

they retain their identity, but their culture subsumed those of others, including English, Welsh, and Germans who began settling and intermarrying with the Scots-Irish on the frontier.

With the establishment of the United States, those on the frontier found themselves enfranchised and wielding political power. The leaders they chose were most often populists and warriors. If any leader was like a clan chieftain of old, it was “Irish Andy” Jackson. Webb argues that Old Hickory “remains in a class by himself.” Devoting an entire chapter to Jackson, Webb is clearly inspired by the man who inspired the frontiersmen, militiamen, mountain folk, Indian fighters, Irish immigrants, and workingmen of America.

By the 19th century, most of the Scots-Irish had left the Presbyterian Church and become Methodists or Baptists or members of some sect of their own invention. Many were swayed by fundamentalist preachers, sowing the seeds of what would become the Bible Belt. Nonetheless, Celtic genes exercised a powerful influence, and the preacher’s words were

countered on a daily basis by the heavy drinking that had come, along with the stills, from the glens of Ireland and Scotland, and by an equally long addiction to devilish music, sensual pleasures, constant physical challenge, and an inbred defiance of authority.

Webb follows the Scots-Irish into the Civil War and argues that Southern boys—a disproportionate number of whom were Scots-Irish—had been reared with a “warrior ethic” and fought because someone had invaded their land, because their chieftains had rallied the clan, because there was a fight to be fought. They fought least of all, probably not at all, for slavery. Although Webb only briefly mentions it, those regions of the South that were virtually 100-percent Scots-Irish—the western part of Virginia and the eastern parts of Kentucky and Tennessee—were Union in their sympathies. Webb attributes this to loyalty to local leaders who “went with the Union.” I wish he would have opined why they sided with the North. It is clearly evident to me that the Scots-Irish hated the aristocratic planters and their privilege, reminiscent of English landlords in Scotland and Ireland.

Scots-Irishmen made up the bulk of the Confederate Army, says Webb, including most of its leaders—such men as Albert Sidney Johnston, Nathan Bedford Forrest, Jeb Stuart, and Stonewall Jackson. The Union Army was run like a business, a machine, argues Webb. The Confederate Army was a clan,

a living thing emanating from the spirit of its soldiers—daring, frequently impatient, always outnumbered, often innovative, relying on the unexpected and counting on the boldness of its leaders and the personal loyalties of those who followed.

There are those who have said that the Southern boys lost the war “because they were too Celtic and their opponents too English.” Not so, counters Webb. The South, lacking materiel and manpower, fought as well and for as long as she did only because she was “so wildly and recklessly Celtic.”

Webb also discusses the aftermath of the war and Reconstruction, a “mess that Yankees made.” His analysis is sharp, but it is really more about the South than about the Scots-Irish. His most interesting observation comes in noting the migrations of Scots-Irish out of the South, particularly to the West. The Celts have always been on the move westward. Driven by a folklore describing a paradisaical land to the west, the Celts fought and trekked their way across Europe until they got to the Atlantic seacoast. They then built ships and sailed to the British Isles. Saint Brendan and other Irish monks sailed to Iceland and Greenland and may have reached North America. Now California claims the greatest number (although not percentage) of Celts in the United States. Where do they go from the Golden State?

While most scholars have argued that the Scots-Irish as an identifiable group were well on their way to the oblivion of assimilation by the time of the Civil War, Webb sees the characteristics and traits of the wild Celts everywhere in American life, especially in the military, in country music, and in fundamentalist Christianity. He sees them in his own family, generations of his family, be they Webbs or Hodges, Doyles, Smiths, McKnights, Murphys, Walkers, or Cochrans. He loves his people, and he loves their ways. He seems mostly proud that they always stood their ground and never backed down.

## The Peculiar Path

by Paul Gottfried

Demokratie-Sonderweg  
Bundesrepublik: Analyse der  
Herrschaftsordnung in Deutschland  
by Josef Schüsslburner  
Fulda: Lindenblatt Media Verlag;  
798 pp., \$39.80 EUR

A Bavarian legal scholar who has been attached to the U.N. Secretariat and to the E.U. Commission in Brussels, Josef Schüsslburner has disagreements with the German Basic Law, enacted in 1949 as an interim constitution for the West German Federal Republic. The author describes this guiding document and the circumstances that helped shape it as “democracy’s peculiar path for the Germans.” It is a path that mandates an “order of control” (*Herrschaftsordnung*) that leaves little room for real constitutional freedom or for any meaningful practice of popular government.

While the Basic Law (Article 146) claims to be only provisional and, in fact, subject to replacement by a new, permanent constitution once Germany is reunified, its origins determined both its later development and the virtual impossibility of superseding it. The law came out of Germany’s defeat and demoralization and has special features that her occupiers inflicted on their subjects. These include a federal court for interpreting the Basic Law (Bundesverfassungsgericht) and the federal and provincial agencies known as the Verfassungsschutz, which were organized in 1949, at the command of the Allied Occupation, to document “extremist” threats to German democracy. Such institutions interpret the constitutionally guaranteed right to make fundamental changes in the Basic Law as an antidemocratic attack on German “militant democracy” (*wehrhafte Demokratie*). Although Articles 79 and 146 provide for the possibility of amending part or all of the Basic Law, the “state protectors” of Germany’s democratic transformation and of the entrenched parliamentary blocs insist that any public advocacy of constitutional revision, particularly by conservative nationalists, should be suppressed. Courts have come down hard on those who express politically uncongenial opinions, and those groups that

call for a constitution without snooping agencies or party bans can expect to be “investigated.”

Schüsslburner has zeroed in on the glaring contradiction between the German government as it actually is and how it depicts itself. He is on target when he characterizes the Federal Republic, in the terminology of Carl Schmitt, as “a sovereign dictatorship,” a form of permanent despotic control that affects the way people live. The Allied restrictions on a defeated Germany—imposed (supposedly) to save her and her neighbors from a re-eruption of German nationalist passions—and the Allied espousal of a plan for German “reeducation” shaped West Germany’s constitutional horizons. The constitution points back to Allied directives—to what Schüsslburner styles a “governmental prototype,” in the way that it monitors political opinion and empowers courts to ban undesirable parties and organizations. It was possible, however, to amend that dictatorial pattern once the occupiers were gone. Instead, judicial democracy became a permanent and accelerating German practice. And, since the ascent to power of the radical, antinationalist left—what, by now, has grown to become Germany’s governing class—this rigidly controlling government, practicing forms of censorship reminiscent of East German communism, has gone largely unchallenged. (German parties of the right-center are even more weak-kneed than our Republicans and avoid identification with “extremism,” which, in Germany, means the nationalist right.)

Like the Incorporation Doctrine in the United States, by which federal judges, through the 14th Amendment, can turn the Bill of Rights against the sovereign states that the amendments were meant to shield, German jurists and courts selectively invoke those parts of the Basic Law that can be turned against opponents of “militant democracy.” At the same time, they ignore or slight those “Fundamental Rights,” such as freedom of expression, that come at the beginning of the German constitution. This arbitrary judicial rule contradicts even those classical liberal traces that can be found in the Basic Law. From that law, it would appear that the state should not take sides in the competition for political office, providing that legal procedures are observed. Nor would it seem that the Basic Law empowered the Bundesverfassungsgericht to keep individuals from cam-

paigning for office, unless they are doing something quite concrete, like stockpiling weapons or inciting violence, to “remove” or “damage” the regime. Unfortunately, this constitutionally expressed fear of “damaging” Germany’s *freiheitliche demokratische Ordnung* and the referring of decisions regarding such threats in Article 21 to the federal constitutional court open the door to inventive interpretations of what constitutes such an assault.

German “democrats” have set out to give their allegedly benighted countrymen a “community of values” that bars opposition and criminalizes even those who argue that today’s German republic is less concerned about intellectual and political freedom than German governments of the past. (Schüsslburner is correct to suggest that the German Second Empire, not to mention the Weimar Republic, was far more tolerant of opposing political views than the current version of “militant democracy.”) Moreover, Germany’s ideological dictators, assisted by the press, present themselves as “constitutional patriots.” And they deny loyalty toward a specifically German nation, which they pelt with insults. These enforcers of universal values and constitutional procedures are not genuine legalists, however. They genuflect before the Basic Law only to the extent that it can be made to serve their purposes. Thus, the rights to express, publish, and disseminate opinions in Article 5; the stress on the indispensability of party formations for the “political self-development of the people” in Article 21; and the designation of the “people” in Article 20 as “the source of state power” are all filtered through more useful passages in the Basic Law. Politically incorrect publicists and party organizations are said to threaten the constitutional order, a problem that German censors consider to be addressed in Articles 18, 20-4, and 21-2. As Schüsslburner properly notes, however, the rights conferred on the German people, as well as on the state, to resist overt threats to the constitutional order do not consistently mean what those rights are now made to signify: disagreeing with an imposed ideological value consensus. The law, he explains, is dealing with attempts to overthrow the constitutional order by force, if evidence can be furnished that such a threat exists. And the Basic Law does provide for the peaceful alteration of the established order, in Articles 79 and 146. Although not exactly a fan of the Basic Law, Schüsslburner believes

that the thought control and restriction of parliamentary choices now practiced in Germany go beyond any reasonable constitutional interpretation. He stresses the possibility of making such a document work, as long as the courts are not allowed to engage in “extreme interpretations.”

Schüsslburner demonstrates how Germany’s judicial governance has worked against “dangerous” opposition and disagreeable thought. (Were it not for the embarrassing discovery last year that the “investigated” National Democratic Party had been heavily infiltrated by the *Verfassungsschutz*, German judges would have succeeded by now in banning this party of the nationalist right.) It is also no wonder that the courts and major party blocs condemn “extremist” suggestions about reconstructing the German constitution. After all, the devotees of German ideological democracy are not likely to welcome a new basic law without those features that now help them to exercise their power. They also hope that Germany can be fully incorporated into a denationalized European Community; to that end, they quote arrangements for this transfer of authority in Articles 23 and 24. Why should Germany’s political bosses support a new constitution that might reflect a German national consciousness while endangering their post-national agenda? They have even refused to acknowledge the right of their subjects to vote on the European Union’s new constitution. Why allow people to make “undemocratic” decisions?

Note that Schüsslburner’s arguments, which require a careful reading of the *Grundgesetz* and some previous exposure to German constitutional history, have not gone without criticism from the German right. *Junge Freiheit*, for example, has treated dismissively his contention that the antinational German government and its multicultural reign of terror can be traced back to the Basic Law—or, at least, to its contradictions. While Schüsslburner may push his interpretation too hard, by reading certain parts of that document more negatively than the text would warrant, his critical point is correct. It is also by no means original. Erik von Kuehnelt-Leddihn and Caspar von Schrenk Notzing both wrote convincingly on the same subject, as the liberal-constitutional, anti-Communist phase of the Federal Republic was coming to an end. The association of the West German government with

conservative Catholic Konrad Adenauer and the application of state bans to keep communists, as well as Nazis, out of public view were characteristic of a postwar German dispensation that was ending by the late 1960's. Hard though it might be to believe, the postwar German Social Democratic leader and opponent of Adenauer, Kurt Schumacher, sounded like the current German right in his defense of German nationalism. Not until the 1960's could one view with justification the German Social Democrats at the federal level as a distinctly antinationalist party fixated on the sins of German history. By the 70's, this new direction became even more evident. Willi Brandt and his penitential politics and a radicalized generation of younger Germans, at war with their "Nazi" parents, would give the Federal Republic a different spin. The enemy for them was not generic totalitarianism, including the communists, but "fascism," which meant preeminently the German past.

Schüsslburner should have emphasized more than he does that, without the interruption of the Cold War, the Basic Law might have pushed Germany leftward faster. Like Aristotle, he correctly perceives that constitutions both corre-

spond to and favor specific social characteristics. But this observation also did not elude the Allied High Command and the mostly antinationalist architects of the Basic Law. Their concerns are embodied in what was to be a provisional constitution but, at the same time, an intended prototype for any future German government. Thus, we stumble here over features — e.g., a phased transition to international government, the required granting of asylum, the exclusion of preemptive war, and the solemnization of human rights — that make this law appear to foreshadow the present European left. Postwar Germany was turned into a laboratory for social experiments that eventually migrated elsewhere in the West. Curiously, those who approve of such aspects of the Basic Law never show that it was necessary to keep the Germans from falling back into Nazi habits. There is no reason to assume that this would have happened once the Third Reich had left Germany devastated and humiliated. And it is also not true, as Schüsslburner reminds us, that the Germans had no constitutional models of their own to consult. Adaptable constitutional frameworks abounded in Central Europe from the Holy Roman Empire onward, and some of their

features, as we learn from this book, were incorporated into the work of the postwar constitutionmakers. There were also 19th-century liberal constitutions that had functioned in southwestern Germany since the end of the Napoleonic Wars. The idea that Germany had no tradition of constitutional self-government — except for the Weimar failure — until the Allies came along is plainly untrue. What the Germans gave themselves in 1949, partly through advice they could not refuse, was not the best government they ever had. It was an imperfect constitution from the standpoint of national self-government but the only one that their former enemies would allow them to live under. In my view, this *Grundgesetz* was defensible, given the circumstances in which it was prepared and given the presumption that it could be altered. What happened thereafter, with shades of 1933, was that the Basic Law became window dressing for a legal revolution. Schüsslburner traces the fateful course by which this development occurred.

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## Toward a Hard Right

What is the meaning of the election of 2004 for the American Hard Right? The question, of course, presupposes that there is such a thing as a “Hard Right” distinct from the Mossad’s Station Pentagon, or the “moral values” evangelicals, or the Girly Boys’ Jamboree. By “Hard Right,” in this context, I mean neither what has by now evolved into the establishment conservatism of the neocons and their Christian Right allies nor the collection of conspiracy-mongers, captives of various ethnic and class resentments, and neck-twitchers of all descriptions whose bottomless buckets of e-mails seem magnetically attracted to my inbox. I mean, rather, a still amorphous but definitely existing formation of dissident conservatives and rightists (some savory and some not, depending on one’s tastes) that finds itself alienated not only from the direction in which America as a nation and a civilization appears to be going but from the mainstream of American “conservatism,” a body of opinion that now merely defends and reflects this direction. I will not name all the elements of this movement that I think belong in it (since the first response to doing so would be for most of those I named to denounce and reject association with the others), but most of the readers with whom I communicate, many of whom I regularly encounter at public conferences and speeches, will know exactly which individuals and which groups I am talking about. The Hard Right is not defined (at least not yet) by any coherently stated ideology or program or any formal organization (there are several, sort of), but those who are drawn to it know it when they see it, and those who don’t are people for whom it probably doesn’t really matter if they know it or not.

Regardless of the groups, publications, websites, and individuals who make up the Hard Right, there are three main issues that so far define it: immigration control, the war in Iraq (and, a bit more broadly, U.S. foreign policy), and what we shall call (perhaps a bit demurely) the Cultural Issue—namely, what kind of country is this going to be, and who’s going to be in charge of it? The Cultural Issue is only in part (and only a rather thin

part) about such matters as “homosexual marriage” or abortion or display of the Ten Commandments on the courthouse lawn, or similar moral-social (or constitutional) issues. Those issues all have conservative champions in the mainstream, and few in the Hard Right are much interested in them explicitly. The candidate who carried those issues more than any other in the last election was not President Bush, who did his best to avoid them but wound up with all the credit for them anyway, but the Constitution Party’s Michael Peroutka, whose valiant efforts were barely noticeable in the final returns (a bit more than 100,000 votes). One reason he did not fare better, perhaps, is that President Bush and the Republicans actually did stroke those issues enough to be able to draw away whatever support he might have gained from them.

The Moral Issue, in that sense, is not the same at all as the Cultural Issue, of which immigration should properly be considered a part. The Cultural Issue concerns matters on which religious and ethical beliefs in themselves are silent: For example, Should we display the Confederate Flag or similar symbols? Or, What should your children learn at school about George Washington or Christopher Columbus, as opposed to Red Cloud and Nat Turner? Ultimately, of course, the Cultural Issue comes down not just to procedural questions about what public schools should teach and on what public funds should be spent but to the bottom line: Was the Confederacy right, or at least defensible? Were whites right to take the country from the Indians? Were white Southerners right to keep slavery as long as they did? Throughout most of American history, the answers were clear enough to all Americans who mattered. Today, thanks in large part to the managed collapse of the traditional cultural envelope, they are not, and the answers that are emerging (again, through managed construction) are what help create the Hard Right.

To return, then, to the question raised, What was the effect of the 2004 election on the American Hard Right? My original inclination, both before and after it became clear that George W. Bush had



won, was that its impact was disastrous. Now, that may not be the case.

The reason a Bush victory seemed disastrous (for the Hard Right specifically, as opposed to all the other reasons it is disastrous) is that it effectively prevents the conservative consciousness-raising that is needed if Americans who now think of themselves as “conservatives” (and believe, as conservatives do, that everything’s OK) are ever going to grow up and recognize that they need to be Hard Right (adherents of which know that things aren’t OK). What happened in 2004 is what has happened in every election year since George Wallace ran against Richard Nixon in 1968. The Democrats are just sooooo bad! Humphrey or McGovern or Clinton or Gore or Kerry or (fill in the blank) is sooooo dangerous, we’ve just got to vote for Nixon or Ford or Bush or Bush or whoever it might be to keep him out. With all his flaws, the Republican is always the lesser of the two evils.

Not surprisingly, of course, the logical consequence of this “strategy” of the Lesser of Two Evils is that the lesser evil becomes increasingly evil. Not only does it offer a blank check to the Republican incumbent to do whatever he wishes after he once again gulls the conservative cattle into the proper voting corrals, but it does nothing to develop conservative strength within the party itself as a base from which it could ever recover its position. The natural result of the perpetual Lesser of Two Evils strategy is the permanent marginalization of conservative forces within the GOP. Today, to say they have been “marginalized” is problematic. It is not clear that they even exist.

Suppose, however, that conservatives had decided to vote against Bush this time and allowed Kerry to win? Would this have been any better? Probably not.

The reason is that conservatives in-