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# A STABLE POLITICAL SYSTEM

The Basic Law of the Federal Republic of Germany has proved to be a solid foundation for the development of a stable democratic society and a well-functioning system of government.

With this system the Federal Republic of Germany resumed and carried forward Germany's democratic tradition following the years of National Socialist tyranny. The Federal Republic's state symbols indicate this continuity: the colors of the federal standard – black-red-gold – have since the 19th century stood for Germany's freedom, democracy and unity. The same aims are also linked with the national anthem and the federal coat of arms with spread eagle, which was introduced at the time of the Weimar Republic.

The accession of the German Democratic Republic has extended the Basic Law and the Federal Republic's legal system to the new federal states. The Basic Law, as proclaimed in the amended preamble, thus applies to the entire German people.

*Schloß Bellevue – the Federal President's official residence in Berlin*



Bundesbildstelle



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# Germany

## CONSTITUTION AND LEGAL SYSTEM

Der Parlamentarische Rat hat das vorstehende Grundgesetz für die Bundesrepublik Deutschland in öffentlicher Sitzung am 8. Mai des Jahres Eintausendneuhundertneunundvierzig mit dreiundfünfzig gegen zwölf Stimmen beschlossen. Zu Urkunde dessen haben sämtliche Mitglieder des Parlamentarischen Rates die vorliegende Urschrift des Grundgesetzes eigenhändig unterschrieben.

BONN AM RHEIN, den 23. Mai des Jahres  
Eintausendneuhundertneunundvierzig

Konrad Adenauer  
PRÄSIDENT DES PARLAMENTARISCHEN RATES

Wolfgang Schoenfelder  
VIZEPRÄSIDENT DES PARLAMENTARISCHEN RATES

Karlmann Heine  
VIZEPRÄSIDENT DES PARLAMENTARISCHEN RATES

From September 1948 to May 1949, the Parliamentary Council in Bonn drew up the Basic Law of the Federal Republic of Germany. Pictured here, the original ratification document of the constitution with the signatures of Konrad Adenauer, President of the Parliamentary Council and subsequently German Chancellor, and the two Vice-Presidents

# THE EVOLUTION OF GERMAN LAW

German law is rooted in the continental European tradition and derives from both Roman law and the laws of various Germanic tribes. Roman law came to Germany in the 15th and 16th centuries but by no means completely ousted German customary law.

German law began to reassert itself in the 18th century. Fundamental legislation in the form of the Prussian General Land Act of 1794 and the Austrian General Civil Code of 1811 superseded Roman law in these fields and reintroduced a number of Germanic legal concepts, such as oral court proceedings.

Criminal and procedural law, as well as public and administrative law, were influenced by the ideas born of the French Revolution and embodied in the French codifications of the 19th century (e.g. the Code Napoleon), and by English legal concepts.

Uniformity was achieved after the founding of the Reich in 1871 through such major reforms as the Penal Code (1871), the Judiciary Act, the Codes of Criminal and Civil Procedure (1877), the Civil Code (1896), and the Commercial Code (1897).

The Civil Code is a mixture of Roman and German law. Its significance also lies in the fact that it has influenced the civil law of Japan and Greece, and the legal systems of Austria, Switzerland, Turkey, Brazil, Mexico and Peru.

The single European market went into operation on 1 January 1993, ensuring freedom of movement for goods, persons, services and capital. This process of European integration presupposes the further approximation of the legal systems of member states.



of them it has been required to review laws as to their constitutionality. Two percent concerned the prohibition of political parties (two cases) and disputes between the Federal Government and the states over organizational and other matters.

Any court can, and must, appeal to the Federal Constitutional Court if it considers that a law which it has to apply in a case before it is unconstitutional. The Federal Government, the state governments, and the Bundestag (Federal Parliament) with the support of at least one third of its members, may have the constitutionality of federal and state laws reviewed at any time.

Every judgement by the Federal Constitutional Court determining that a law is unconstitutional is binding on the constitutional organs of the federation and the states and on all courts and public authorities.

Among the many other matters falling within the court's jurisdiction are impeachment of the President or a judge, the banning of political parties – a matter which it alone can decide – as well as constitutional disputes between the Federal Government and the states or between the states themselves.

The Federal Constitutional Court is independent of all other organs of the constitution. It has two panels, known as senates, each of which has eight judges. Half of them are appointed by the Bundestag and half by the Bundesrat (the Federal Council or upper house of Parliament). Their term of office is limited to 12 years and they may not be reelected. Not all of them have been practising lawyers. Some have their background in politics, others are law scholars.

*The Federal Constitutional Court, Karlsruhe*

# THE FEDERAL CONSTITUTIONAL COURT

All action by public authorities, and by parliament, is governed by the Basic Law. The Federal Constitutional Court, which is located in Karlsruhe, insures that the laws and rights embodied in the constitution are not violated. It is a constitutional organ.

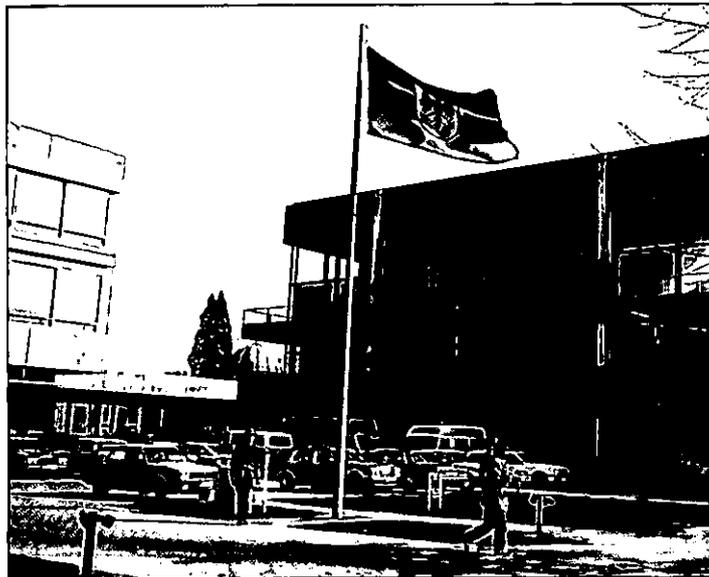
No similar court in Germany has ever had comparable powers. Although it only acts in response to appeals, the category of those entitled to apply is so large that the Federal Constitutional Court has many opportunities to review rules of law, international treaties, court sentences and decisions by public authorities as to their conformity with the constitution.

Under the Basic Law, a citizen may lodge what is known as a constitutional complaint. The system differs from that of most other countries with a similar institution in that anyone who feels that his fundamental rights have been violated may, after exhausting all other means of legal redress, complain to the Federal Constitutional Court against measures taken by a German public authority, which is bound by the Basic Law.

Since being instituted in September 1951, the Federal Constitutional Court has dealt with more than 90,000 cases, 95 percent of which have been complaints. In over three percent

*F Clifton White Resource Center  
International Foundation for Election Systems*

*The "Sachsenspiegel"  
(early 13th century),  
oldest and most  
important statute book  
in Germany.*



# GERMAN CONSTITUTIONAL TRADITIONS

The old German Reich which ceased to exist in 1806 had no formal constitution, and although the Act of 1815 establishing the German Confederation declared that all member states should have a constitution, only the south German governments complied with this requirement (Nassau in 1814, Bavaria and Baden in 1818). What Americans and Frenchmen had fought for and won came about in Germany as a more or less reluctant concession from the ruling monarchs.

It was not until the German Revolution of 1848 that the movement for a democratic constitution achieved its first breakthrough, although the instrument drafted by the National Assembly meeting in Saint Paul's Church, Frankfurt, in 1849 could not be put into effect.

The state constitutions which followed (for instance, that of Prussia in 1848) were again forced on the people from above. Even the purely organizational constitution of the North German Confederation of 1867, which became the constitution of the Reich in 1871, was not the product of democratic constitutional reform.

The principles and traditions enshrined in the 1849 draft were not revived until 1919, when the National Assembly, whose seat was in Weimar, adopted the famous Weimar Constitution. However, it proved unable to withstand the strain of Germany's political instability and economic troubles, with the result that the democratic system it had established collapsed in 1933 when the Nazis came to power.



*The Frankfurt National Assembly  
in St. Paul's Church*

## II.

The labor courts settle disputes between employees and employers over contracts, wage agreements, and questions of works constitution and co-determination.

## III.

The administrative courts are concerned with all disputes falling under public law that are not of a constitutional nature, such as lawsuits against public authorities to obtain a building permit, or against nuclear establishments and airports, as well as complaints by persons who have been denied a university place or by foreigners who have been refused asylum. Proceedings instituted by civil servants against their employers are likewise handled by the administrative courts.

## IV.

The finance courts settle disputes between citizens and the state over tax matters.

## V.

The social courts are competent for disputes relating to social security, unemployment insurance, war victims' benefits and health insurance.



*Proceedings in Frankfurt's  
Court of Justice*

## THE COURTS

In keeping with the country's federal structure, there are federal and state (Land) courts. Most cases are handled by the state courts, whilst the main task of the federal courts is to assure the uniform administration of justice.

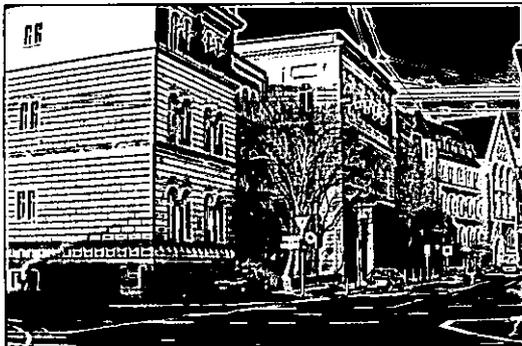
### The German judicial system

Decisions by courts of first instance may usually be appealed from a court of second instance. The appellate court reviews both the law and the facts of the case, if necessary taking fresh evidence. The next and final instance is the supreme court of appeal, which considers legal aspects only.

Apart from constitutional jurisdiction, the courts in the Federal Republic of Germany are divided into five independent branches, each of which is headed by a supreme court (see the diagram "Courts of the Federal Republic of Germany").

### I.

The courts of ordinary jurisdiction deal with all criminal proceedings, civil and commercial disputes, as well non-contentious litigation relating, for instance, to guardianship, probate and land transfers. In certain cases where the protection of industrial property is concerned, the matter is handled by the Federal Patents Court.



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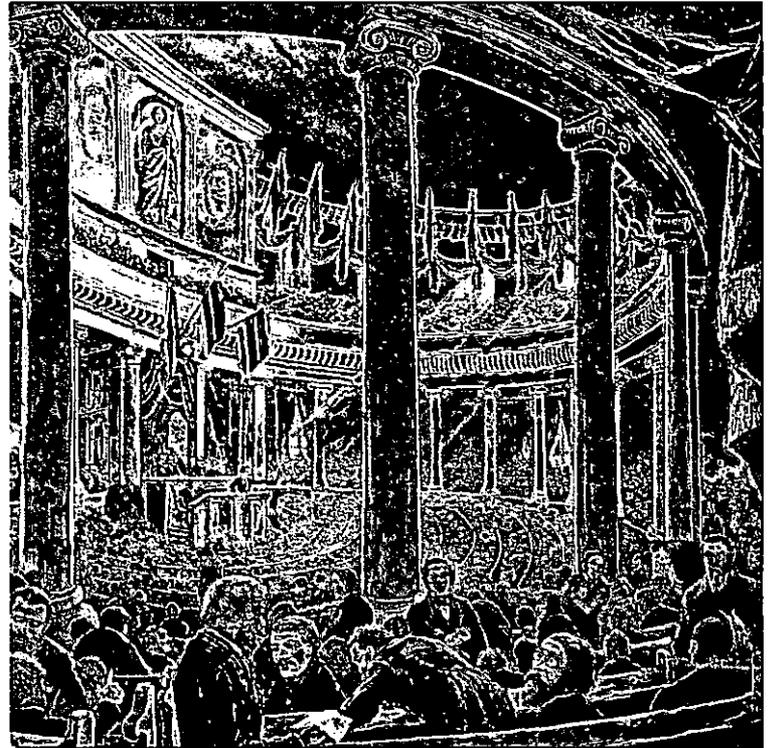
*In Bonn, as in some other towns, the regional and the local court are side by side*

## HISTORY OF THE FEDERAL REPUBLIC OF GERMANY

The surrender of the German armed forces on May 8, 1945 marked the end of National Socialist tyranny in Germany. France, the United Kingdom, the Soviet Union and the United States of America occupied the country and assumed supreme authority. One of their aims as occupying powers was to give the German people the opportunity to prepare for their return to democracy and peace.

But, owing to the growing discord between the allies, the joint administration of Germany, which had been divided into four occupation zones, became increasingly difficult and the occupying powers were unable to agree on the country's future.

On July 1, 1948 the three Western powers authorized the Minister Presidents of the Laender (states) in their zones to convene a constituent assembly to draft a democratic, federal constitution.



Archiv für Kunst und Geschichte

# ADOPTION OF THE BASIC LAW

Following initial hesitation by some West German politicians who feared that the formation of the Western occupation zones into a state would deepen the division of Germany, a Parliamentary Council was convened on September 1, 1948.

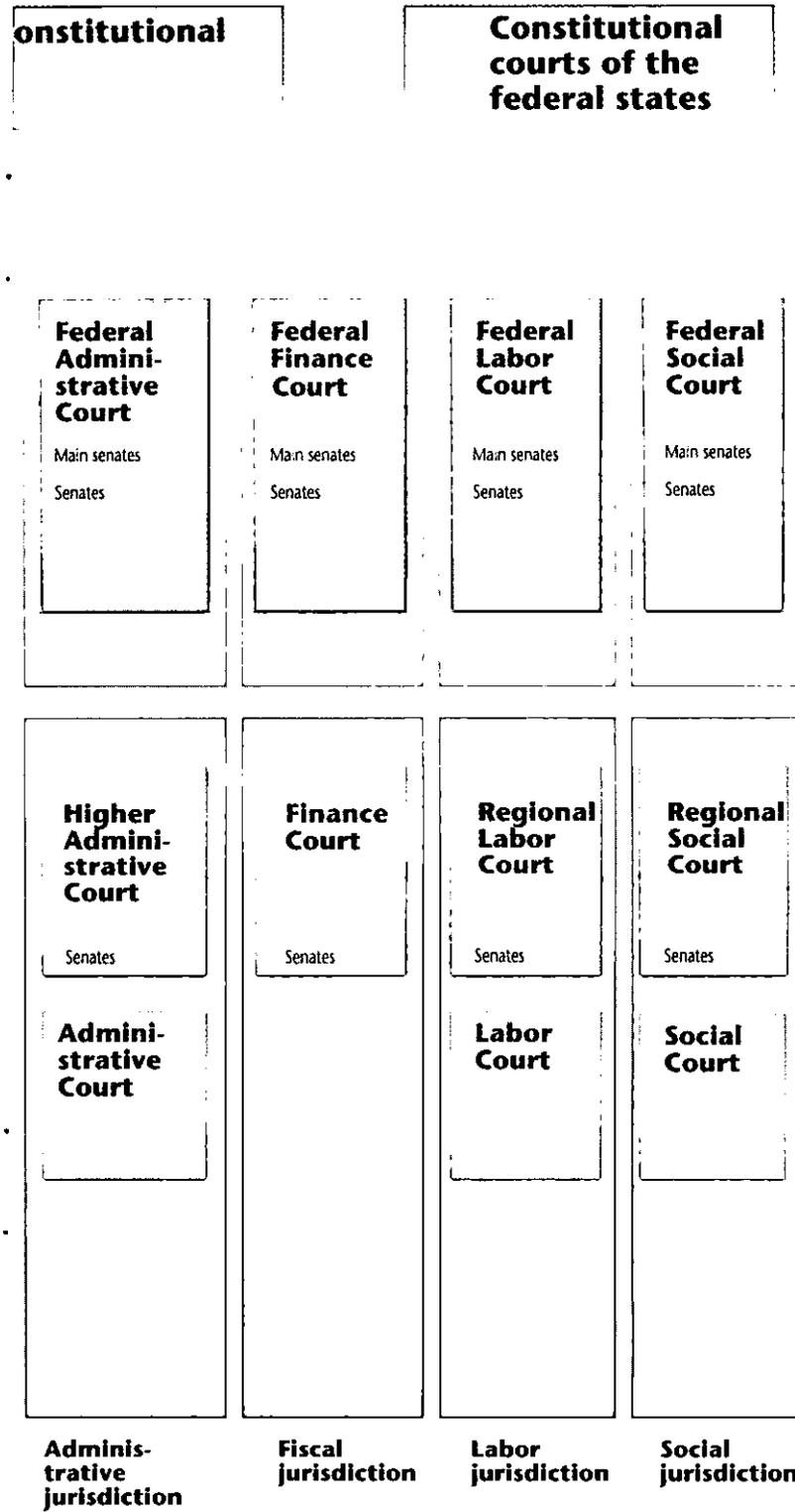
This assembly, whose 65 members had been elected by the state parliaments, drafted in the following eight months a "Basic Law for the Federal Republic of Germany". They set about their difficult task with the determination to establish a constitutional basis for the unification of the Laender in the Western zones. In spite of the differences over fundamental issues, especially the question of federalism, the result proved acceptable to the political parties in Germany and did not conflict with the wishes of the Western powers.

They created a Basic Law which was an attempt to lay the foundations for a stable democracy and thus prevent the kind of situation from developing which in the thirties, following the decline of the Weimar Republic and hence of democracy, had opened the door to Nazi coercion. At the same time, it marked the new state's determination to preserve Germany's unity and to foster peace in a united Europe and throughout the world.

The Parliamentary Council adopted the Basic Law with a large majority on May 8, 1949. This constitutional instrument, after having been approved by the military governors, was endorsed by the parliaments of all the Laender except Bavaria and became effective after May 23, 1949, the day on which it was promulgated.

On October 7, 1949 a separate constitution was introduced in the German Democratic Republic (GDR), thus laying the foundation for a second state in Germany which, over the next 40 years, developed along completely different lines.

At first, the occupying powers retained substantial sovereign rights, but these were gradually transferred to the Federal Republic of Germany and the German Democratic Republic. The allies retained responsibility for Germany as a whole, however, until October 3, 1990 when the German Democratic Republic acceded to the Federal Republic of Germany, thus uniting the two German states.



# The Courts of the Federal Republic of Germany

**Federal Court**  
2 Senates

## Federal Court of Justice

Main civil senate

Main penal senate

Civil senates

Penal senates

## Higher Regional Court

Civil senates

Family affairs senates

Penal senates

Penal senates for serious crimes against the state

## Regional Court

Civil divisions

Commercial divisions

Minor penal divisions

Main penal divisions (1<sup>st</sup> instance)

Main penal divisions (2<sup>nd</sup> instance)

Juvenile divisions (1<sup>st</sup> instance)

Juvenile divisions (2<sup>nd</sup> instance)

## Local Court

Single judge

Family court

Judge for penal cases

Magistrate's court (1 professional, 2 lay judges)

Judge for juvenile cases

Magistrate's court for juvenile cases

Civil jurisdiction    Penal jurisdiction

Ordinary jurisdiction

# GERMAN UNITY

The reunification of Germany on October 3, 1990 marked the fulfilment of the last sentence in the original preamble to the Basic Law, which read: "The entire German people are called upon to achieve in free self-determination the unity and freedom of Germany". This event was preceded by the reforms in the Soviet Union and the peaceful revolutions throughout eastern and south-eastern Europe. The flight of people from the GDR in the summer and autumn of 1989, many via west German embassies in the former eastern bloc countries, eventually led to the opening of the intra-German border on the evening of November 9, 1989.

After the uncertainty of those early dramatic days which had a tremendous impact on Germany and the world, it soon became clear that the people on both sides of the border wanted the country to be reunited. "Germany, the united fatherland" or "We are one nation" were the slogans heard at many demonstrations.

The first elections for the Volkskammer (People's Assembly) were held in eastern Germany on March 18, 1990. They produced the first ever democratically elected government in the GDR. The Treaty on Economic, Monetary and Social Union, the main foundation for German unity, became effective on July 1, 1990. On August 23, the Volkskammer resolved that the GDR should accede to the Federal Republic of Germany, and on August 31, the Unification Treaty was signed. It introduced transitional arrangements for the new citizens. The laws of the "old" Federal Republic were extended to the "new" territory and, where necessary, adapted to the special requirements of unification.

On October 3, 1990 German unity was achieved. The states of Brandenburg, Mecklenburg-Western Pomerania, Saxony, Saxony-Anhalt and Thuringia, which were created by a GDR law passed on July 22, 1990, became states of the Federal Republic of Germany. Berlin became the capital, and the Basic Law, after certain amendments, became effective in the eastern part of the country as well.

Under the "Two-plus-Four Treaty" concluded on September 12, 1990 between the two German states and the four victorious powers of the Second World War "Germany as a whole" regained full sovereignty over its internal and external affairs.

# THE BASIC ELEMENTS OF THE CONSTITUTION

One of the first requirements in establishing the Federal Republic of Germany as a new political entity following the Nazi dictatorship (1933-1945) was to rebuild a society in which the power of the state would be limited and the rights of the individual citizen guaranteed.

The Basic Law covers all aspects of the political and social life of the Federal Republic of Germany. Its provisions are not confined to statements of principle regarding the structure and function of the body politic. Indeed, the Basic Law created a system of values within which protection of individual freedom and human dignity is the highest principle of law.

However, it does not perceive the citizen as an individual apart from the rest but as a person living in the community and linked with it in many ways. In order to emphasize, therefore, that it is the duty of the state to serve the people, the basic rights were given pride of place in the constitution.

Those rights, which, being a system of values, are the very core of the Basic Law, protect the individual against encroachments by the state and insure that he can play his proper role in the life of the community.

According to Article 20, four fundamental principles determine the political and social structure of the Federal Republic of Germany. It says that it is a democracy, a state based on the rule of law, a social state, and a federal state.



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*Signing ceremony of the Basic Law*



*The statue of Roland (14th century) indicates that Bremen is a free city with its own jurisdiction*

The nation's judges are independent and subject only to the law. They may not be given any instructions. Also, they may not be removed from office or transferred against their will, except in a few cases and only on the strength of a judicial decision. The judge has sole responsibility for determining the facts of a case and applying the law.

The fact that a judge is independent does not mean that he can act as he pleases. He is bound by the law. The independence of judges is essential to insure that the law is applied impartially.

Judges, public prosecutors, attorneys, notaries as well as civil servants and legal advisors in industry and commerce receive the same professional training. They begin by studying at a university and take the first state law examination. Then come two years of practical work, mainly in the courts, public authorities and attorneys' offices. This is followed by the second state law examination, which is the qualification required by judges and gives access to all the legal professions.

# RULE OF LAW AND ADMINISTRATION OF JUSTICE

In a democratic state based on the rule of law the judiciary, which is independent of parliament and government and bound only by the law, protects the individual in relation both to his fellow citizens and the public authorities.

Every citizen has a right to have his case brought before a judge, whose competence has been determined beforehand in accordance with objective criteria. It is not permissible to set up special tribunals for the sole purpose of sentencing known offenders.

Everyone has a right to be heard in court. Any person who is directly affected by the outcome of legal proceedings is entitled to express his view before the court. Criminal and civil cases are generally heard in public.

A person may only be found guilty of an offense if the punishment for such offense has been established by law before it was committed. New penal laws may not be enacted nor sentences increased with retroactive effect. Capital punishment has been abolished. No one may be punished more than once for the same offense.

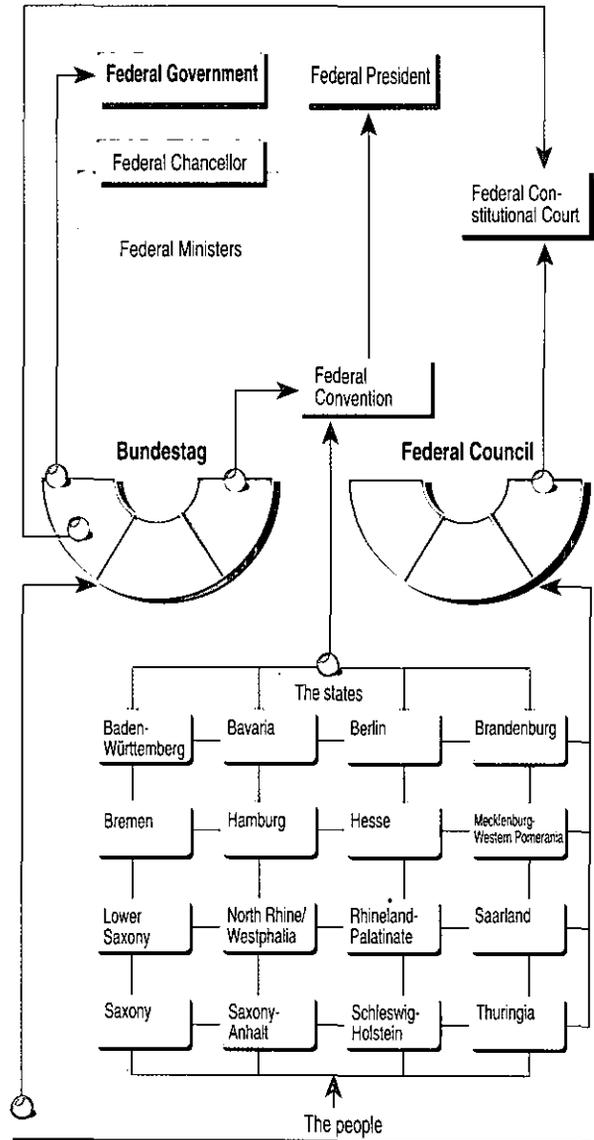
A person's liberty may only be restricted by virtue of a law and only by a judge, who determines the admissibility and duration of any imprisonment. The police may only detain suspects until the end of the day after the arrest was made.

Anyone temporarily taken into custody on suspicion must be arraigned at the latest on the following day. The judge must then either issue a warrant of arrest, stating the reasons, or order the person's release. If a warrant is issued a relative of the detainee or a person of his confidence must be notified.

The penal system is regulated by a law, which states that the purpose of imprisonment is "to make the offender capable of living a life in awareness of his responsibility to society and without committing any further punishable offense".

## Democracy

Under the democratic principle, sovereignty and hence all authority emanates from the people. The Basic Law has given effect to this principle in the form of a representative democracy in which state authority is exercised indirectly through elected representatives of the people. It provides for direct decisions by the people (referendums) only where parts of the federal territory are to be reapportioned or reorganized.





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**The flags of the German states in front of the Reichstag, Berlin**

### Rule of law

According to the rule-of-law principle, all state action is bound by law and justice. The functions of the state are exercised by independent legislative, executive and judicial authorities. All government measures may be reviewed by independent judges to determine whether they meet the requirements of the law.

Justice and the "certainty of law", meaning that everyone knows what is valid in law and who is authorized to make new laws, are essential elements of the country's legal system.

Government is specifically bound by the laws of the land and by the courts. Any encroachment by the state upon a citizen's rights must have the backing of the law and such action is subject to control by independent courts.

But parliament, too, is not free in exercising its law-making powers; it is bound by the constitution. Laws are only valid if they are consistent with the Basic Law (see reference to "constitutional complaints" in the section on the Federal Constitutional Court).

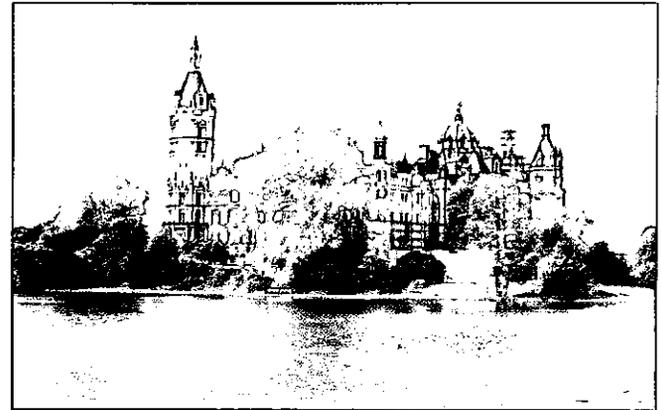
Article 20 (4) of the Basic Law establishes the right "to resist any person or persons seeking to abolish the constitutional order if no other remedy is possible." Aside from this, no one has the right to plead self-defense or use force in resistance to laws, regulations and other government measures.

### Social state

The social-state principle was established mainly to protect the weaker members of society. The state is required to insure that every member of the community is free from want, can live

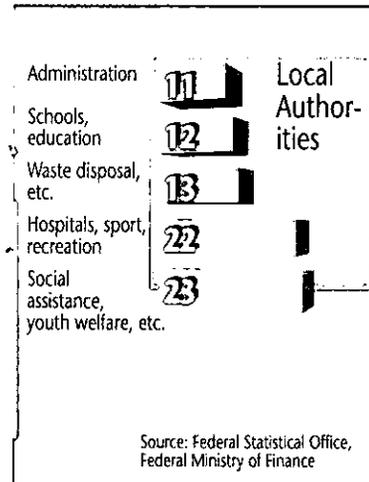
The main responsibilities of the municipalities are town planning, cultural and educational affairs, public welfare, public transport, as well as water and energy supply. Their revenue takes the form of rates and allocations from the states.

Districts or counties comprising several municipalities, have their own elected parliaments and rights of self-government. Like the municipalities, they are at the same time the lowest tier of public administration.



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**The castle in Schwerin is the seat of the state parliament of Mecklenburg-Western Pomerania**



# THE LAENDER (FEDERAL STATES)

The Laender of the Federal Republic of Germany have their own sovereignty which is not derived from the federation. They are public entities with their own authority, not merely provinces or subordinate administrative agencies. Unless authority has been vested in the federation by the Basic Law, it is the Laender who are responsible for legislation, government and administration of justice.

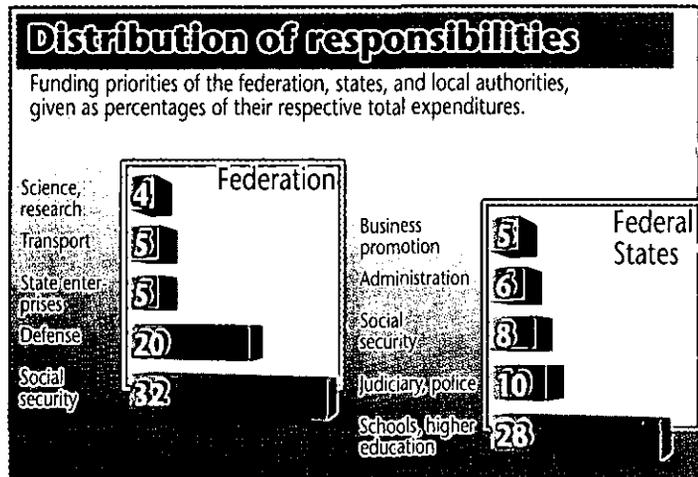
Although the most important areas of legislation are today the domain of the federation, the Laender, too, have considerable jurisdiction, especially in the fields of culture, education and internal security.

Generally speaking, the federal states implement all laws, including those enacted by the federation. Under the Basic Law, the federation has only narrowly defined administrative powers.

The advantage of this decentralization of public authority lies in the fact that decisions are usually taken where their effects can best be judged. In this way, greater consideration is given to local and regional conditions and to each particular situation.

Each federal state has an elected parliament, a government elected by parliament, its own administrative authorities, and an independent judiciary.

The municipalities have a special status within the Laender. Under the Basic Law they are allowed to regulate all local matters on their own responsibility within the scope of the law. They have enjoyed this right of self-government since the beginning of the 19th century. It is exercised primarily by the elected town council.



in circumstances worthy of human dignity, and has a fair share of the nation's general prosperity.

This implies that the state must not only guarantee the individual's civil liberties and basic rights but is also required to balance social discrepancies, thus assuring social security and social justice.

### Federal state

The federal system was chosen because of Germany's deep-rooted federalist tradition. This system makes it possible to develop regional characteristics and leaves scope for differentiated cultural and political competition. At the same time, the division of legislative, executive and judicial powers between the federation and the states prevents excessive concentrations and hence the possible abuse of power.

The states of the Federal Republic of Germany following the accession of the German Democratic Republic on October 3, 1990 are Baden-Wuerttemberg, Bavaria, Berlin, Brandenburg, Bremen, Hamburg, Hesse, Mecklenburg-Western Pomerania, Lower Saxony, North Rhine-Westphalia, Rhineland-Palatinate, the Saarland, Saxony, Saxony-Anhalt, Schleswig-Holstein and Thuringia.



*Justitia with scales and sword – symbol of law and justice*

Wolfgang Lechthaler



Two attempts have been made to overthrow the Chancellor through a constructive vote of no confidence. Only one was successful – in 1982, when the CDU/CSU and F.D.P. overthrew Helmut Schmidt and elected Helmut Kohl as the new Chancellor. This coalition was confirmed at the elections in March, 1983, January, 1987 and, following the unification of Germany, again in December, 1990.

To date, the Federal Republic of Germany has had 16 governments and six Federal Chancellors: Konrad Adenauer (1949-63), Ludwig Erhard (1963-66), Kurt Georg Kiesinger (1966-69), Willy Brandt (1969-74), Helmut Schmidt (1974-82), and the incumbent, Helmut Kohl (since 1982).



Chancellor  
Helmut Kohl

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Vice-Chancellor  
Klaus Kinkel,  
Federal Minister for  
Foreign Affairs

# THE FEDERAL GOVERNMENT

The Federal Government is the supreme executive authority. It consists of the Federal Chancellor and the federal ministers, who are appointed by the Federal President on his proposal. The Federal Chancellor is elected by the Bundestag.

The Basic Law accords the Federal Chancellor considerable powers to insure the proper functioning of government. It is therefore not without good reason that the Federal Republic's system of government is referred to as a "Chancellor democracy". The Chancellor lays down government policy guidelines, within which the federal ministers run their departments on their own responsibility.

The government has to account to parliament for its actions. It is also possible for the Bundestag to replace the government by means of a vote of no confidence. Such a motion may only be directed against the Chancellor, not against ministers.

In order to prevent parliament from ousting the cabinet without being able to produce a majority in support of a new administration, the Basic Law gave the no-confidence motion a constructive nature, meaning that the Bundestag can only remove a Chancellor (and with him his cabinet) if at the same time a majority of members vote a new Federal Chancellor into office.



The cabinet in session, Federal Chancellery, Bonn



<b>Germany</b>	
Capital/Seat of government:	Berlin/Bonn
Area:	356,732 km <sup>2</sup>
Population:	80.8 million
<b>Bavaria</b>	
Capital:	Munich
Area:	70,553.93 km <sup>2</sup>
Population:	11.7 million
<b>Baden-Württemberg</b>	
Capital:	Stuttgart
Area:	35,751.39 km <sup>2</sup>
Population:	10.1 million
<b>Rhineland-Palatinate</b>	
Capital:	Mainz
Area:	19,848.80 km <sup>2</sup>
Population:	3.9 million
<b>Saarland</b>	
Capital:	Saarbrücken
Area:	2,570.17 km <sup>2</sup>
Population:	1.1 million
<b>Hesse</b>	
Capital:	Wiesbaden
Area:	21,114.16 km <sup>2</sup>
Population:	6.0 million
<b>North Rhine-Westphalia</b>	
Capital:	Düsseldorf
Area:	34,071.00 km <sup>2</sup>
Population:	17.6 million
<b>Lower Saxony</b>	
Capital:	Hanover
Area:	47,364.00 km <sup>2</sup>
Population:	7.6 million
<b>Bremen</b>	
Capital:	Bremen
Area:	404.23 km <sup>2</sup>
Population:	0.7 million
<b>Hamburg</b>	
Capital:	Hamburg
Area:	755.30 km <sup>2</sup>
Population:	1.7 million
<b>Schleswig-Holstein</b>	
Capital:	Kiel
Area:	15,731.00 km <sup>2</sup>
Population:	2.7 million
<b>Berlin</b>	
Capital:	Berlin
Area:	889.00 km <sup>2</sup>
Population:	3.5 million
<b>Mecklenburg-Western Pomerania</b>	
Capital:	Schwerin
Area:	23,598.00 km <sup>2</sup>
Population:	1.9 million
<b>Brandenburg</b>	
Capital:	Potsdam
Area:	29,053.00 km <sup>2</sup>
Population:	2.5 million
<b>Saxony-Anhalt</b>	
Capital:	Magdeburg
Area:	20,443.97 km <sup>2</sup>
Population:	2.8 million
<b>Thuringia</b>	
Capital:	Erfurt
Area:	16,251.40 km <sup>2</sup>
Population:	2.5 million
<b>Saxony</b>	
Capital:	Dresden
Area:	18,337.69 km <sup>2</sup>
Population:	4.7 million

# BASIC AND HUMAN RIGHTS

The first article of the constitution relates to the dignity of man: "To respect and protect it shall be the duty of all public authority." From the dignity of man the constitution derives a commitment of the German people to "inviolable and inalienable human rights as the basis of every community, of peace and justice in the world".

The basic rights are not simply non-committal exhortations or policy objectives but directly applicable law that is binding on the legislature, the executive and the judiciary. The system of values reflected in the basic rights influences the reading of the entire Basic Law and of the general legal system of the Federal Republic of Germany. When we speak of basic rights we make a distinction between "everyone's rights" – i.e. human rights which thus may also be invoked by foreigners in the Federal Republic of Germany – and "civil rights", which apply only to German nationals.

Certain basic rights may be restricted by law, but on no account, says the Basic Law, "may the essence of a basic right be encroached upon", not even by parliament.



**A** courtroom of the Federal Constitutional Court, Karlsruhe



**F**ederal President Richard von Weizsäcker watching Turkish folk-dancers in Berlin

The Federal President examines legislation in the making to insure that it is in conformity with the constitution and finally promulgates laws in the Federal Law Gazette. He also appoints and dismisses federal judges, federal civil servants, as well as commissioned and non-commissioned officers of the Federal Armed Forces. He exercises the right of clemency on behalf of the federation and he confers the Order of Merit on persons who have served the Federal Republic of Germany with distinction.

The current and sixth Federal President is Richard von Weizsäcker. He was elected in 1984 and reelected in 1989. His predecessors were Theodor Heuss (1949-59), Heinrich Lübke (1959-69), Gustav Heinemann (1969-74), Walter Scheel (1974-79), and Karl Carstens (1979-84).

# THE FEDERAL PRESIDENT

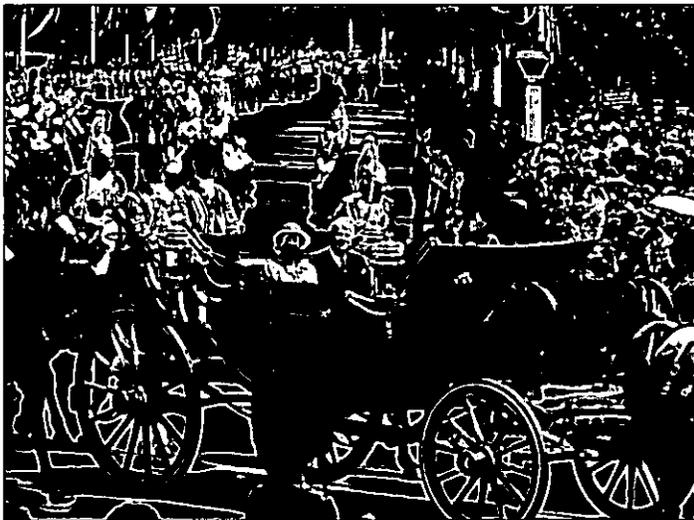


The Federal President is the head of state of the Federal Republic of Germany. He is elected for a five-year term by the Federal Convention and may be reelected once. The Federal Convention convenes for this purpose only. It consists of members of the German Bundestag and an equal number of delegates nominated by the state parliaments.

The architects of the Basic Law, deliberately pruning the powers that had been exercised by the Reich President during the Weimar Republic, gave the Federal President a merely representative and integrative function. He is not without political influence, however.

The Federal President represents the Federal Republic of Germany in its relations with other countries. He signs treaties, accredits and receives envoys, and pays state visits to other countries as an ambassador of goodwill.

When a government is formed it is his task to nominate a candidate for the office of Federal Chancellor. He also appoints and dismisses federal ministers on the proposal of the Chancellor. In certain cases, that is to say, if a candidate for the chancellorship fails to win a majority in the Bundestag or if parliament carries a motion of no confidence in the Chancellor, the Federal President can dissolve the Bundestag.



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The Federal President on his state visit to London

This, and the fact that the basic rights are directly applicable law, show that the Basic Law affords much greater protection for basic rights than Germany's previous constitutions.

Where force is indispensable it may only be exercised by the competent government authorities strictly in accordance with the law. Force may not be used as a means of achieving political or social aims.

Some basic rights are not only of a "defensive" nature, that is, intended to protect the individual against encroachments on his freedom by the state, but also establish his own claims on the state.

Anyone who feels that his basic rights have been violated may file a complaint with the Federal Constitutional Court.

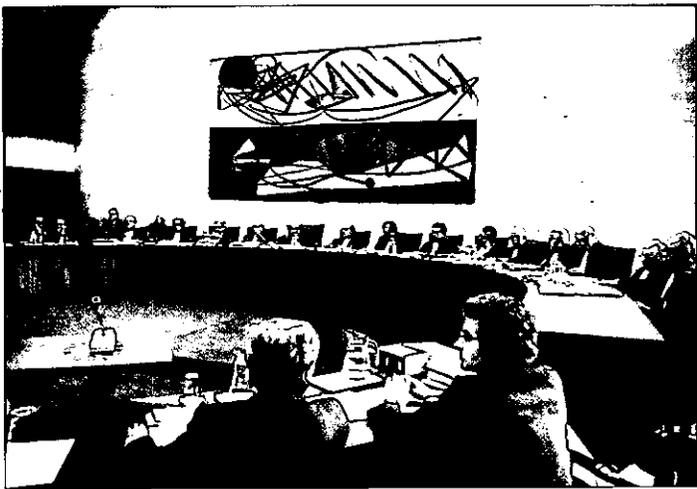
Protection of human rights is not merely a domestic matter but the foundation of peace and justice throughout the world. Through joining major international conventions, the Federal Republic of Germany has subjected itself to international controls designed to insure that human rights are respected.

Since 1953, the European Convention for the Protection of Human Rights and Fundamental Freedoms has been applicable law in the Federal Republic of Germany.

Since 1955, every citizen has been entitled to appeal to the European Commission of Human Rights in Strasbourg if he has



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**G**limpse into the chamber of the European Court of Human Rights in Strasbourg \_\_\_\_\_

felt that his human rights have been violated. In the nearly 5,000 complaints so far registered against the Federal Republic of Germany, eight have been judged violations.

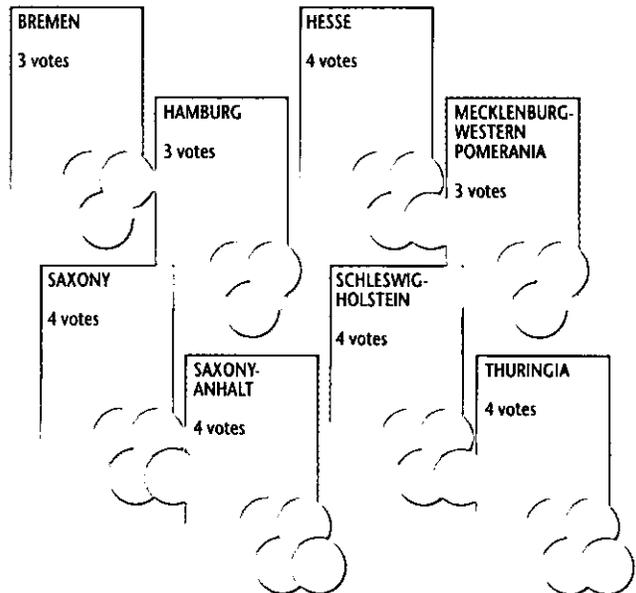
In 1973 the Federal Republic also ratified the United Nations covenants on human rights, and in November, 1977 it submitted its first report to the United Nations on the protection of human rights in the Federal Republic of Germany. The second and third reports followed in 1985 and 1988, and the fourth is due at the end of 1993.

concerned, which is now mostly the case. Even where its consent is not required, the Bundesrat has a right of objection, though it can be overruled by the Bundestag.

Both Bundestag and Bundesrat may, in cases where they disagree, submit the bill in question to the Mediation Committee, which is composed of members of both Houses and usually works out a compromise.

The Bundesrat proposes amendments to federal laws, but although the interests of the two Houses are often not identical, and in spite of the party political composition of the Bundesrat, the number of cases when a bill is rejected by the Bundesrat are very few.

## otes in the Bundesrat



Bills may be introduced from the floor of the Bundestag, by the Bundesrat (the Federal Council representing the constituent states) or, as is usually the case, by the government. They are given three readings in the Bundestag and are often amended.

The bulk of the legislative process takes place in the committees since the House does not have the time to deal with the many technical and other details. The final vote is taken after the committee stage and after a third reading of the bill during a plenary session of parliament. A bill has been adopted if it is carried by a majority. Any bills which propose amendments to the constitution require a two-thirds majority in the Bundestag and the Bundesrat.

The Bundesrat, the second legislative body, brings the federal element into the legislative process. It is composed of representatives of the state governments who, depending on the size of the state's population, have three to six votes.

Laws passed by the German Bundestag require the consent of the Bundesrat where certain matters affecting the states are

## BUNDESTAG AND BUNDES RAT

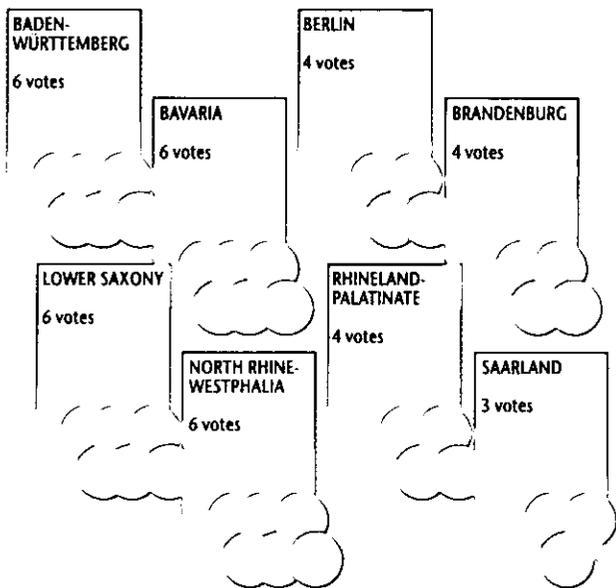
The German Bundestag is the supreme legislative authority. Its members are elected by the voting public (German citizens aged 18 and over) in general, direct, free, equal and secret selections for a four-year term. The electoral system is a combination of proportional representation and direct election of candidates. Half of the members are elected directly, the other half via the state lists of candidates nominated by their respective parties.

In the general election held on December 2, 1990, 662 members were elected to the Bundestag. 127 of them are from the new federal states of Mecklenburg-Western Pomerania, Brandenburg, Saxony-Anhalt, Saxony and Thuringia.

The Basic Law emphasizes the special role of the parties as representing the political will of the people. They usually nominate the candidates for the elections. In order to insure that parliament and government can function properly, only parties which poll at least five percent of the votes or win three seats under the first-past-the-post system may be represented in the Bundestag.

Eleven parties were represented in the first German Bundestag elected in 1949, but their number quickly fell to four. In the first general election (December 2, 1990) to be held following East Germany's accession to the Federal Republic, the 5% clause applied separately in East and West.

### Distribution of v



View of the Bundestag and Bundesrat building, Bonn

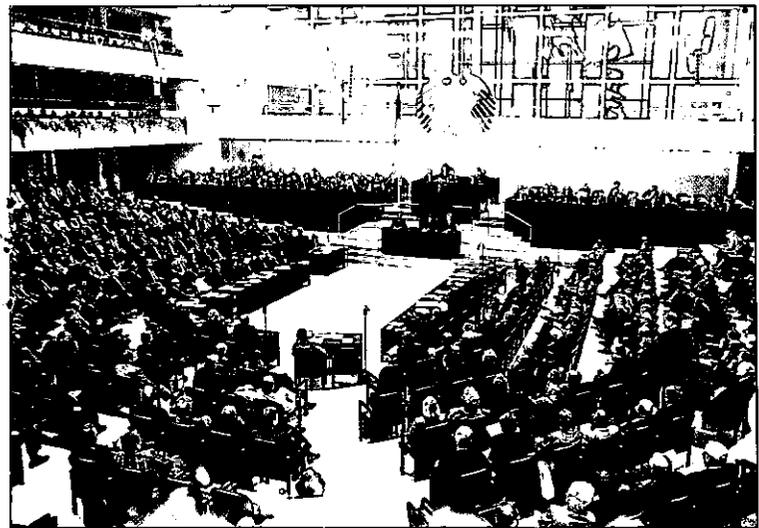
Now six parties and groups are represented in the Bundestag: the Christian Democratic Union (CDU), the Social Democratic Party of Germany (SPD), the Free Democratic Party (F.D.P.), the Christian Social Union (CSU), the Party of Democratic Socialism (PDS), and the Alliance 90/Greens. Since 1982, the CDU, CSU and F.D.P. have been in coalition with a majority in parliament. In 1991 they formed their fourth administration.

Members of Parliament are not bound by instructions and are answerable to their conscience only. Consequently, a member does not have to relinquish his seat even if he leaves his party.

The parties form groups (parliamentary parties) in the Bundestag. The size of the groups determines the composition of the parliamentary committees.

The German Bundestag has four main functions: it is the legislative body, it elects the Federal Chancellor, it keeps check on the government, and it is the political representative of the German people.

Parliament's constitutional right to exercise control over the executive also permits minority groups in the Bundestag to demand information from the government or request the appointment of a committee of inquiry.



**C**onstituent session of the German Bundestag on October 4, 1990 in the Berlin Reichstag following German unification

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