

THE
Constitution
O F T H E
Federal Republic
O F
Germany

David P. Currie

THE UNIVERSITY OF CHICAGO PRESS

Chicago and London

Contents

Preface xi

Abbreviations and Shortened Titles xv

CHAPTER 1: INTRODUCTION 1

- I. A Little History 1
- II. The Basic Law 8
 - A. Fundamental Rights 10
 - B. Basic Structural Principles 18
 - 1. The Rechtsstaat 18
 - 2. The Sozialstaat 20
 - C. The Allocation of Powers 25
 - D. The Constitutional Court 27
 - E. Unification and Beyond 30

CHAPTER 2: THE FEDERAL SYSTEM 33

- I. Legislative Powers 35
 - A. Exclusive Federal Authority 35
 - B. Concurrent Authority 42
 - C. Framework Legislation 50
 - D. Financial Provisions 52
 - E. The Role of the Bundesrat 61
- II. Other Powers 66
 - A. Executive Power 66
 - B. Judicial Power 74
- III. The Bundestreue Principle 77
- IV. Other Dimensions of Federalism 81
 - A. Local Government 81
 - B. The Federal Republic and Germany 84
 - C. The European Union 91
- V. Conclusion 100

CHAPTER 3: SEPARATION OF POWERS 102

- I. Legislative Power 104
 - A. Elections and Equal Rights 104
 - B. Autonomy and Stability 111
 - C. Supremacy 116
 - D. Exclusivity 121
 - E. Nondelegability 125
- II. Executive Power 134
 - A. The President, the Chancellor, and the Cabinet 135
 - B. The Limits of Parliamentary Control 142
- III. Judicial Power 149
 - A. Judicial Independence 153
 - B. Judicial Review 162
- IV. Conclusion 172

CHAPTER 4: FREEDOM OF EXPRESSION 174

- I. Balancing 181
 - A. Boycotts 181
 - B. Early Defamation Cases 190
 - C. *Mephisto* 192
 - D. Other Restrictive Decisions 198
 - E. The Trend toward Greater Protection 202
- II. Political Parties 207
- III. Subversion 213
 - A. Unconstitutional Parties 215
 - B. The Civil Service 221
 - C. Other Measures 224
- IV. The Media 227
 - V. Academic Freedom 233
- VI. Conclusion 237

CHAPTER 5: CHURCH AND STATE 244

- I. Establishment of Religion 245
- II. Religious Freedoms 250
 - A. Conflicting Constitutional Rights 252
 - B. Exemptions from General Laws 255
 - 1. Article 4(1) and (2) 258
 - 2. The right of self-government 263
- III. Conclusion 267

CHAPTER 6: OTHER FUNDAMENTAL RIGHTS 270

- I. Marriage, the Family, and Private Schools 275
 - A. Defensive Rights 276
 - B. Nondiscrimination 278
 - C. The Institutional Guarantee of Marriage 281
 - D. Affirmative Duties and Positive Rights 285
- II. Property 290
 - A. Takings 291
 - B. Limitations 294
- III. Occupational Freedom 299
- IV. Life, Liberty, and Personality 305
 - A. Life and Liberty 305
 - B. Human Dignity 314
 - C. The Development of Personality 316
- V. Equality 322
 - A. Classifications Expressly Prohibited 322
 - B. Sex Discrimination 328
 - C. The General Equality Provision 332
- VI. Conclusion 337

EPILOGUE 339

- Appendix: The Basic Law 343
- Index 413