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STATE AND BUREAUCRACY IN PRUSSIA AND GERMANY

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Prussia, as a *pars pro toto,* is regarded by many an observer as a system with a strong state tradition. It will be demonstrated here that the model outlined by Metin Heper can also be applied to the Prussian and German cases. The reader should not, however, expect to gain an historical account of three hundred years of Prusso–German history from this chapter.[1]

FROM PERSONALIST TO IDEOLOGICAL POLITY (1640–1807)

From the reign of the Elector Friedrich Wilhelm (1640–1688) onward, the Hohenzollerns started to centralize politically a "queer and constantly changing territory on the map of Europe" and to form an absolutist state from what had been "so artificial and rootless that, long after its adventitious establishment, it remained without a name."[2] In the course of monopolizing power through the creation of a standing army and the introduction of permanent taxation, the Electors of Brandenburg and kings in Prussia (1701) politically eroded the "estates" and their representative bodies in the provinces and concomitantly developed a central political apparatus.

Although the landed nobility was economically weak due to the great depression accompanying the Thirty Years' War, the traditional feudal "constitution" was not formally abolished. Rather, it was made superfluous, as more and more functions previously carried out by the few cities and the landed nobility came to be executed by the monarch's personal servants, whom he appointed, removed, and regulated without the estates' participation.

In this sense, the state apparatus was superimposed on a decentralized feudal society without immediately destroying its basic structures. On the central level the "estatist" Privy Council established in 1604 lost its functions in 1689 to the professionally staffed Court Chamber, which in

1713 developed into the General Finance Directory and the General War Commission.

When overlapping jurisdictions of the "private" royal administration of demesne farms and the "public" fiscal bureaucracy resulted in a trial over the privilege to brew beer, Friedrich Wilhelm I, the "soldier king" (1713–1740), merged both offices with the General Accounting Office in the General Directory in 1723.

At the provincial level the responsibility of the estatist self-government was functionally reduced to juridical and ecclesiastical matters (as had happened to the Privy Council in 1728 after the establishment of a foreign office), while the two columns on which the absolutist state rested—military and fiscal administration—were transferred to the Professional War and Demesne Chambers. The same institutional dualism developed in the towns. In the counties, however, the local landed nobility preserved their rights; an indigenous landlord had to be appointed as commissioner or country councillor [*Landrat*], as the office had been called since 1702.

Thus, at the basis of the Prussian system of domination stood the *Junker,* who remained a political force until 1918. Until 1807, they controlled the agrarian production by virtue of being the only landlords and hereditary serf masters; *politically,* until 1891, they ran local government; *administratively,* until 1848, they were prosecutors, judges, tax collectors, and local police officers (partly until 1927); *militarily,* they had the "privilege," together with their peasants, of helping the king to fight wars; and, above all, the *Junker* were the local *church patrons,* and, as such, appointed the priests, who in turn controlled education at the local level.

Tax exemption and privileged juridical status compensated the landed nobility for their responsibilities and contributed to their strong identification with the state. Even at the provincial level the nobility often headed the War and Demesne Chambers in order to mediate between central and provincial, or royal and estate, interests and served as "strategically placed liaison officers in aristocratic public relations."[3]

But these positions were the rare exceptions in the new bureaucratic apparatus, which up to 1740 was primarily, although not exclusively, staffed with non-nobles. At the time even the officers in the army were predominantly mercenaries. It was with Frederick the Great (1740–86) that the patterns of recruitment began to change when he compensated the political losses the *Junker* had suffered on the provincial and central levels with officer posts in the expanding army, the only job regarded appropriate vis-à-vis feudal terms of honor. In the—still small—civil bureaucracy, however, the *Junker* offspring did not immediately begin to prevail but had to compete with the new servants' estate [*Beamtenstand*], which was directly accountable to the king without the mediation of the estates. While the Prussian system continued to rest politically on a compromise between the king and feudal aristocracy, it ceased to be a polity of estates. The

traditional and newly acquired public functions were centralized through a personal servant bureaucracy during the first half of the eighteenth century.

Since then, the four provincially specialized central departments of the General Directory became further differentiated into departments of trade and industries (1740), military economy (1746), forestry (1768), and mining (1771). These departments reflected the new mercantilist policy, and the conception of a welfare state [*Wohlfahrtsstaat* or *Polizeistaat*]. The idea has been developed since the end of the seventeenth century by thinkers such as Seckendorff, Pufendorff, Thomasius, Wolff, and Leibniz.[4] These theorists also introduced the word *Staat* [state][5] to denominate the king's court, his territory, and his initially restricted area of jurisdiction, which was not yet subject to public law.

As economic intervention increased and the king gained the monopoly to issue new regulations beyond the "good old rights," a different notion of state developed on the basis of Lutheranism and Aristotelian social philosophy. Public good was defined from above for the well-being of the king's subjects [*Untertanen*]. After 1727, the expertise needed for drafting and executing policies was provided by new university chairs of Cameralist sciences—that is, economics, statistics, and politics related to mercantilistic areas of state intervention. Cameralist sciences also contributed to a further elaboration of the theory of the state. University education became a social filter through which the nobility had to pass before taking up administrative posts. In the long run the nobility was "domesticated" by having to go through a university education and join the state service. Bureaucratic recruitment and advancement became related to education and performance. The achievement principle evolved and finally gave rise to the *noblesse de robe* as a distinct stratum.

His father had regarded himself as the ruler of a state that he was assumed to own the way a landlord would own his (real) "estate," and he treated his bureaucrats as personal servants, but the rationalist philosophy and the ideas of enlightenment led Frederick the Great to conceive of the state as an artifact and an entity in its own right, which he (in the first place) and his "sitting and standing armies" had to serve. This notion of service to a depersonalized entity transcending the people and the territories, which had become labeled with the word "state," was accompanied by a gradual distinction between private and public law, private court and state budget, and the typically German regulation of the civil service status by public law.

Among the other eighteenth-century Prussian codifications, the 1974 General Code [*Allgemeines Landrecht*] is of special importance because it formalized the positions of civil servants and established their employment on a basis of tenure, thereby replacing the former hire-and-fire policy and granting the bureaucracy more existential security and political independ-

ence. This went along with the official recognition of the civil service as a professional estate, complementing the hierarchy of estates by birth.

Although the code restricted the absolutist welfare mission of the state by institutionalizing the rights of the individual vis-à-vis the state, at the time Prussia could not be called a *Rechtsstaat* in the sense in which the term is understood today,[6] or even in which Mohl conceptualized it in the 1830s. Rather, Prussia gradually developed into a law state [*Gesetzesstaat*], as the positive law became a means to overcome common law, traditional feudal jurisdictions, and provincial diversities. The liberalist conception of *Rechtsstaat* emerged only with the post-1830 constitutionalist movement.

What Otto Hintze in analyzing the state apparatus called military–bureaucratic absolutism, and what Hans Rosenberg referred to as bureaucratic monocratic autocracy with respect to the power distribution, should both be taken here as emphasizing the goal-setting function of the Prussian kings during the eighteenth century. The law spelled out by the king was a means to implement the substantive state conception of the authoritarian welfare state. Therefore, initially the bureaucracy developed into a "machine" bureaucracy. However, the bureaucracy gradually came to have greater independence—a phenomenon that marked the beginning of a new phase in Prussian history.

IDEOLOGICAL POLITY WITH THE BUREAUCRACY AS THE LOCUS OF THE STATE (1807–1848)

After the catastrophe that Napoleon's victory meant to Prussia in 1806, the bureaucracy more or less pressed King Friedrich Wilhelm III into a secondary role and initiated a number of (semiconstitutional) administrative reforms as well as new substantive policies, partly to meet the ideas of the French revolution, and partly to revitalize the country economically, socially, and politically with the purpose of liberating it from Napoleon's domination. The period until at least 1822 has even been called bureaucratic absolutism,[7] after Minister vom Stein had forced the king in 1807 to abolish the cabinet government—that is, the filter of cabinet secretaries, which, under his weak successor, had turned from their original executive functions in Frederick the Great's rule *through* cabinet into advisory roles of a government *by* cabinet. Stein thereby achieved direct access of the ministers to the king, with the right of countersignature of all decrees.

Central administration was reorganized into (the classical) five functional departments, and the towns were granted extensive autonomy by a new municipal constitution. In 1811 Minister v. Hardenberg further enlarged the political role the bureaucracy had acquired by creating the office of Chancellor of State. In order to push the reform decrees on a

partly resistant bureaucracy—in particular the provincial bureaucracy acting as spokesmen of societal interest groups—Hardenberg staffed his office with young, progressive non-nobles and interfered in the day-to-day operation of the departments, thus prompting the latter's recalcitrance to his policies; they saw this as a violation of the traditional collegial pattern of decisionmaking.

In contrast to the popular thesis of bureaucratic conservatism, reformers such as Stein, Hardenberg, Humboldt, Scharnhorst, Gneisenau, Clausewitz, and Boyen, all having served for years in the administration and the army, brought about a series of reform policies and forged a "revolution *with* the state, not against the state." The abolition of serfdom and the granting of the right to emigrate (1807) created the preconditions for later industrialization (and proletarization). The transfer of property rights to the peasants by monetary or land payment (1810) allowed for agricultural concentration and productivity increases. Abolition of the guild system and the introduction of freedom of trade, the emancipation of the Jews (1812), the right of the nobility to engage in economic activities, the opportunity for the bourgeoisie to buy nobles' estates (including their public functions), the raising of bourgeoisie to the ranks of the nobility, and the possibility of intermarriage with the *noblesse de robe* were devices that helped to level out social, economic, and regional differences, to develop a Smithian *national economy,* and to form a *national society* with equally and easily administrable inhabitants.

The Prussian bureaucracy was preoccupied with the implementation of these reform policies for several decades, and it thereby brought about drastic socioeconomic changes. From about the 1820s onward, it was then increasingly faced with the unforeseen consequences of these policies. Unemployment and mass poverty arose due to the liberation of the aristocracy from their feudal obligation of sustaining their serfs, and also because of the emergence of an urban proletariat. The state tried to control these developments by providing public works (railroad building in particular), by regulating the work of children (1839), by supplying poverty subsidies, and through the supervision of work conditions in industry (1845).

Although in 1815 the Crown had promised a written constitution to grant *political rights,* political concessions made before the general political restoration of the 1820s turned out to be minimal. The reestablished Privy Council consisted of princes, military leaders, and top bureaucrats. Although virtually no law was enacted without the participation of, or against, the Privy Council, the Council was merely a "preconstitutional parliament of the upper class."[8] Arguments made against a national representative body included Prussia's heterogeneity, the East–West socioeconomic diversity of the provinces, religious cleavages, juridical

fragmentation with the French jurisdiction over the Rhine provinces, and—last but not least—differences in language in Polish areas. Consequently, political participation was allowed only at the level of eight provinces in 1823, when estatist diets were formed and presided over by the *Oberpräsidenten,* the top provincial executives. Only the Prussian bureaucracy was the national ("general" in Hegel's terms) "estate." Political reform, therefore, was preempted by administrative reform, as Kosellnek has put it.

According to the administrative *Ersatz*-constitution, the initiative for legislation originated in the bureaucracy, having been discussed there in a cumbersome and time-consuming process in which all echelons of the administration and evolving interest groups were given opportunity to express their views. An inner bureaucratic democracy of unrestrained discussion substituted for political democracy.

The General Code of 1784 blessed the bureaucrats with protection against arbitrary dismissal and required a collegial decision-making in the Privy Council. The disciplinary code of 1823 and similar regulations in 1844 and 1851 guaranteed by implication the institution of lifelong tenure for the German civil servants. In 1825 the economic position of the bureaucracy was further strengthened with the legal right (instead of princely grace) to receive old-age pensions..

Another structural change concerned the training *system.*[9] Although a university education in Cameralistic sciences had proved useful, the system was largely based on internship, and appointments depended on the examination given by the *Oberexaminations-Kommission* (replacing the king's personal judgment). In the early nineteenth century, greater emphasis began to be placed on preentry education, itself a target of the 1807 reforms of Humboldt, which culminated in the foundation of Berlin University in 1810 (with the philosopher Fichte as the first rector, and Hegel teaching). Soon, almost all civil servants came from among the graduates of this university.

In 1812 the elementary and secondary school system was geared to the university system, since the admission to university presupposed knowledge of the classics. The significance of this (intended) coordination between secondary school/university and higher civil service lies partly in its role of having fostered the idea of "nobility by education" (*Bildung,* or formation of character). This notion legitimized the literati of the bureaucratic estate.

Undoubtedly, between 1807 and 1848 the bureaucracy was the power center, although after 1840 the monarch's sovereignty had been formally reemphasized by reverting back to the notion of divine right. As national participatory mechanisms were missing, the bureaucracy, self-programmed by law, virtually interpreted the substance of policy and regarded itself as the national representative.

IDEOLOGICAL POLITY WITH THE BUREAUCRACY AS MACHINE (1848–1918)

In system-theoretical terms the polity described above was not able to transform the inputs from the socioeconomic system into outputs. The political lag in question contributed to the 1848 revolution, which led to a Constitution par octroi in 1849, revised in 1850. Stressing the monarchist principle—i.e., leaving the supreme military command to the king, preserving his right to appoint and dismiss ministers, and delineating his jurisdiction only by examples—this Constitution did not greatly enhance the preconstitutional position of the Crown; it only redefined the king's position to be but one—although the ultimate one—of the state organs. In particular, the legislative consensus required between the House of Lords, the House of Representatives (elected by the economically defined three-class suffrage), and the king showed an obvious deficiency during the conflict of 1862–66; the Diet rejected the military budget, but the new Prussian prime minister, Bismarck, continued to rule without budget approval.

After the successful wars against Denmark (1864), Austria (1866), and France (1870/71), Prussia established her hegemonial position within Germany. The Norddeutscher Bund (1867) brought about the second Empire in 1871 through a treaty with the other German states.[10] More a federation of states than a federal state, the constitutional power center was the *Bundesrat,* the representative organ of the individual monarchical states, where legislation was initiated, and in which Prussia commanded the majority of votes. Furthermore, the kaiser was at the same time king of Prussia and supreme commander of the military forces.

The personal union between Prussian and *Reich* positions was, however, most prominent in the position of the chancellor (Bismarck, until 1890), who was appointed by the kaiser without parliamentary approval and who, at the same time, figured as the Prussian prime minister. The foreign and military policies were elaborated and carried out under the chancellor by the Prussian bureaucracy.

In addition to the federal *Bundesrat,* the 1871 Constitution established the *Reichstag* as a parliamentary body, elected on equal suffrage of *men* to control the *Reich*'s executive. The federalist division of jurisdictions implied that only a few policies that fell under the jurisdiction of the *Reich* could be controlled by the Parliament.

This was basically done through the control of the budget. However, up to 90 percent of the *Reich*'s budget was set aside for military expenditures, which were subject to appropriation only every seven and (since 1980) every five years. Furthermore, Parliament could be dissolved by the Federal Chamber. In addition, until 1919 Prussia, like most of the other states, adhered to the three-class suffrage system. In effect, the ruling Prussian agrarians, *Junker,* and industrialists ultimately controlled even

the affairs of the *Reich* via the federal chamber. The system of five political parties that had evolved after the revolution of 1848 was controlled by liberals and national-conservatives, the first representing the bourgeoisie, the latter the agrarian and military interests. *Le quartième état,* the industrial proletariat, was represented by the Social Democrats, which—formed in 1867/1869/1975 and forbidden as a party by Bismarck's antisocialist law between 1878 and 1890 and afterwards—engaged in merely "negative politics."

After the reaffirming of the monarchist principle in the course of the unsuccessful 1848 bourgeois revolution and the constitutional conflict in Prussia, Bismarck was backed by a conservative majority in the *Reichstag* and the Prussian majority in the *Bundesrat.* He ruled between 1862 and 1890 in an autocratic manner, depending merely on the trust of the emperor. From 1852 onward, what remained of liberalism in the bureaucracy was increasingly suppressed with a new disciplinary code, by various measures of personnel policy, (basically secret) political supervision, and careful recruitment. Above all, civil servants could be expelled on political grounds—a break with the principle of tenure, which had a strong disciplining effect.[11]

In 1887, under von Puttmaker (Prussian minister of interior), these preventive measures reached their height and produced an even more monarchist-conservative bureaucracy, which survived into the 1930s.[12] By extending the unpaid apprenticeship to eight years beyond the expensive university education, social selectivity of recruitment was ensured; informal political criteria of an old boy network made certain that nobles reached top positions and that Liberals, Social Democrats, and Jews were not accepted for service.

The period between 1848 and 1918 can institutionally be described as pseudoconstitutionalism; authority was vested in the kaiser and autocratically executed by the chancellor, whom he appointed. Now the exclusively juridically trained civil service, influenced by the dominant doctrine of the legal positivism of Laband, Gerber, Otto Meyer, and Jellinek, perceived itself as the guardian of the *Rechtsstaat* emptied of all policy goals, legitimating pure power politics [*Realpolitik*], and emphasizing *Staatsraison.* On the other hand, this bureaucracy regarded itself as standing above political parties and interests groups and as being entitled to determine the common good without having a yardstick apart from safeguarding the institutional and legal order. This attitude was reinforced after 1890 as the government became even more authoritarian.

MIXED POLITY DURING THE FIRST REPUBLIC (1919–33)

The German defeat in 1918 led to the resignation of the kaiser and created a political crisis that—similarly to 1848—led to a transformation of the political system rather than to a full-fledged revolution. On the one hand,

the (pacified) Social Democrats had been drawn into government in October 1918; on the other hand, the core institutions of the state—the civil service, the judiciary, and the military, which had been cut back to 100,000 standing troops after the Treaty of Versailles—all continued to operate without a purge or major structural changes. The 1919 Constitution introduced an extremely liberal republican system and maintained the federal structure of the *Reich*, despite unitary traits. In completing the 1848 revolution, it provided even the opponents of the Republic with the civil rights to undermine the new system.

The conflict of loyalty felt by most civil servants, who had sworn an oath to the kaiser and the king personally and were now asked by the revolutionary committees to carry on serving, was resolved when the monarchs and the kaiser gave dispensation. As an alternative, the civil service was allowed to retire prematurely without incurring negative sanctions. Only 4 of 12 secretaries of state of the *Reich* left office, and in Prussia merely 10.5 percent of the higher civil service retired.[13] Most of the political civil servants declared their loyalty to the new government in November 1918.

An important factor in explaining the problems of the governments with the bureaucracy during the Weimar Republic is the legal basis on which the civil service carried on working after the revolution. For the first time in Prusso–German history, the civil service status had become constitutionally regulated (Article 129). Article 176 of the Weimar Constitution required that civil servants swear an oath on the Constitution, thereby addressing an even more abstract notion of the state than the one personified in the Crown.[14] In practice this often meant merely lip service, as the bureaucrats continued to be monarchist, or at least not prorepublican. A "two-soul theory," of official role understanding on the one hand and private political conduct on the other was facilitated by the ambiguity of Article 130, which stated that the civil servant had to serve the people and not a party, thus stressing the traditional role of the bureaucracy while granting the civil servant the unrestricted right of political (including monarchist) opinion. Furthermore, civil servants had the liberty of free association, could become members of a political party, and were eligible to parliamentary bodies without incompatibility between mandate and office. Thus, working for the state did not imply actively advocating the Republic.

Although the functional indispensability of the civil service in coping with postwar problems had again given it the power to press for the maintenance of its status, this did not mean that governments abstained from exercising political control over the bureaucracy by personnel policy, the way other regimes had done before. However, they had to operate within the legal constraints of the existing civil service code and had to rely on political support for their personnel policy. In fact, the party-political fragmentation became the decisive structural feature, accounting for the

failure of the First Republic. Apart from certain constitutional weaknesses rooted in the position of the *Reichspräsident*[15] and the economic and fiscal problems with which the republic struggled throughout its short existence, it was the fragmented party system, reflecting ideological and social cleavages of all sorts in German society, which determined the extent to which stable coalition governments could be formed, without including in them antirepublican parties. The more stable a government, the more determined it could be in carrying through a long-term personnel policy in order to obtain support for the Republic from one of its core institutions. The differences in this respect between the *Reich* government and the Prussian government were quite revealing.

After the "Weimar coalition" (formed by the Catholic *Zentrum,* Liberal Democrats, and Social Democrats) had lost its majority in 1923, the following 15 *Reich*-governments until 1932 were either formed without the Social Democrats as the strongest party (except 1928–30) and/or by minority governments tolerated by negative coalitions. These shifting governments included extreme nationalist and antirepublican parties and not only led to a "second legislative procedure" circumventing the *Reichstag* by ruling with emergency decrees signed by the *Reichspräsident* (after 1925, the *Ersatz-Kaiser* Fieldmarshall v. Hindenburg) and *de facto* to a *commissionary dictatorship* (at least, to an authoritarian regime with a growing political role of the bureaucracy and judiciary), but also blocked any effort to control the *Reich*'s bureaucracy by systematic recruitment or purge.

In Prussia, on the contrary, the Weimar parties managed to form a stable republican government throughout the First Republic under SPD prime ministers, often expelling noncooperative and even destructive monarchist officials from leading positions. By 1920, roughly 50 percent of the provincial and regional presidents as well as the police presidents were replaced by republicans, while only about 10 percent of the 450 *Landrate* had been substituted.

As the SPD in particular lacked a reservoir of followers in the career civil service (as a result of the imperial personnel policy), they had to recruit heavily from among trade union and party officials. Although external recruitment was legal and well practiced in the past, this personnel policy soon became a political issue providing the conservative forces (associations of civil servants, professors of public law, and conservative press) with the reproach of party political patronage, impairing the imaginary impartiality and efficiency of the professional civil service, if not the institution as such.

The nineteenth-century ideology of the state and its servants as being above particular interests, which might have meant something when the state leveled out provincial divergencies and when the civil service was the "general class," was revived even more forcefully in the 1920s as an

ideology in view of the incapability of the party system to reach a republican consensus. Now the politically neutralized civil service was regarded as a warden of the metaphysical state, which role was assumed to have persisted as such regardless of the new republican form. In fact, the bureaucracy and the military stayed loyal in the Kapp and Hitler Putches of 1920 and 1923.

The 1919 Constitution of the first German republic had strong traits of a liberal polity because it followed the conception of Western parliamentary government as elaborated by Preuss and advocated by Radbruch, Heller, Anschütz, or Kirchheimer. However, the plebiscitarian institution of *Reichspräsident,* which Max Weber had strongly favored, opened the gates for an *Ersatz-Kaiser* and the juridical state ideas of Carl Schmitt. The monarchist bureaucracy, not controlled by a strong government, perpetuated its ideas of a *formally statist Rechtsstaat* and defined itself as the center and stabilizing force (a fourth power).

THE TOTAL STATE— A VERSION OF PERSONALIST POLITY (1933–45)

Shortly after Hitler's appointment as chancellor an emergency decree suspended the human rights declared in the 1919 Constitution. This presidential decree, which could not be renounced by Parliament because the *Reichstag* had once again been dissolved, enabled the government to prosecute its political enemies, in particular the Communists and the Social Democrats, with the help of the Nazi gangs (SA), to which police authority had been transferred. The result was that the Enabling Act [*Ermächtigungsgesetz*] passed Parliament with the support of even the Liberals and against the opposition only of the SPD. The Communists were prevented from attending the session. The law enabled the government to legislate without consent of the Parliament and without respecting the Constitution; in other words: the Republic had abolished itself and established a dictatorship.

In close sequence, the polity became centralized: the federal character of the *Reich* was destroyed by robbing the states of their political autonomy and installing commissioners to the *Länder* administration under supervision of the *Reich* ministries. After the decomposition of the trade unions, the SPD was forbidden as a party; the other parties dissolved themselves, except of course the Nazi Party (NSDAP), which thence dominated the state without challenge, and even became a *public law association*—that is, was juridically defined as the equivalent to the civil service. The administrative courts were abrogated so that in addition to the suspension of human rights, there were actually no institutional safeguards left against state terror.

All private associations and even the churches were streamlined and monocratically structured without representative bodies, following the *Führer* principle.

Within a very short period of time, state and society lost their structural plurality, and the remaining institutions as well as the newly created organizations were dominated by Nazi officials. As a principle the *bureaucratic structure was paralleled by the party structure of the NSDAP* on local, regional, state, and *Reich* levels. The party and the *Wehrmacht* [army] were in fact officially regarded as the two branches/offices of the state.

The Nazis followed three goals in their civil service policy after 1933: purging the higher echelons, safeguarding the loyalty of the bureaucracy, and providing patronage for their own followers.[16] The 1932 *coup d'état* in Prussia clearly showed what the bureaucracy would go through later on: 69 higher civil servants were immediately expelled from the ministries. When Göring took over as Prussian commissioner, another 52 were retired in early 1933, 25 police presidents among them.

While this purge was possible on the grounds of the exceptional status of political civil servants, for a more extensive purge of the bureaucracy the law, the "Restoration of the German professional civil service," needed to be enacted. Now it was possible to expel officials who had been externally recruited after 1918, who were non-Arians, or whose political affiliations made them unlikely to support the national-socialist state. Contrary to the principles of "restoration," the Nazis carried out a massive patronage policy and disregarded formal qualifications, for their ideology was full of contempt for the professional civil service bureaucracy which as a whole they viewed as an obstacle to the dynamism of the "movement."

The long-run strategy toward political control of the bureaucracy was ideological streamlining. They accomplished this by incentives, close supervision, and increasingly by party discipline, as more and more civil servants entered the party and thus were exposed to a dual chain of controls. In this process of political streamlining much importance was attributed to the fact that now all civil servants had to pledge an oath of loyalty to Hitler personally—definitely the restoration of an absolutist feature and a personal servant bureaucracy.

After 1939, problems of supply for the civil service weakened the training requirement and threatened the level of professional competence; on the other hand, the bureaucracy became more indispensable than ever during the war, and some officials could avoid joining the party. The civil service as a whole succeeded in preserving its traditional principles. However, this structural conservatism could not lead to political resistance; the apparatus was under tight political control and subordinated to the Nazis. Nevertheless, bureaucracy posed a threat to the supposed dynamism of the party, as can be inferred from the attempt of the Nazis to

loosen in particular the grip of local administrations on the party by interdicting personal unions of party and administrative officials, because the former tended to become socialized into bureaucratic viewpoints.

There is a consensus that the Nazis, despite vertical centralization of the entire public sector, introduced a high degree of *horizontal disorder* into the executive system by creating overlapping jurisdictions between new and existing agencies, such as between the SS and administrative roles. Nevertheless, despite the frictions, the system managed to tackle the "tasks" originating in the war economy—occupation of new territories, exploitation, and extermination of millions of human beings. Obviously, the bureaucracy proper—as well as the judiciary and the military in their areas—contributed to the maintenance of the system of political domination by steering a "reasonable" course. This relationship between *formal rationality* and *substantive irrationality,* between technical efficiency and perverse policy, can only be touched upon here. The interplay between party apparatus and bureaucracy was clearly evident during the period between the planning of the holocaust in the Wannsee conference and its implementation.

The totalitarian system displayed features of historical regression. It was extremely high in stateness. Institutionally it resembled absolutism without being bound to traditional law, and without following substantive policy goals for society. The bureaucracy, having lost its formal yardstick of the positivist *Rechtsstaat* conception, which had led it *ad absurdum,* sank back into a mixture of personal-servant and machine-model bureaucracy.

POST-1949 LIBERAL POLITY

Thanks to reeducation, Allied supervision, and the continuity of the 1919 ideas, West Germany in 1945 was restored as a *Republic* and a *Federation.*[17] The party system became less fragmented as compared with the post-1919 period, it gravitated toward the center, particularly once right- and left-wing extreme positions had been abandoned in 1952 and 1956, respectively. Until the recent advent of the Greens, the dominant three parties shared a firm republican consensus and had all been engaged in mutual coalitions since 1949. The regime has undergone a marked change in respect of the control of the executive branch: in addition to the administrative courts, the Federal Constitutional Court is in particular noteworthy.

After 1945, the bureaucracy was preoccupied with the social and physical consequences of the war—the integration of refugees, reconstruction, the revitalizing of the economy, the reestablishment of a social security system. In the 1960s, with the continuing secular trend of growing functional expansion of the public sector and the entry of the SPD into

federal government, the emphasis shifted toward planning and socioeconomic intervention. This move was the consequence of the perceived weaknesses of the self-regulatory mechanisms of the market. Since the Christian Democrats regained power in 1982, however, a strong commitment to debureaucratization and deregulation indicated a new preference for the withdrawal of the state from society.

The state conception emphasizes the liberal version of *Rechtsstaat* but still incorporates the principle of *Sozialstaat*—i.e., the nineteenth-century legal positivism is maintained and enlarged by a substantive, programmatic principle, which, understandably after the Nazis, is to constrain economic liberalism. With respect to the core functions of the state, Germany is still standing in the étatist tradition. With respect to socioeconomic intervention, the instrumentalist conception dominates, with slight differences between the parties.

The ambiguity between a notion of society high in stateness and of one low in stateness is also reflected in the writings of those who shaped the state conception throughout history. The divergence within the juridical profession, which was characteristic of the First Republic, has continued into the Second Republic. On the one hand, there were doctrines emphasizing the metaphysical version of a state above society (Forsthoff, Krüger); on the other hand, the tradition of Heller and Kirchheimer was continued,[18] supported by political scientists following the Anglo–U.S. approach that overlooks the state–society dichotomy.

After the collapse of the Nazi system, the bureaucracy as a social system operated as previously. With slight differences between the three Western occupational zones, the *de-Nazification* programme can be regarded as a partial failure. Although the U.S. forces wanted to reform, if not abolish, the German professional civil service, it was reinstitutionalized almost without change by the 1949 Constitution.

Although access to the civil service is supposed to be controlled by educational achievement, the higher civil service is—as a result of the unequal access to education—predominantly juridically trained and relatively highly self-recruiting from the middle classes,[19] especially from families with a bureaucratic tradition. Taking into account size, functional diversity, and social heterogeneity of the civil service (by now roughly 20 percent of the total labor force), the service as such cannot be regarded as a political power center. Yet, as voters, the civil servants are of prime importance to the political parties.

On account of its functional indispensability and overwhelming information-processing capacity, the ministerial bureaucracy has preserved its influential role in the polity as it did throughout Prussian and German history. But it is now just one among other elite groups, while actual political power lies with the *political parties,* which have permeated almost all institutions (*Parteienstaat*).[20] As the relatively smooth changes in

government in 1969 and 1982 have shown, the bureaucracy loyally serves its political masters.

About 50 percent of the secretaries of state and one third of divisional heads have been temporarily retired between 1949 and 1983.[21] These figures roughly indicate the extent to which the ministerial bureaucracy is party-politicized in top positions.[22] Furthermore, the notion of society low in stateness is reflected in the role understanding of the administrative elite: the "classical" bureaucrat with a state orientation appears to have been gradually outweighed by a "political" bureaucrat, who, in the last analysis, accepts that societal goals have to be formulated through a pluralistic policy process.[23]

The notion of society high in stateness predominant in Prussia and Germany until recently is partly due to the fact that the *state apparatus has a longer tradition than do democratic institutions.* In turn, this notion and the dichotomy of state and society in German political philosophy had a *depoliticizing effect.* This particular approach to the state and the political influence of bureaucracy have grown stronger, the more fragmented society became territorially, religiously, socially, and politically, in particular after 1806 and 1919. Finally, the legitimating functions of state conceptions were elaborately and competently formulated as their inventors and propagators were themselves predominantly juridical–professorial civil servants, who, in addition, shaped the role understanding of successive generations of bureaucrats. The transformation of personalist polity into liberal polity in the recent history of the German state was, however, not primarily caused by endogenous developments in the propagating stratum or in the bureaucracy itself, but rather by exogenous socioeconomic changes and political catastrophies.

NOTES

1. An extended version of this chapter can be obtained from the author. In the essay presented here, I have left out almost all military, diplomatic, and territorial aspects necessary for an understanding of German history. In the notes I confine myself to quoting merely the most representative titles, thus not mentioning great parts of my intellectual indebtedness to other authors.

2. See Hans Rosenberg, *Bureaucracy, Aristocracy and Autocracy. The Prussian Experience 1660–1815* (Cambridge: Harvard University Press, 1958), pp. 22, 27. This period is also well covered by Fritz Hartung, *Staatsbildende Kräfte der Neuzeit* (Berlin: Duncker und Humblot, 1961); Otto Hintze, *Regierung und Verwaltung. Gesammelte Abhandlungen zur Staats-, Rechts- und Sozialgeschichte Preussens* (Göttingen: Vandenhoeck und Ruprecht, 1967).

3. See Rosenberg, *Bureaucracy, Aristocracy and Autocracy,* p. 69.

4. Cf. Hans Meier, *Die ältere deutsche Staats- und Verwaltungslehre,* 2nd ed. (Munich: Beck'sche Verlagsbuchhandlung, 1980). An overview of German state

theory is also contained in Kenneth Dyson, *The State Tradition in Western Europe. A Study of an Idea and Institution* (Oxford: Martin Robertson, 1980).

5. Cf. Paul-Ludwig Weinacht, *Staat. Studien zur Bedeutungsgeschichte des Wortes von den Anfängen bis ins 19. Jahrhundert* (Berlin: Duncker und Humblot, 1968).

6. Today *Rechtsstaat* is taken to mean unrevisable human rights; prerequisite of the law for authoritative intervention of administration into private rights; independent judiciary, especially a constitutional court and administrative courts; and parliamentary legislative procedure.

7. See Hartung, *Staatsbildende Kräfte,* p. 223.

8. See Reinhard Kosselleck, *Preussen zwischen Reform und Revolution,* 3rd ed. (Stuttgart: Klett-Cotta/SVK, 1981), p. 63; Willerd R. Fann, "The Consolidation of Bureaucratic Absolutism in Prussia 1817–1827," Ph.D. dissertation, University of California, Berkeley, 1965; John R. Gillis, *The Prussian Bureaucracy in Crisis: 1840–60* (Stanford: Stanford Univeristy Press, 1971).

9. Cf. Wilhelm Bleek, *Von der Kameralausbildung zum Juristenprivileg* (Berlin: Colloquium Verlag, 1972); Hans Hattenhauer, *Geschichte des Beamtentums* (Cologne: Heymanns, 1980), pp. 69–134.

10. Cf. for this chapter Hans-Ulrich Wehler, *Das deutsche Kaiserreich 1871–1918,* 5th ed. (Göttingen: Vandenhoeck und Ruprecht, 1980).

11. Cf. Dieter Kugele, *Der politische Beamte. Entwicklung, Bewährung und Reform einer politisch-administrativen Institution,* 2nd ed. (Munich: Tuduv Verlagsgesellschaft, 1978).

12. Cf. Eckhardt Kehr, "Das Soziale System der Reaktion in Preussen unter dem Ministerium Puttkamer" in *Der Primat der Innenpolitik,* ed. Hans-Ulrich Wehler (Berlin: de Gruyter, 1965), pp. 64–81; Rudolf Morsey, "Zur Beamtenpolitik des Reiches von Bismarck bis Brüning," in *Demokratie und Verwaltung,* ed. Hochschule Speyer (Berlin: Duncker und Humblot, 1972), pp. 101–116; Hans Fenske, "Monarchisches Beamtentum und demokratischer Staat," in Speyer, *Demokratie und Verwaltung,* pp. 117–36.

13. Cf. Wolfgang Elben, *Das Problem der Kontinuität in der deutschen Revolution* (Düsseldorf: Droste, 1965), p. 34; Wolfgang Runge, *Politik und Beamtentum im Parteienstaat. Die Demokratisierung der politischen Beamten in Preussen zwischen 1918 und 1933* (Stuttgart: Klett, 1964), pp. 102 ff.

14. Arnold Köttgen, *Das deutsche Beamtentum und die parlamentarische Demokratie* (Leipzig; de Gruyter, 1928), esp. p. 118.

15. For a comprehensive analysis of this period see Karl-Dietrich Bracher, *Die Auflösung der Weimarer Republik,* 5th ed. (Villingen: Ring Verlag, 1971).

16. Cf. Hans Mommsen, *Beamtentum im Dritten Reich* (Stuttgart: Deutsche Verlagsanstalt, 1966); Jane Caplan, "Bureaucracy, Politics and National Socialist State," in *The Shaping of the Nazi-State,* ed. Peter D. Stachura (London: Croom Helm, 1978), pp. 234–56.

17. For a description see Nevil Johnson, *State and Government in the Federal Republic of Germany. The Executive at Work,* 2nd ed. (Oxford: Pergamon Press, 1983); Klaus König et al. (eds.), *Öffentliche Verwaltung in der Bundesrepublik Deutschland* (Baden-Baden: Nomos Verlag, 1981).

18. See the contributions in Ernst-Wolfgang Böckenförde (ed.), *Staat und Gesellschaft* (Darmstadt: Wissenschaftliche Buchgesellschaft, 1976).

19. See Hans-Ulrich Derlien, "Soziale Herkunft und Parteibindung der Beamtenschaft," *Der Bürger im Staat,* 36 (1986): 39–44.

20. See Kenneth Dyson, *Party, State, and Bureaucracy in Western Germany* (Beverly Hills: Sage, 1977).

21. See Hans-Ulrich Derlien, "Einstweiliger Ruhestand politischer Beamter des Bundes 1949–1983," *Die Öffentliche Verwaltung* 37 (1984): 689–99.

22. See Hans-Ulrich Derlien, "Politicization of the Civil Service in the Federal Republic of Germany—Facts and Fables, in *The Politicization of Public Administration,* ed. François Meyers (Brussels: International Institute of Administrative Sciences, 1985), pp. 10–38.

23. See Robert D. Putnam, "The Political Attitudes of Senior Civil Servants in Western Europe: A Preliminary Research Report," *British Journal of Political Science,* 3 (1973): 253–90; Joel D. Aberbach, Robert D. Putnam, and Bert A. Rockman, *Bureaucrats and Politicians in Western Democracies* (Cambridge: Harvard University Press, 1981).