What he certainly underestimated, however, was the fact that one of the results of his democratic revolution was also that, once universal suffrage was introduced, he had taken a decisive step towards modern parliamentarism in German history; his Caesarism was just an interlude. At a time, however, when German parliamentarians as a group did not acquire the self-confidence and sense of collegial solidarity that were enjoyed by members of the English Parliament or American congressmen or that was common, in Germany, to bureaucrats and army officers, the *Reichstag* could not realize that the Chancellor was more dependent upon it than it actually might appear from the text of the constitution. For this reason, Bismarck, the symbol of effective statecraft and strong personality, could afford that constitutional compromise, which provided for a complicated system of checks and balances between the Federal Council (*Bundesrat*), Chancellor and Parliament (*Reichstag*), between the *Reich* and Prussia, between Parliamentarism and Federalism, between particularism and unitarism.

¹⁵ K. HILDEBRAND, *Das vergangene Reich. Deutsche Außenpolitik von Bismarck bis Hitler*, Stuttgart 1995, pp. 20 ss.

Taken together, Bismarck's «revolution from above» as a model for the foundation of the German nation-state has to be qualified: Of course, not only the European state system had been revolutionized, but also the the new nation states from inside. While in Western Europe the state realized the nation, it was the nation which realized the state in middle Europe. Thus, as in the Italian case, the German «Reichsgründung» actually was at the same time the revolution of the forces from the «bottom». In other words it was the interaction between Bismarck and the national movement – in the Italian case between the «piemontesian» prime minister and the «moderati» (Cavour) and the democratic-revolutionary party follower of Garibaldi and Mazzini. No doubt it was an interaction *malgré soi*, as the relationship between Bismarck and the liberal press was extremely strained. The public opinion in Germany was already so powerful, that not only Bismarck, but any German government since the revolution of 1848 sought to win this power potential for its own purposes and respectively adjusted its politics to this potential. This became obvious for instance by the fact that no German «middle state» (*Mittelstaat*) dared to enter into an alliance with a non-German state, though the *Wiener Bundesakte* provided for the right of all German states to do so. The politics of a «third Germany», a federation of German states with french backing after the model of the *Rheinbund* of 1806 would have implied incalculable domestic risks two generations later.

Thus, the model of the «revolution from above» has to be qualified in the German case as well. Of course the German *Reich* was not united by speeches and majority votes, but by blood and iron. Nevertheless, nothing could have led to success, that permanently opposed the mass nationalism. Bismarck himself stated it very clearly in his memoirs: «Wenn auch durch Landtagsbeschlüsse, Zeitungen und Schützenfeste die deutsche Einheit nicht hergestellt werden konnte, so übte doch der Liberalismus einen Druck auf die Fürsten aus, der sie zu Konzessionen für das Reich geneigter machte»¹⁶.

Bismarck's outstanding role as Chancellor again leads us to the most interesting, though also most difficult question in this context: the question to what extent the institutional form on the one hand and the personal style and administration of official duties on the other hand have influenced the political process in German history. Two points seem to be important here. First: The traditionally justified *Sonderform* (form) of the German chancellorship corresponded with the emphasis on the German *Sonderweg* in comparison with the other western democracies which since the beginnings

¹⁶ O. VON BISMARCK, *Gedanken und Erinnerungen*, Stuttgart 1899, I, p. 293.

of the 19th. century had a determining influence on the idea of the German nation-state at the expense of the constitutional movement. Second: This *Sonderform* became obvious in the ambivalent intermediate position of the Chancellor between monarchy and parliamentary system, thus providing for his strength under the monarchic principle and *vice versa* his weakness at a time, when the parliamentary principle gained importance. As intermediary agent of the Emperor the Chancellor enjoyed quasi-monarchical power towards the *Reichstag*.

This understanding of chancellorship, which was closely related to the anti-western, non-democratic state conception of specifically German convictions, became anachronistic during the days of Wilhelm II and when the military preponderance gained momentum in World War I. Nevertheless, it revived under different conditions during the *Weimarer* Republic: in the presidential governments of bipartisan politicians such as Cuno and Luther; and especially in Brüning's government of emergency decrees, which was counting so exclusively on Hindenburg's confidence as Brüning's memoirs impressively prove¹⁷.

Any historical review must of course differentiate between the fatal sticking to anachronistic structures of the monarchic *Obrigkeitsstaat* on the one hand and the just criticism of the weakness of the *Weimarer* governmental structures on the other hand. The demand for the strong Chancellor was the result of an anti-parliamentary, anti-democratic and anti-republican tendency as far as it was combined with a popular Bismarck cult, with restauration, reaction, and nationalism. Under the specific conditions of the German political tradition this was the negative side of the general tendency of any parliamentary system to improve its efficiency by integrating some stabilizing elements for the safeguard of political leadership, continuity, and the proper treatment of political issues in transitional phases. This was either speaking for the preservation or restauration of certain elements of the Bismarck system in the traditional sense or for an approach towards the American presidential system with its strong concentration of the whole executive power in the modern, republican sense. Weimar tried both – and for this reason a practical solution failed. In the political practice this perfectionist double construction of a parliamentary chancellor cabinet and plebiscitarian presidential power lacked both – the strength of the monarchic government and the balanced function of the American president. Nevertheless, the experiment of a modification of the parliamentary system in favour of stable governing conditions was justifiable as well as advisable.

¹⁷ See H. BRÜNING, *Memoiren 1918-1934*, Stuttgart 1970, *passim*.

The solution of 1949 rested on the historical experience that the pre-democratic Bismarck system was out-dated, that the *Weimarer* construction was full of contradictions, and that a modified form of parliamentary democracy was still necessary – now, of course, in conscious approval of the western tradition. Before we turn to that last period in this reflection, however, we must briefly ask for the reasons of the hitherto so ambivalent development of the political leadership phenomenon in German history; so far the symptoms have been mentioned, but not the deeper causes of this development.

3. The German nation-building process – indeed a «revolution from above»?

As in any other western democracy the establishment of a specific understanding of the execution and performance of political leadership in Germany was closely related to the respective experiences of the nation-building process and objective historical forces. The consciousness of the liberal bourgeoisie as the main representative of the idea of the German nation-state had been developed over generations; it was oriented towards the images and myths of a romantic utopia, of the vision to restore the medieval imperial splendor of the Holy Roman Empire. This myth was so strong, it seemed, that no German nation-state could be erected without any reference to it. Bismarck knew that the title of the Emperor had very different meanings: It met the particularist ideas of the southern princes as it emphasized the federal aspect of the Old *Reich*; it helped to persuade conservatives, who had difficulties to come to terms with the new constitutional reality by giving them the idea that the christian-romantic emperorship would prevent further secular tendencies of liberalization; and it finally made liberals and democrats place their hopes on the idea of the popular emperorship of the *Paulskirche*, while at the same time the correlation between war and the proclamation of the emperor allowed for interpretations of a Caesaristic-Napoleonic army emperorship. It was this ambivalence of the title, which led Wilhelm I to speak of a *Scheinkaisertum* (fictive emperorship)¹⁸.

Thus, the emperor in a way became the central unifying element in the process of bringing together particularist state interests – one can call that the «outer process» of political unification. This particularism, however, lived on during the process of the «inner»

¹⁸ For this see H. SCHULZE, *Staat und Nation in der Europäischen Geschichte*, München 1994, p. 238.

Reichsgründung, the consolidation of the empire after 1871. There was a great variety of opposing social and economic interests, developed into different parties, mass organizations, syndicates and smaller interest groups; and there were minority problems, which further impeded any national evening out. Bismarck, as already indicated, tried to solve this problem by sorting out those, who were capable of being integrated from what he called «Reichsfeinde» (enemies of the empire).

That means, that from the very beginning the leadership problem in Germany was twofold: There was a demand for an overriding leadership role in a rather vague and unspecific sense on the one hand, a demand for a leader with a certain symbolic function. And there was the necessity of political leadership to integrate a nation without a common identity or unifying idea, without a civil culture of common sense, on the other hand – a nation, of which the different interests were only eclipsed by a common *Reichs*-German nationalism; a nation-state, which on the first sight seemed more or less created from above and which finally evolved from anti-French war sentiments¹⁹.

Paradoxically the idea of the Old *Reich* became effective in two opposite directions. It helped to make progress with the process of building the nation state through the integrating function of the emperor and was yet responsible for its delay («verspätete Nation»)²⁰ because of its disintegrating federalist structures. All this contributed to a development, in which the army and the state itself, and since the 1890s a rather poor copy of the English example, the imperial temptation as well, became the real unifying elements of the nation.

There is not enough room for a deeper reference to what we have called «objective historical forces»; only a few notes should be added: History takes shape by the action of the politicians, who take up the challenges of these objective forces and circumstances, each, of course, in a very different way. In other words, what came of any given situation depended on how Bismarck and Caprivi, Bülow, Bethmann-Hollweg and Ludendorff, Stresemann, Brüning and finally Hitler reacted to it. The results were partly characteristically German, partly in a general way European. From the start, however, the newly erected German nation-state was confronted with great problems; this fact is part of its difficult normalcy.

¹⁹ M. STÜRMER, *Das ruhelose Reich. Deutschland 1866-1918*, Berlin 1983, pp. 143-192.

²⁰ H. PLESSNER, *Die verspätete Nation. Über die politische Verführbarkeit bürgerlichen Geistes*, Stuttgart 1959.

These problems included its geographical location in the middle of Europe²¹ as well as the fact of its late foundation – both causing a strange «restlessness»²² of its existence; its alleged territorial incompleteness (*kleindeutsche Lösung*), which, combined with the yearning for the boundless *Reich*, resulted in a dangerous demand for territorial adjustment; last but not least, the permanent tension between natural urge (as part of the imperialistic movement) and necessary abandonment inasmuch as economic prosperity conflicted with the requirements of a self-imposed defensive foreign policy²³.

Bismarck was aware of these circumstances and requirements, but not his successors at the turn of the century, who finally sought their salvation in an offensive foreign policy. And yet, no matter how Bismarck's way of acting differed from Hitler's, somehow both are inseparable parts of the complicated development of the German nation-state. All political leaders between 1871 and 1945 sought to avoid permanent entanglements with foreign powers and instead pursued its own course of action, independent of any power or *Weltanschauung* in the West or in the East. This was nothing spectacular, in fact it corresponded with the tradition of European great power politics. In the German case, however, this natural desire from the start held the dangerous element of permanent overburdening. And there is no doubt that in the end this contributed to the aberration of the German National Socialism.

III. *Perspectives and different versions of the Chancellor democracy (Kanzlerdemokratie) after 1949*

1. Constitutional modifications on the way to a Chancellor democracy

At this point we come to the conclusion for what were the ideas of the framers of the constitution in 1949 against the background of these historical experiences and what are the exceptional features of the *Kanzlerdemokratie*, which soon thereafter came to be the common term for the characterization of the constitution of the Federal Republic.

The modification of parliamentary democracy, respectively the *Grundgesetz*, now was not the establishment of a fundamental counterpoise – as in the case of the *Weimarer* President –; rather it consisted in the full recognition and development of the cabinet gov-

²¹ For this E. ENGELBERG, *Bismarck. Das Reich in der Mitte Europas*, Berlin 1990, pp. 85-103.

²² M. STÜRMER, *Das ruhelose Reich*, cit., pp. 193-248, 399-410.

²³ H.-U. WEHLER, *Bismarck und der Imperialismus*, Köln 1969 (4th. ed. 1976).

ernment, the protection of its viability and the reduction of government crises²⁴. The parliament could only fulfil the task to set up the government and assume responsibility in any government crisis, if it was not circumvented by presidential cabinets (as it was the case in 1930) or negative oppositions (with negative majority as it was the case in 1932) without any binding obligation to install a new government.

It is true that the framers of the constitution in 1949 were suspicious of an absolute democratization; this was manifested in the regulations against anti-democratic parties or movements and any plebiscitarian elements. On the other hand there is no doubt that this modification was compatible with the principles of parliamentary democracy. More than that, this was the only way to modernize the system under the requirements and conditions of the increasing complexity of state activities after 1949.

The constitutional problems, which resulted from the development of a consciously stabilized Chancellor democracy (*Kanzlerdemokratie*), concerned two institutions: the cabinet and the parliament. There were, however, no more dazzling interdependencies and rivalries between government and parliament on the one hand and the president on the other hand. Neither the presidential system of *Weimar* nor its later version (1958) of the Fifth French Republic had been a serious enticement – the president was assigned to merely representative functions within the new constitution. This became obvious during the debate on the European Defense Community in 1952/53, during Adenauers candidacy for the presidency in 1959, and when Lübke tried to exert more direct political influence.

2. A new position for the Chancellor and the requirements of exercising political leadership

What kind of position did the constitution provide for the Chancellor? Though there are clearly defined regulations for the relationship between the Chancellor on the one hand and the cabinet and the parliament on the other hand, there remains enough scope for the former to act and set the political guidelines within this given constitutional framework. Again, the historical background is important here. The development of the parliamentary democracy led to the establishment of the so-called *Kollegialprinzip* (resort principle) within the cabinet; moreover any minister had to defend his policy before the parliament. Contrary to the *Kanzlerprinzip* of

²⁴ E. PIKART, *Auf dem Weg zum Grundgesetz*, in R. LÖWENTHAL-H.P. SCHWARZ (edd), *Die zweite Republik*, cit., pp. 149-178.

the Bismarck-Reich and different from the American presidential system *Weimar* consequently followed this way. At the same time, however, it held to the *Richtlinienkompetenz* (the right to set the political guidelines) of the Chancellor, convinced that total cooperativeness makes governing impossible.

For two reasons this construction turned out to be contradictory: On the one hand the double dependency of the cabinet towards Parliament and the president implied a splitting and uncertainty of the executive, which in turn prevented a continuous governing. On the other hand the *Richtlinienkompetenz* of the Chancellor remained a blunt instrument as long as he permanently had to be prepared for the leaving of any coalition partner or even the dismissal of single ministers by the parliament.

The Federal Republic came to the obvious conclusion that the parliament's control mechanisms should exclude the right to appoint ministers and remove them by a vote of no confidence (*Mißtrauensvotum*); instead these rights were exclusively assigned to the Chancellor, thus strengthening the *Richtlinienkompetenz* and increasing his chances of exercising political leadership. Above all this modification urges parliament, be it the ruling parties, be it the opposition, to treat the government as a whole and to judge coalition conflicts or strifes within the parties by their relative weight and in relation to the chances of the fall of the Chancellor. In this context that famous construction of modern parliamentary democracy becomes relevant, which was supposed to provide for more stability as well: the so-called *konstruktive Mißtrauensvotum*²⁵.

The discussion on this special feature of the German Chancellor democracy combines all the important intentions and motives, that finally moulded the governmental system of the Federal Republic. The fact that the ministers were dependent on the Chancellor, but not on the Parliament, and that in turn the Chancellor could only be overthrown by parliament through the election of a new Chancellor, clearly demonstrates the primary interest of the framers: namely to secure the continuity and stability of a unified government against alterations and vicissitudes within the parliament.

Critics of the system have often pointed to the ambivalent character of a strong chancellorship due to the specific conditions of the German political tradition. Karl Löwenstein has spoken of a «demiautoritäres» system with «controlled parliamentarism», which rooted in the decisions and structures of the second German demo-

²⁵ T. ELLWEIN-J.J. HESSE, *Das Regierungssystem der Bundesrepublik Deutschland*, Opladen 1992', pp. 273 ff.

cracy²⁶. On the one hand there has always been a potential fear that it could all too easily turn into an authoritarian, patriarchal one man-regime. This was, what Adenauer has been blamed for so many times, whose political style indeed seemed to have something in common with that of Bismarck or de Gaulle; as a matter of fact, however, Adenauer, compared to both, gave the impression of ordinariness, rationality and a civic cast of mind²⁷. On the other hand there have also been tendencies towards a more *technocratic, plebiscitarian* state system under what came to be called *Volkskanzler-tum* (populist Chancellorship) – as was the case with the chancellorship of Ludwig Erhard («formierte Gesellschaft») –²⁸ or a *cooperative* Chancellorship, which was inevitably the case during the *Große Koalition* (Grand Coalition) under Kurt-Georg Kiesinger²⁹.

After all, however, it is as simply as it is: a Chancellor democracy depends on the Chancellor. It is definitely not true that the structure of the federal government according to Art. 65 of the *Grundgesetz* (GG) is based on an equal combination of *Kanzler-, Ressort- and Kollegialprinzip*³⁰. As compared to *Weimar* the Chancellor today obviously is in the strongest position, provided, that he, as Adenauer did, combines governmental and party leadership in his hands; this is a very important point as the failure of Erhard proved only three years later (1966). It is finally up to him whether he gives priority to the *Kanzlerprinzip*, as Adenauer did and in a way also Willy Brandt with the reform of the chancellorship (*Kanzleramt*), or whether he attaches more attention to cooperative decisions within the cabinet, as Erhard and Kiesinger did. In the end the Chancellor's position of power depends on how he makes use of his *Richtlinienkompetenz*. This is what mainly contributes and enables him to exercise political leadership. Solely responsible to the parliament, which in turn can only dismiss him by a construction (*Mißtrauensvotum*, Art. 67 u. 68 GG), which is very difficult to manage, he can in almost any case push his political ideas through cabinet. No matter, whether the Chancellor sets the political guidelines or whether he adopts them from others, whether he accepts the

²⁶ K. LÖWENSTEIN, *Verfassungslehre*, Tübingen 1959, pp. 92 ss.

²⁷ On Adenauer: H.-P. SCHWARZ, *Adenauer, I: Der Aufstieg: 1876-1952; II: Der Staatsmann: 1952-1967*, Stuttgart 1986-1991.

²⁸ K. HILDEBRAND, *Von Erhard zur Großen Koalition 1963-1969* (Geschichte der Bundesrepublik Deutschland, IV), Stuttgart 1984, pp. 235-237.

²⁹ B. VOGEL, *Die Kunst des Möglichen*, in D. OBERNDÖRFER (ed), *Begegnungen mit Kurt Georg Kiesinger*, Stuttgart 1985, pp. 341-350.

³⁰ See T. ELLWEIN-J.J. HESSE, *Das Regierungssystem der Bundesrepublik Deutschland*, cit., pp. 281 ss.

majority decision of the cabinet or not: he is responsible for the decision. As Theodor Eschenburg stated very clearly:

«Alleinige Richtlinienbestimmung, alleinige Verantwortung, alleinige Organisationsgewalt hinsichtlich der Einrichtung von Ministerien und der Verteilung der Geschäfte auf sie, alleinige Macht, Minister zu ernennen und zu entlassen – daneben die kollegiale Bundesregierung mit ihrem Anspruch auf Information, mit ihrem Mehrheitsbeschluß und bestehend aus für ihren Geschäftsbereich verantwortlichen Ministern:

‘Das Grundgesetz hat hier eine interessante Kombination von Kollegialsystem und Einzelführung geschaffen. Durch diese Verbindung sollen die Mängel jedes Systems sich gegenseitig einschränken. Gleichgültig, ob der Bundeskanzler die Richtlinien selbst bestimmt oder sie von anderen übernimmt, ob er sich dem Mehrheitsbeschluß des Kabinetts fügt oder diesen umstößt: immer trägt er allein die Verantwortung. Wird der Bundeskanzler überstimmt, so muß er sich, symbolisch ausgedrückt, aus der Kabinettsitzung in sein Arbeitszimmer zurückziehen und noch einmal die Entscheidung für sich fällen, die dann die endgültige ist. ‘Einsame Entschlüsse’ sind also nicht nur aus der Eigenheit Adenauers zu erklären, sondern werden durch Art. 65 GG geradezu verlangt; allerdings muß eine Beratung und Beschlußfassung der Bundesregierung vorangegangen sein’³¹.

Nevertheless the term «Chancellor democracy» is inseparably connected with the era Adenauer – afterwards it fades in importance as Adenauer's successors undoubtedly lack his leadership qualities. The significance of the era Adenauer was characterized by two fundamental decisions – that means conditions for this exception the decision for a coalition of CDU and FDP – a decision which marked the beginning of a 15 years lasting domestic power structure during the formative years of the FRG. And the completion of a consequently persecuted *Westorientierung*, which was of inevitable logic during the Cold War years. This decision implied a stabilization of the so-called *Provisorium* and it made it easier to reach the status of a sovereign Federal Republic. There is no doubt that the strong position of the first Chancellor was due to the constitutional provisions as well as to the political conditions, which more or less anticipated those decisions.

There were several other factors which contributed to Adenauer's strong position: His age, which not only threw the bridge to the *Weimarer Republik*, but also to the *Wilhelminische Epoche*, helped the Chancellor to legitimize his authority, his personal style before the public. His experience as mayor of Cologne had taught him the rational business of political tactics and shaped the West German image of his national and European convictions, that corresponded with the situation of the new state. The patriarchal style of the mayor from 1917 until 1933 now left its mark on his opinion of a Chancellor government, which rested less on cooperative cabinet politics

³¹ T. ESCHENBURG, *Staat und Gesellschaft in Deutschland*, Stuttgart 1956, p. 735.

than on personal leadership with the help of a strong and reliable administration. Only few, clear basic ideas, to which he stuck with unshakeable self-confidence, helped him to do everything within the possibilities of his office and recklessly defend it against his opponents.

And yet, the *Kabinetts-* and *Kollegialprinzip* as well as the special rights of the ministers counterbalance the *Kanzlerprinzip*. Again, this depends on the competence of the acting politicians. Adenauer has filled the given constitutional frame by his personal style, his authority and his growing prestige in such a strong way, that even his weaker successors could use the practise of a *Kanzlerregime*, which was made possible by the constitution, but not automatically given. As a matter of fact the government of Adenauer, who didn't tolerate any rivals in his cabinet, worked because of the precedence of the *Kanzleramt* over the cooperative decisions of the cabinet: the personal style and management of the government was significantly favoured by this constellation. The strengthening of the *Bundeskanzleramt* as it took place under Brandt's social-liberal coalition in the early seventies thus was the almost logically consistent development of this primacy of the *Kanzlerprinzip*, although these reforms were revoked by the second Brandt cabinet.

In sum, the competences as set in the *Grundgesetz* do not tell us anything about the political possibility and advisability to make use of them or instead prefer a more cooperative style. The personality of the Chancellor as well as the party political and parliamentary constellation play an important role in this context. Any criticism of the system thus did not primarily address the principle of the Chancellor democracy in general, but rather the handling of certain political issues in practise and of course the general political understanding, that in turn has a determining influence on the political style. This is especially true with regard to the assessment of the parliament by the Chancellor, as it becomes obvious in his treatment of the government majority as well as the opposition. In the case of Adenauer – as his memoirs certainly prove – this relationship was determined by the Chancellor's obvious scepticism, partly even contempt, towards the parliament. For this reason it is also important to judge any chancellorship not only by its technical-tactical administration, but also by its underlying relationship between the understanding of democracy and governmental practice.

Last, but not least, one has always to keep in mind the prevailing political conditions at any taking over of the government, though this is a very subjective way of looking at the question of political leadership, which has to be qualified from case to case. Nevertheless, as noted above, Adenauer was favoured by such conditions,

and so was Brandt's *Ostpolitik* or Helmut Kohl's *Vereinigungspolitik*. In contrast to that, Helmut Schmidt, who certainly ranks as one of the charismatic and impressive statesmen in the history of the FRG, does not evoke the idea of being one of the most successful political leader. Taken this as a criterion, Adenauer, Brandt and Kohl will almost certainly be ranked higher by historians in later generations. Whatever criteria one takes into account for studying the role of political leadership in German history, one thing is for sure: The democracy of the FRG for the most part is due to the shaping of a stable *Kanzlerregierung*.