

# Constitutional Law in Germany

Herdegen / Masing / Poscher / Gärditz

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Constitutional Law in Germany

  
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# Constitutional Law in Germany

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DIE FACHBUCHHANDLUNG

Niklas Burkart

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## DIE FACHBUCHHANDLUNG

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## Preface

When the publisher C. H. BECK approached us with the idea of publishing a handbook of constitutional law, we reacted with a mixture of spontaneous interest and scepticism. Do we not have plenty of handbooks and commentaries on German constitutional law? What would be the added value of one more handbook? That we agreed to take on the project was not least due to our ambition to not just publish a German, but also an English version. Prior to this handbook, there was no contemporary comprehensive presentation of German constitutional law in English. So we decided to seize the opportunity and to capitalise on C. H. Beck's interest in a new handbook to bridge this gap.

Another equally important reason for embarking on this project lies in the transnational perspective of the handbook. Although presentations of German constitutional law can no longer ignore the transnational context, another gap remains: There is a lack of an account that systematically includes these references and seeks to represent German constitutional law internationally with a view to transnational dialogue. For us editors, this transnational perspective on constitutional law has two aspects.

On the one hand, it refers to the inter- and supranational- and comparative-law influences on German constitutional law. Especially in recent constitutional jurisprudence, it has become clear that the Basic Law can no longer be understood as a kind of self-contained regime, but is part of a multi-level system of inter- and supranational regulations, in which it must constantly re-define its place and take account of the interrelations within the multi-level system. Inter- and supranational references are often accompanied by a comparative-law perspective, as comparative law analyses of the constitutional practice of Member States have a direct significance for the understanding of international treaties and supranational regimes.

On the other hand, the Basic Law has an impact in the comparative and international sphere. Transnationalisation is not a one-way street. Just as German constitutional law practice and constitutional law doctrine have opened up to international influences, other constitutional systems have also followed developments in German constitutional law – in some cases with great attention – and sometimes integrated them in the sense of an adaptive reception. In addition, a lively interest in German constitutional law and its scholarly appraisal and conceptualisation can be observed in the transnational discussion of constitutional theory. It is a central objective of this handbook to respond to this aspect of increased receptivity in transnational discussions and constitutional development. By attempting a self-distancing view of German law and placing legal practice and jurisprudence in a transnational context, the contributions are intended to facilitate access to German constitutional law for foreign readers. With the handbook, the editors and authors want to foster a process in which German constitutional law, jurisprudence, and scholarship find their proper place in the international academic discourse.

With its two editions, the handbook pursues an ambitious aim, i.e., to showcase German constitutional research authored by some of the most accomplished German constitutional scholars. This ambition also informs the way the editors and authors see their mission. The individual contributions, beyond presenting a concise and objective overview of the development in the different areas of German constitutional law, reflect the dedicated stance of each author on the subject matter. Therefore, the handbook deliberately unfolds a broad spectrum of different legal policy perspectives.

Our project, which extends into the international sphere, has drawn much support from distinguished foreign colleagues who have in depth external perspective on German constitutional law. We were fortunate to be able to win over a circle of outstanding – and committed – foreign advisors from all over the world for the project. The editors and authors owe them essential suggestions that are important for an informed comparison of other constitutional systems and thus also for the accessibility of the contributions from the perspective of the foreign readership of the handbook. The members of this advisory group provided advice and assistance to the editors at two meetings that served to conceptualise the handbook (Cologne and Berlin) and then to all authors during three meetings (Berlin, Cadenabbia, and Munich) to discuss the contributions. We would like to thank them most sincerely, also on behalf of our authors, for their tireless and altruistic commitment, which has often gone far beyond their input at these meetings. We have benefited greatly from their suggestions and proposals.

We would also like to thank our authors. By attempting to place the contributions in a transnational perspective, we have embarked on a new and, as became apparent, not easy path together. We are pleased that we were able to reflect on and discuss this with all the authors as well as our foreign advisors on the basis of rough drafts. However, we are even more thankful to our authors for committing to provide an English adaption of their contributions. This is a commitment that went far beyond what could be expected and reflects a joint ambition to contribute to the further opening of German constitutional law to international debate.

We would also like to thank the sponsors who made the conferences, the organisational, and the editorial support possible, namely the German Research Foundation, the Fritz Thyssen Foundation, the Friedrich Ebert Foundation, the Konrad Adenauer Foundation, the German Foundation for International Legal Cooperation (IRZ), and the Carl Friedrich von Siemens Foundation. Our thanks also go to Dr. Rolf-Georg Müller, Dr. Wolfgang Czerny, Ms. Saskia Henze-Wiskow and Ms. Elisabeth Becker from the publishing house C. H. BECK – especially for their advice, their unswerving, patient support, and their constant assistance.

A special thank you is due to Niklas Burkart. He has accompanied the project as a research assistant from the beginning. With stoic calm, great commitment, and thoughtfulness, he not only provided editorial support, but also increasingly took charge of the workflows and processes in an effective, energetic, and even-keeled manner that one would only expect from a much more senior colleague. We could not have wished for better support on our side. Many thanks go in the same way to Niklas Simon, who took over this task from Mr. Burkart for the last year of preparing the edition and carried it out with the same commitment and skill.

Special thanks also go to Luc von Danwitz, Rafael Beauregard-Lacroix, and Lucas Mies. Their support in editing the English versions of the contributions was invaluable. They provided our authors with detailed feedback not only on linguistic issues and matters of style, but also with important suggestions for making the texts more accessible to foreign readers.

Finally, we would like to thank all the other staff members of our chairs and departments who also provided important organisational or editorial assistance for finalising the English version of the handbook. During the crucial final phase, Christian Thönnies coordinated the efforts at the different locations by Çiğdem Bektaş, Johanna Bückler, Rebekka Hans, Jann Köster, David Linkerhägner, Sarah Norman and Moritz Schulze, who all deserve our thanks and special mention.

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