

Drafting the Disaster

The Conceptions of the Drafters of the Weimar Constitution
with Regard to the Powers of the President

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The work presented in this thesis is to the best of my knowledge and belief original, except as acknowledged in the text, and has not been submitted either in whole or in part for a degree at this or any other university.

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Abbreviations

DDP	Deutsche Demokratische Partei
DNVP	Deutschnationale Volkspartei
DStP	Deutsche Staatspartei
DVP	Deutsche Volkspartei
MSPD	Mehrheitssozialdemokratische Partei Deutschlands
NSDAP	Nationalsozialistische Deutsche Arbeiterpartei
SPD	Sozialdemokratische Partei Deutschlands
USPD	Unabhängige Sozialdemokratische Partei Deutschlands

Abstract

An understanding of the causes behind the development of authoritarian government in Germany in the late 1920s and the 1930s, and the collapse of democracy during that period, is integral to any study of twentieth-century German history. The President's use of the wide-ranging executive powers which were granted to him by the Weimar Constitution is generally recognised as one of those causes, and analysis as to why the Constitution defined the Presidency as it did is central to any investigation of the downward trajectory of democratic government during the Weimar Republic. The extensive literature on this issue generally posits that the predominantly liberal drafters – the most influential of whom were associated with the German Democratic Party – did not realise in 1919 the difficulties inherent in the granting of the presidential powers which are recognised by scholars in the field today. This thesis re-examines that understanding and argues the need for a more differentiated and more nuanced approach. With particular reference to primary source material – specifically the relevant debates of the National Assembly as well as the contemporary writings of Hugo Preuß and Max Weber – the thesis suggests that the liberal drafters understood the potential for abuse of the provisions regarding the President's executive powers, and indeed that it is possible they may have desired some form of semi-authoritarian outcome. These conclusions have implications, not only for historical understandings of the causes which contributed to the rise of authoritarian government in Germany in the late Weimar Republic, but also for the drafters of the Constitutions of contemporary emerging democracies.

Introduction

Der Historiker ist ein rückwärts gekehrter Prophet.

Friedrich von Schlegel

As Karl Dietrich Bracher has pointed out, any analysis of the interwar years in Germany which begins with the understanding that the fate of the Weimar Republic was “bereits für entschieden anzusehen” and that the failure of the Republic was a “zwangsläufige, unausweichliche Konsequenz”¹ of the history of the German people up until that date is itself destined to be inherently flawed, as such an analysis views historical events deterministically. Similarly, Erich Matthias has noted:

Any attempt to give a monocausal interpretation of the fate of the Republic is bound to fail when put to any serious test [. . .]. If we are to understand what happened in Germany we must start from the premise that the erosion and ultimate doom of the Republic were due to the interaction of a variety of factors.²

¹ Karl Dietrich Bracher, *Deutschland zwischen Demokratie und Diktatur. Beiträge zur neueren Politik und Geschichte* (Munich: 1964), p.36.

² Erich Matthias, “The Influence of the Versailles Treaty on the Internal Development of the Weimar Republic”, in Anthony Nicholls and Erich Matthias (eds.), *German Democracy and the Triumph of Hitler: Essays in Recent German History* (London: 1971), pp.13-28, p.14.

Nevertheless, the role played by the wide-ranging powers of the President as defined under the Constitution in the deterioration of democratic governance in Weimar Germany cannot be discounted. This is not to say that the Constitution was the only, or even the most important, factor in the history of the period which caused that outcome and its horrific consequences. But given the significance of the President and the powers granted to him in precipitating that “ultimate doom”, examining the declared aims and expectations of the drafters of the Constitution in defining the role of President as they did seems central to any interpretation of twentieth-century German history, and also has contemporary relevance, given the number of emerging democracies on the geo-political scene following the collapse of the Soviet bloc, and more recently in the Middle East. This thesis will argue the need for a differentiated view of the intentions of those who drafted the new German Constitution in 1919, with particular reference to primary source material.

The Weimar Constitution was composed after the end of the First World War, in a period of national unrest and civil disorder. The new democratic system was formed within the democratically elected forum of the *Nationalversammlung*,³ which had been established in the midst of the Versailles peace negotiations. The contemporary political party with the greatest influence on the constitutional drafting process was the *Deutsche Demokratische Partei*, the newly created political home of German Liberalism founded in November of 1918 by the merger of the *Fortschrittliche Partei* and the left wing of the *Nationalliberale Partei*.⁴

³ Henceforth referred to as the National Assembly.

⁴ For a detailed analysis of this political merger and the formation of a separate, right-leaning liberal party in the *Deutsche Volkspartei* see Larry Eugene Jones, *German Liberalism and the Dissolution of the Weimar Party System 1919-1933* (Chapel Hill, NC: 1988), especially pp.15-29.

One of the co-founders of this party – Hugo Preuß, “father of the Weimar Constitution”⁵ – drafted the initial constitutional document, and it was the ideas of the German liberal bourgeoisie, as extolled most passionately by another famous DDP co-founder, Max Weber, which predominantly found expression in the final document. As well as having a profound influence on the initial draft, the DDP was also given the Chairmanship, in the person of Conrad Haußmann, of the *Verfassungsausschuß* of the National Assembly (a position to which it was not automatically entitled by the party-political makeup of the Assembly), and Preuß was made *Reichsminister des Innern*, propounding the government line in the debates. His standing was such that he even continued in this role – though with the amended title of *Reichskommissar für Verfassungsfragen* – after he resigned from the government along with the rest of his DDP colleagues in June 1919 rather than be party to the official ratification of the Treaty of Versailles and the imposition of the punitive measures mandated by the same.

One aspect of the Constitution which had significant repercussions for the stability of the democratic process during the Weimar Republic was the creation of a powerful Presidency. With the drafters conceiving the President as a counterbalance to the Parliament, he was given wide-ranging powers including the ability to appoint and dismiss the Chancellor and his Ministry, to dissolve the Parliament and, perhaps most decisively, the prerogative to take executive action in the face of threats or disturbances to the “öffentliche Sicherheit und Ordnung” per Article 48 of the Constitution.⁶ Over the course of the turbulent political and

⁵ Herbert Kraus, *The Crisis of German Democracy* (Princeton: 1932), p.159.

⁶“Die Weimarer Verfassung”, *Deutsches Historisches Museum Online*, 29 September 2010 (<http://www.dhm.de/lemo/html/weimar/verfassung/index.html>). This and all subsequent quotations from the Weimar Constitution are taken from the copy reproduced on the website of the *Deutsches Historisches Museum* as appended, in part, on pp.66-70 of this thesis.

economic history of the Weimar Republic, a paradigm developed in which the Parliament became ineffective as a legislative body: it proved incapable of forming stable, long-term governments, and the President began to play an ever-increasing role in the passing of legislation. From 1930 onwards, government measures were increasingly instituted by decree, using the power vested in the President by Article 48. Of itself the Article was not inherently anti-democratic, technically containing various checks on its use, despite its widely-drafted provisions. But in the face of the other powers granted to the President, these checks were nullified and the President was able to exercise power in an almost completely unchallenged manner.

The position of the President has been analysed at length in the scholarly literature, and this body of work generally asserts (though not without exception) that the drafters of 1919 did not intend any of the authoritarian outcomes which arose partly as a result of the freedom with which the President could exercise the powers they had granted him in the Constitution, and did not realise the authoritarian potential inherent in the President's powers. The analysis provided by individual authors claims, for example, that, "[t]he possibility that the constitutional system could be destroyed by manipulation of the democratic process never occurred to the members of the National Assembly."⁷ This is despite the problems inherent in the role of the President and his ability to employ his powers under Article 48 without effective oversight being described, for example, as, "an obvious weakness."⁸

⁷ Hans Mommsen, *The Rise and Fall of Weimar Democracy*, translated by Elborg Forster and Larry Eugene Jones (Chapel Hill, NC: 1996), p.56; originally published as *Verspielte Freiheit: Der Weg der Republik von Weimar in den Untergang, 1918 bis 1933* (Berlin: 1989).

⁸ David Dyzenhaus, *Legality and Legitimacy: Carl Schmitt, Hans Kelsen and Hermann Heller in Weimar* (New York: 1997), p.19.

This thesis will challenge this view of the drafters' intentions by examining primary source documents in an effort to ascertain what central figures involved in the process thought at the time the Constitution was being drafted. This will be done in order to avoid reaching an unjustified conclusion with regard to their intentions simply by presuming they could not have desired the post-1933 outcomes which arose partly as a result of the way in which they had constructed the Constitution in 1919. However, the thesis is not intended to discount the scholarship already compiled on the subject, but rather to align with a minority view which seems more justifiable in the face of the primary evidence, and to suggest that a more differentiated view of the drafters' intentions ought to be developed.

The first chapter of the thesis outlines the genesis, scope and significance of the presidential powers by examining a number of themes in turn. The first theme examined is the creation of the Weimar Constitution as a document, with an exposition of the events which both preceded and precipitated its development, as well as of the drafting process itself. The second section of the first chapter deals with the drafters themselves, specifically the groups and individuals who were most influential in 1919, namely the DDP and its members. The final section of the first chapter outlines the powers granted to the President in the Constitution, and explains where they led in historical terms.

The second chapter begins with a literature review which details the trends within the existing scholarship on the powers of the President in the Weimar Constitution, and which sets out the current understanding as to the conceptions of the Presidency which were held by the drafters of 1919. This is followed by a critical analysis of these views, with direct reference to primary source materials such as the proceedings of the National Assembly and the contemporary writings of Hugo Preuß and Max Weber, which is intended to support the argument that a more nuanced view of the drafters' aims in so establishing the role of the

President would be more appropriate. The methodology of the thesis is thus straightforward, in that it assesses the existing historical understanding against the evidence provided by relevant primary sources. The thesis ends with a brief summation of the conclusions drawn from the research.

Chapter One

Sie streiten sich, so heißt, um Freiheitsrechte:

Genau besehn, sinds Knechte gegen Knechte.

Faust II, 6962f. / Mephistopheles

The Creation of the Weimar Constitution

Before any analysis of the effects of the Articles in the Weimar Constitution defining the President's powers can be undertaken, it is necessary to outline the processes which brought about the implementation of the new German constitutional structure. A mere five days after the proclamation of the Republic on 9 November 1918, and amidst the events of the German 'Revolution', Friedrich Ebert – in his role as *Vorsitzender des Rates der Volksbeauftragten* – invited Hugo Preuß to draft a Constitution which would comprise the basis of the discussions as to the new form of the German State. It would seem to be no coincidence that Preuß received this offer on the same day, 14 November, that he had published an article in the *Berliner Tageblatt* entitled, "Volksstaat oder verkehrter Obrigkeitsstaat?"⁹, which set out his vision of a democratic Germany. The advisability of having a draft Constitution before the National Assembly – or any other similar body – was established to discuss new constitutional arrangements is ably set out, if in a slightly tongue-in-cheek manner, by Ernest Hamburger:

⁹ Reproduced in Hugo Preuß, *Staat, Recht und Freiheit* (Hildesheim: 2006), pp.365-368; originally published Tübingen: 1926. Article first published in *Berliner Tageblatt*, 14 November 1918.

The availability of an appropriate text as a basis for negotiations is important in preventing the discussion from drifting aimlessly. To ensure purposeful debate and rapid decisions, a gathering needs a firm platform from which to advance. This may not necessarily apply to all peoples, but it certainly does to the Germans.¹⁰

Having already published his ideas along with a completed constitutional draft in 1917 in an article entitled “Vorschläge zur Abänderung der Reichsverfassung und der preußischen Verfassung nebst Begründung”,¹¹ Preuß was able to compose the document requested by Ebert with remarkable speed, and in order to further develop this draft an informal Constitutional Committee was set up at his suggestion,¹² meeting from 9 to 12 December 1918. Interestingly, it was not exclusively politicians of the day who made up this thirteen-man committee, but also various officials from the civil service, including Paul von Krause, who had been *Staatssekretär des Reichsjustizamtes im Deutschen Kaiserreich* since 1876; Kurt Riegler, as representative for the Foreign Office; Theodor Lewald, the *Unterstaatssekretär im Reichsamt des Innern*; and *Geheimrat* Schulze as a further representative from the *Reichsamt des Innern*. This inclusion of imperial State bureaucrats in the composition of the future democratic basis for the German State did not excite any comment at the time: as Hans Mommsen points out, “No one took umbrage at the involvement of high-ranking officials from the national and state governments in the work of

¹⁰ Ernest Hamburger, “Hugo Preuß: Scholar and Statesman”, *Leo Baeck Institute Yearbook*, January 1975 (vol.20), pp.179-206, p.190.

¹¹ Reproduced in Preuß, “Vorschläge zur Abänderung der Reichsverfassung und der Preußischen Verfassung, nebst Begründung”, in Preuß, *Staat, Recht und Freiheit*, pp.290-335. MS 1917.

¹² Hamburger, “Hugo Preuß”, p.193.

the constitutional committee.”¹³ In any case, the dominance of the DDP and contemporary liberal ideals remained the hallmark of these discussions, not only because several of the bureaucrats themselves had close ties to the DDP, but also due to the influence of Preuß and Max Weber on the committee and during the debates undertaken. The important role played by this preliminary committee in the drafting process as a whole is summed up well by Gerhard Schulz, who describes the Committee as

the delivery room of the Weimar Constitution, although it had no official character, met with strict secrecy, and did not allow decisions by vote. Its decisions established the fundamental framework of the Weimar constitution that remained essentially unchanged in the parliamentary and extra-parliamentary deliberations that were to follow.¹⁴

The day after the election of the National Assembly on 19 January 1919, the Committee’s draft was published in the *Amtlichen Reichsanzeiger*. The Assembly’s first reading of the Constitution was undertaken on 21 February, and a general debate in which the various parties outlined their positions towards the draft followed until 4 March. After the debates within the plenary sessions of the Assembly, “[d]ie weitere Behandlung des Entwurfs wurde dann einem Verfassungsausschuß aus 28 Abgeordneten aller Parteien unter Vorsitz des

¹³ Hans Mommsen, *Rise and Fall*, p.58.

¹⁴ Gerhard Schulz, *Zwischen Demokratie und Diktatur: Verfassungspolitik und Reichsreform in der Weimarer Republik* (Berlin: 1963), p.129, quoted in Wolfgang J. Mommsen, *Max Weber and German Politics 1890-1920*, translated by Michael S. Steinberg (Chicago: 1990), pp.355-356; originally published as *Max Weber und die deutsche Politik, 1890-1920* (Tübingen: 1959).

württembergischen Demokraten Haußmann anvertraut.”¹⁵ This Committee was given the weighty title of *Ausschuß zur Vorberatement des Entwurfs einer Verfassung des Deutschen Reichs*. The relative speed of these events was likely due to the imperative nature of the Versailles peace negotiations which were then taking place: “Der Druck der Versailler Verhandlungen hat schließlich wesentlich zur Beschleunigung der Schlußberatungen im Ausschuß wie im Plenum beigetragen.”¹⁶ The hopes that the democratization of Germany taking place in the National Assembly could be used as a positive bargaining tool during the peace negotiations were quashed on 7 May, when the harsh peace conditions were finally given to the Germans by the Allies.

Meanwhile the debates on the Constitution continued. Once the official Constitutional Committee had completed its work, the draft was further debated in plenary sessions until the conclusion of the second reading on 22 July, with the third reading following on 29 July and the final vote taking place on 31 July 1919. The final document did not meet with universal acclamation, being approved by 262 votes to 75, with the DNVP and DVP as well as the *Bayerische Bauern-Bund* and USPD members voting against the Constitution, as was only to be expected given their attitude towards the changes being made to the German State structure throughout the proceedings. However, the parties which made up the governing ‘Weimar Coalition’ – MSPD, DDP and the German Centre Party – were also unable to muster unanimous support for the Constitution: “auch von den Koalitionsparteien fehlten etwa 70 Abgeordnete; der rasche Schwund der breiten Koalitionsmehrheit zeichnete sich hier

¹⁵ Bracher, *Deutschland zwischen Demokratie und Diktatur*, p.26.

¹⁶ *Ibid.*, p.28.

schon ab.”¹⁷ Further, those reactionary forces opposed to the democratic system within Germany were already employing the slurs which would come to be used with ever-increasing frequency towards the end of the Republic’s life. Oswald Spengler, for instance, saw the assembled representatives not as the best and brightest that the nation could produce at this time of critical change, but, on the contrary, described the National Assembly as a, “Biertisch höherer Ordnung.”¹⁸ Criticisms of both the democratic process and the Constitution which it had produced continued in a similar vein throughout the Weimar Republic.

¹⁷ Ibid., p.29.

¹⁸ Quoted in Kurt Sontheimer, *Anti-demokratisches Denken in der Weimarer Republik: die politischen Ideen des deutschen Nationalsozialismus zwischen 1918 und 1933* (Munich: 1962), p.186.

The Drafters of the Weimar Constitution

The role played by the DDP in composing the constitutional document was decisively significant. It was the “Doppelkonstruktion”¹⁹ of the liberal drafters – influenced by the theories of Robert Redslob and the idea that the President was to be a ‘counterweight’ to Parliament, with the two bodies supposedly balancing one another out, and conceived in response to the skepticism of parliamentary supremacy which was propounded forcefully by Max Weber in the intellectual milieu of the liberals outside the Assembly – which was most conclusively adapted into the Constitution, and it was the intellectuals of the DDP who played the most influential roles in both the unofficial and official Constitutional Committees, as well as in the plenary sessions of the National Assembly. During the debates of the *Verfassungsausschuß* and the National Assembly, the floor was necessarily given over to Preuß in his role as *Reichsminister des Innern* and later as *Reichskommissar für Verfassungsfragen*, to respond to suggested amendments and to complaints by other members against the form of the draft Constitution, and the position advocated by him regarding questions on the President and his powers was almost always that accepted in the final vote. Similarly, the positions taken by the DDP as a party in that regard often met with the approval of the other parties present, with the exception of the USPD and occasionally the MSPD, the members of which seem to have been the only representatives within the National Assembly who saw anything problematical in the propositions put forward by the DDP.²⁰

¹⁹ Bracher, *Deutschland zwischen Demokratie und Diktatur*, p.37.

²⁰ For example, the debates conducted on how onerous the restrictions placed on Presidential use of Article 48 should be; the debates regarding the ability of the President to appoint and dismiss members of the Cabinet; even the debates regarding the retention of the title *Reichspräsident*, rather than *Reichswart* or some other formulation, see Eduard Heilfron (ed.), *Die Deutsche Nationalversammlung im Jahre 1919 in ihrer Arbeit für*

Whether the choice of the MSPD leadership to allow the DDP the critical role of Chairman in the *Verfassungsausschuß* (which by order of numerical superiority should have been held by the Majority Socialists) can be viewed as a further instance of the “abdication of parliamentary responsibility”²¹ – an accusation leveled against the MSPD leadership by various scholars with regard to their behaviour during most of the fourteen years of the Weimar Republic – or whether these leaders genuinely saw the primacy of the liberals and their conceptions of the State as most conducive to the best outcome, is not critical to this analysis. What this choice does indicate, however, is the pervasive influence of the DDP and its members, and consequently their ideas, during the drafting process.

The level of influence the DDP exerted was truly remarkable given their relatively modest representation among the members of the National Assembly, especially in comparison with other parties – particularly the MSPD – which could otherwise have been expected to have been guiding and controlling forces within the debates, due to their representative superiority:

The German Democratic Party ranked only third in terms of party strength in Weimar, but played an important role in the constitution-making out of proportion to its members. Preuß had prepared the text and presented it to the Assembly. Konrad [*sic*] Haußmann was elected Chairman of the Constitutional Committee. Friedrich Naumann,

den Aufbau des neuen deutschen Volksstaates, vol.5 (Berlin: 1919), pp.3227-3231, pp.3267-3269 and pp.3232-3234 respectively.

²¹ Cindy Skatch, *Borrowing Constitutional Designs: Constitutional Law in Weimar Germany and the French Fifth Republic* (Princeton, NJ: 2005), p.56. See also Albrecht Tyrell, “Towards dictatorship: Germany 1930 to 1934”, in Christian Leitz (ed.), *The Third Reich* (Oxford: 1999), pp.29-48, p.30.

the Party Chairman, was remarkable in that generally rather sober minded Assembly for the pathos with which he proclaimed national and democratic ideals.²²

The reason it was the members of the DDP who were chosen to formulate the Constitution despite their numerical inferiority within the Assembly and their modest position within the Government was apparently the experience of their party members in that regard. The conclusion reached by Hamburger is that the Socialists had neither the expertise nor the inclination to involve themselves too heavily in the minutiae of the drafting process, which seems justified despite the generalised and somewhat overstated nature of its expression: “As in other fields, the Social Democrats lacked suitable personnel. Socialist lawyers had hardly ever paid attention to constitutional and administrative matters.”²³

The two members of the DDP who most shaped the drafting of the Constitution were both widely respected figures in the field of Constitutional Law, and had previously published on the subject of a new Constitution for the German State, with their cumulative influence on the ideas held within the DDP, particularly with regard to Weber’s and Preuß’s extensive influence throughout in the drafting process, being the culmination of many years of academic work. Preuß had studied law, completing a doctorate at the University of Göttingen in 1883, had worked since 1889 at the *Friedrich-Wilhelms Universität zu Berlin* as an untenured lecturer in Public Law, had been made rector of the *Handelshochschule Berlin* in 1918 and had published widely within legal circles. Weber, after also completing a doctorate in law at the *Universität zu Berlin*, held various prestigious academic posts and published widely in numerous academic and political fields – including law, sociology and economics.

²² Hamburger, “Hugo Preuß”, p.197.

²³ *Ibid.*, p.180.

While the gravitas which their various positions and accolades accorded them may not have been reflected in the opinions of many of their own Party colleagues – with Preuß regularly seeking and regularly being rejected from pre-selection for the party lists in winnable seats, and Weber describing his opponents within the left-liberal DDP as “doctrinaire pacifists and literati”²⁴ – their importance to German legal and social thought at the time meant that they were both considered for the role of *Statssekretär des Reichsinnenministeriums*, with the task finally falling to Preuß, largely due to the uncertain feelings Ebert had towards Weber:

[Ebert] preferred the expert with a solid knowledge of constitutional law, who moreover had carried out some relevant preliminary work, to the sociologist of genius who was more deeply interested in social affairs, while his attitude during the war had not always inspired confidence and his decisions were sometimes unpredictable.²⁵

The “relevant preliminary work” referred to was primarily the publication of Preuß’s 1917 pamphlet (see above p.8). In this, Preuß had set out his ideal version of a new German Constitution, including a powerful President as a balancing factor vis-à-vis the hypothetical Parliament. Weber had also published a draft of a “plebiscitary führer democracy”²⁶ – in which a popularly and directly elected leader was the ultimate manifestation of government – in 1917 in a series of articles entitled “Deutschlands Parlamentarismus in Vergangenheit und

²⁴ Quoted in Attila Chanady, “The Dissolution of the German Democratic Party in 1930”, *The American Historical Review*, June 1968, vol.73 (no.5), pp.1433-1453, p.1438.

²⁵ Hamburger, “Hugo Preuß”, p.189.

²⁶ The term most often used to describe Weber’s conception of the Presidential role. For a detailed analysis see Bryan S. Turner, *Max Weber: from History to Modernity* (New York, NY: 1992), particularly pp.220-223.

Zukunft”, but due to the aforementioned reservations about his character he was not a favoured candidate for any official role.

Despite his lack of official status, such was Weber’s skill in debate that he often managed to convince the other members of the unofficial Constitutional Committee to accede to his point of view: “the Reich constitution is complete in principle and *very* close to my proposals”²⁷ [his emphasis]. The final draft produced by that Committee, described by Karl Löwenstein as “Preuß’s draft”, “accorded very wide powers to the *Reichspräsident*, largely as a result of Max Weber’s pressing demands.”²⁸ It was largely Weber’s idea that the President should be a great “caesarean leader”²⁹, a man who most fully expressed the Weberian ideal of the ethic of Responsibility and ethic of Conviction in politics, as put forward in Weber’s oft-cited speech to students at Munich University, *Politik als Beruf*,³⁰ and a man who could carry the people of a nation into acceptance and pursuit of his ideas through force of personality. In arguing for such, Weber was simply pursuing an augmentation of the powers already granted by Preuß to the President in his original provisional constitutional draft of 1918, which were ultimately an expression of the liberal philosophy of the State which was enunciated by the DDP as a political party. The *Wiesbadener Zeitung* of 6 December 1918, for example, cited

²⁷ Cited in Wolfgang J. Mommsen, *Max Weber*, p.368. Weber cited (as translated by Michael S. Steinberg) from a letter to his wife on 13 December 1918.

²⁸ Karl Löwenstein, *Max Weber’s Political Ideas in the Perspective of Our Time*, translated by Richard and Clara Winston (New York, NY: 1966), p.16; originally published as *Max Webers staatspolitische Auffassungen in der Sicht unserer Zeit* (Bonn: 1965).

²⁹ Wolfgang J. Mommsen, *Max Weber*, p.340.

³⁰ Reproduced in Max Weber, *Gesammelte Politische Schriften*, 2nd ed. (Tübingen: 1958), pp.533-48.

Weber's comment during a speech made in the same town that, "Parliamentarism and with it partisan quarrels are avoidable if the unified executive of the Reich is in the hands of a President elected by the entire nation."³¹ Similarly, the *Heidelberger Tageblatt* of 17 January 1919 reported Weber's comments during a Collegial Cabinet speech regarding the "classical model" of parliamentary democracy:

We are supporters of a strong governmental power on a democratic basis and supporters of a president directly elected by the people. We would experience a stupid shopkeepers' convention or the like if we had a college of ministers without the power of the president above it. This might produce, for example, a minister of culture from the Centre, a Socialist finance minister, etc.³²

Friedrich Meinecke, the lauded historian and another DDP co-founder, was particularly vehement in advocating the development of an *Ersatzkaiser* position for the President in articles published in late 1918 and early 1919, which included this profession of belief: "Ich bleibe, der Vergangenheit zugewandt, Herzensmonarchist und werde, der Zukunft zugewandt, Vernunftrepublikaner."³³ Similarly, Friedrich Naumann, the first *Vorsitzender* of the DDP and member of the official Constitutional Committee, believed that a powerful President who embodied and appointed the whole executive was desirable and, "that the American presidential system was a better model."³⁴ Bruno Ablas, a further member of the

³¹ Cited in Wolfgang J. Mommsen, *Max Weber*, p.340. Weber is cited as translated by Michael S. Steinberg.

³² *Ibid.*

³³ Friedrich Meinecke, "Verfassung und Verwaltung der deutschen Republik", in his *Politische Schriften und Reden*, Georg Kotowski (ed.) (Darmstadt: 1958), pp.280-295, p.281.

³⁴ Hamburger, "Hugo Preuß", p.195.

DDP included in the official Constitutional Committee, declared his views – which reflected those of the wider political Party – to the Committee room in a remarkably succinct manner, “I am an enemy of an absolutely unlimited parliamentary majority.”³⁵

Through these and the preceding comments it can be suggested, without placing an undue emphasis on individual paragraphs or phrases, that the ideal governmental model of the liberal drafters of the Constitution was one which, in many ways, was an authoritarian model of democracy. The fact that these conceptions were widespread among the group which had the most influence on the construction of the Constitution as a whole – and specifically on the powers of the President – had a deleterious effect upon the workability of government in Germany during the Weimar Republic, as will be outlined in the next section.

³⁵“Protokolle des 8. Verfassungsausschusses der Nationalversammlung”, *Verhandlungen der Verfassungsgebenden deutschen Nationalversammlung*, vol.336, Anlagen zu den stenographischen Berichten, no.391 (Berlin: 1920), p.460, cited in Wolfgang J. Mommsen, *Max Weber*, p.375.

The Significance of the Presidential Powers

Those Articles which detailed the powers of the President had an importance which it would be difficult to overstate. Brecht has suggested:

It is not too much to say that, if [these clauses] had not been written into the Constitution, the history of Germany would have taken a very different course, although it may be impossible to say exactly what that would have been.³⁶

It was through those powers that the authoritarian trends in the many and varied governments of the Weimar period were able to develop: trends which precipitated the downward trajectory of truly democratic government in Germany.

Article 48 empowered the President to pass executive measures and use military force in cases, “wenn im Deutschen Reich die öffentliche Sicherheit und Ordnung erheblich gestört oder gefährdet [wurde]” – a situation described parenthetically by Peter L. Lindseth as “all too common under the Weimar Republic as it turned out.”³⁷ As Boldt has pointed out, Article 48 of the Weimar Constitution is, “[i]n die Tradition des Belagerungszustandes [. . .] einzuordnen”,³⁸ and it emulated provisions in previous German Constitutions which allowed a *besonderer Rechtszustand* to be declared when a state of affairs was thought to exist which

³⁶ Arnold Brecht, *Prelude to Silence: the End of the German Republic* (New York, NY: 1944), p.49.

³⁷ Peter L. Lindseth, “The Paradox of Parliamentary Supremacy: Delegation, Democracy, and Dictatorship in Germany and France, 1920s-1950s”, *The Yale Law Journal*, May 2004, vol.113 (no.7), pp.1341-1417, p.1362.

³⁸ Hans Boldt, “Der Artikel 48 der Weimarer Verfassung – sein historischer Hintergrund und seine politische Funktion”, in Michael Stürmer (ed.), *Die Weimarer Republik: Belagerte Civitas* (Königstein/Ts.: 1980), pp.288-309, p.290.

endangered the safety and order of the State, for example Article 68 of the *Reichsverfassung* of 1871.

The measures to be taken under Article 48 were intended to facilitate the, “Wiederherstellung der öffentlichen Sicherheit und Ordnung.” To this end the President could suspend “ganz oder zum Teil” various individual liberties enumerated in the Constitution, including freedom of the person; inviolability of the home; right to privacy of letter, telegram and telephone communication; freedom of opinion and the press; freedom of assembly and the right to form associative groups, as enumerated in Articles 114, 115, 117, 118, 123 and 124 respectively. These measures, as with all other Presidential actions, required the countersignature of either the Chancellor or the relevant Minister, per Article 50, and the President was required to inform the Parliament immediately of any measures taken under Article 48, with the Parliament then having the power to demand their suspension. But all his powers combined made the President far more effective in any conflict of his will with that of Parliament: he could simply nullify the Parliament’s control over his measures taken under Article 48, “by continual use of his authority to dissolve that body.”³⁹ Article 25 of the Weimar Constitution granted the President the power to dissolve the Parliament. It was a very wide power which was constrained only by the “vague condition”⁴⁰ that this only could be done, “einmal aus dem gleichen Anlass”. The same Article mandated that new elections take place within sixty days after the Parliament had been dissolved, a provision which would seem unremarkable. But as Brecht noted in 1944, the period of time the Parliament could remain dissolved before new elections had to be held was “a long time under modern conditions and [could] easily be

³⁹ Dyzenhaus, *Legality and Legitimacy*, p.19.

⁴⁰ Loc. cit.

used so as to make any immediate re-establishment of a fully democratic government technically and practically impossible.”⁴¹ Article 53 of the Weimar Constitution granted the President the power to appoint and dismiss the Chancellor and Cabinet. While this is not problematical in and of itself, when combined with his other powers, this Article meant that the President

could ensure a cabinet which would give him the requisite countersignature and which did not have the confidence of parliament simply because there was for the time being no parliament in existence.⁴²

The President was granted another constitutionally embedded advantage over his rival or counterweight – depending on the preferred interpretation – the Parliament by the drafters of 1919: his term of office was seven years, per Article 43, while that of the *Reichstag* was only four, as set out in Article 23. This construction had unfortunate consequences for the long-term viability of the Republic, as the establishment of a centralised figure of authority had an adverse effect on the behaviour of the political parties within the Parliament itself:

Die Regierung ohne oder gegen das Parlament mochte als Konsequenz erscheinen, wenn die siebenjährige Amtsperiode des Reichspräsidenten als Faktor der Kontinuität gegenüber dem natürlichen Pluralismus und Antagonismus der Parteien und Fraktionen überlegen machte. Der Zwang zur Kooperation und Koalition, jenes Lebenselement der parlamentarischen Demokratie, verlor damit an verpflichtender Kraft, Parlament und

⁴¹ Brecht, *Prelude to Silence*, p.49.

⁴² Dyzenhaus, *Legality and Legitimacy*, p.28.

Parteien mochten sich an die Haltung unfruchtbarer Opposition oder resignierender Tolerierung gewöhnen.⁴³

The power of the President was such that he could be used as a last resort, a fallback, in cases of legislative or political deadlock, which meant that the parties in the Parliament did not always shrink from allowing coalitions to collapse, and governments to be denied stability for reasons of political expediency. These structural problems within the polity led to governmental instability of a chronic nature: “The average life of a government during Weimar was eight months.”⁴⁴ As Bracher says, the *Doppelkonstruktion* of the liberals

sollte die schwerwiegende Konsequenz zur Folge haben, dass das Weimarer Regierungssystem ein dualistisches Gebilde, eine Mischform von präsidentialer und parlamentarischer Demokratie, war; statt einander zu stützen und zu stärken, haben die beiden Prinzipien sich im weiteren Verlauf eher behindert und schließlich vernichtet.⁴⁵

With the onset of the financial and social crises precipitated by the Wall Street Crash in 1929, these structural problems within the government contributed significantly to the destruction of the entire system in favour of an authoritarian regime. The extent to which the presidential powers influenced these events is best shown by an examination of how President Hindenburg used those powers during the economic crisis. It has been claimed that Hindenburg

⁴³ Bracher, *Deutschland zwischen Demokratie und Diktatur*, p.38.

⁴⁴ Sandor Halebsky, *Mass Society and Political Conflict: Towards a Reconstruction of Theory* (Cambridge: 1976), p.166.

⁴⁵ Bracher, *Deutschland zwischen Demokratie und Diktatur*, p.25.

read the constitution of the republic for the first time when he became President and that he then underlined all passages concerning the rights of parliament with a red pencil and the passages concerning the authority of the President with a blue one. It was in this fashion that Hindenburg understood his role as President.⁴⁶

This understanding of the Constitution was, to an extent, the very one the liberal drafters of the document held in 1919; perceiving the two equally legitimate and popularly-elected political representatives – President and Parliament – as combative organs of government designed to check one another. Unfortunately, the economic crisis which gripped Germany from 1929 and the measures taken by the conservative government of Heinrich Brüning brought about a drastic change in the way the government was run and the manner in which legislative measures were passed. Brüning had made it clear from the beginning of his government that he would use Article 48 to pass his economic ‘reforms’ if the Parliament should oppose them; a not entirely novel approach, given that President Ebert had passed economic measures in the same way in the early 1920s.⁴⁷ This tactic was initially successful in ensuring parliamentary compliance with Brüning’s measures, but in July 1930 his main financial bill was rejected and he resorted to Article 48 to pass cuts to expenditure and increases in tax. The SPD⁴⁸ moved a motion to suspend the decree – which they were entitled

⁴⁶ Hans Boldt, “Article 48 of the Weimar Constitution: its Historical and Political Implications”, in Nicholls *et al.*, pp.79-97, p.95.

⁴⁷ Between January 1920 and December 1924, various presidential decrees were passed, see Achim Kurz, *Demokratische Diktatur? Auslegung und Handhabung des Artikels 48 der Weimarer Verfassung 1919–1925* (Berlin: 1992), p.146.

⁴⁸ Re-formed as a single party by the merger of the MSPD and the less radical elements of the USPD in 1922.

to do, per Article 48 of the Constitution – and it was passed by a four-vote majority. President Hindenburg then issued the following decree on 18 July 1930:

Nachdem der Reichstag heute beschlossen hat, zu verlangen, dass meine auf Grund des Artikels 48 der Reichsverfassung erlassenen Verordnungen vom 16. Juli außer Kraft gesetzt werden, löse ich auf Grund von Artikel 25 der Reichsverfassung den Reichstag auf.⁴⁹

Once the hindering function of the Parliament was removed, Brüning passed his measures in even more drastic form by presidential decree. The executive, as headed by Brüning, was thus largely free from the Parliament and had no real need for its support.⁵⁰ This set a significant precedent, and once Brüning himself was dismissed by Hindenburg on 30 May 1932,⁵¹ the successive Cabinets of Franz von Papen and Kurt von Schleicher – the so-called ‘Presidential Cabinets’ – were made up almost exclusively of his appointees, with almost no members of the Parliament or any pretence of democratic intention. These were entirely legitimate measures according to the letter of the Constitution. The full import of the cumulative effect of the way the Constitution was drafted in this regard and the authoritarian rule it facilitated is most clearly displayed by the pure statistics of parliamentary activity towards the end of the Republic’s short fourteen-year life. As Eberhard Kolb has pointed out:

⁴⁹ Hans Boldt, “Der Artikel 48 der Weimarer Verfassung“, p.299.

⁵⁰ This was the case although the continued confidence of the *Reichstag* depended on the SPD not lending support to any motions of no confidence brought against the government.

⁵¹ Brüning’s term of office from 30 March 1930 to 30 May 1932 made him the longest-serving Chancellor of the Weimar Republic.

Die Zahl der Sitzungstage des Reichstags ging von 94 im Jahr 1930 (davon 67 nach dem Ende der Großen Koalition) über 42 im Jahr 1931 auf nur 13 im Jahr 1932 zurück. Wurden 1930 vom Reichstag noch 98 Gesetze beschlossen, so waren es 1931 lediglich 34 und 1932 gar nur 5. Dagegen stieg die Zahl der vom Reichspräsidenten als Notverordnungen erlassenen Gesetze von 5 im Jahr 1930 über 44 im Jahr 1931 auf 66 im Jahr 1932.⁵²

These events contributed substantially to the rise and appointment of the Nazis, in a sequence of events too detailed to be described here. It should also be noted that these presidential decrees provided a precedent for the Nazis after January 1933, and their widespread use preceding that date likely contributed to the subsequent credulity among the electors in accepting the Nazi measures: “It was the establishment of the constitutional dictatorship that then allowed Hitler, after being appointed chancellor, to establish a Nazi dictatorship.”⁵³

The manner in which the democratic political parties of the Weimar Republic conducted themselves, partly as a consequence of the conflicting form in which the separation of powers had been drafted into the Constitution, while of secondary significance to the parliamentary deadlock outlined above, also requires a brief examination, given the credibility these actions

⁵² Eberhard Kolb, *Die Weimarer Republik* (Munich: 1984), p.128. There is some inconsistency among the sources as to these numbers: Pötzsch-Hefter claims there were 41 *Reichstag* sittings in 1931 and 60 emergency decrees passed in 1932, see Fritz Pötzsch-Hefter, “Vom Staatsleben unter der Weimarer Verfassung III”, *Jahrbuch des öffentlichen Rechts*, 1933/4, vol.21, pp.110 and 127, cited in Boldt, “Article 48 of the Weimar Constitution”, p.94. In a subsequent work, however, Boldt states the figures as 19 laws passed in 1931 and 59 emergency decrees in 1932, see Boldt, “Der Artikel 48 der Weimarer Reichsverfassung”, p.298.

⁵³ Michael H. Bernhard, *Institutions and the Fate of Democracy: Germany and Poland in the Twentieth Century* (Pittsburgh: 2005), p.73.

lent to the abuse heaped on the democratic system by those groups and individuals who rejected it, and the subsequent loss of confidence in the system among the political classes: the title of Edgar Jung's publication deriding the democratic system, *Die Herrschaft der Minderwertigen*,⁵⁴ might seem all too apt.

Carl Schmitt, the legal academic, was the "hervorragendste Vertreter" of the view which characterized "den Parlamentarismus als ein überholtes politisches System" and he contested whether it, "überhaupt noch eine geistige Grundlage besitze."⁵⁵ The apparent inadequacy of the system as it stood and the mention by writers of varying political persuasions of the value of leadership and the German historical precedent for strong government gave new purchase to those groups who had always decried democracy as an 'un-German' form of government – something arising out of the French revolution and altogether foreign to German ideas – a call which came predominantly from the right of the party-political spectrum. Indeed, even those politicians of the right who had been active in the democratic governments of the Republic expressed heated dislike for the entire system, with former *Reichsminister* Martin Schiele of the DNVP writing in 1926:

Wir beklagen es, dass die Weimarer Verfassung, geboren aus geschichtsloser Verkennung unserer staatlichen Bedürfnisse, unserem Volk statt organischen Aufbaus

⁵⁴ Edgar J. Jung, *Die Herrschaft der Minderwertigen: ihr Zerfall und ihre Ablösung durch ein Neues Reich* (Berlin: 1927).

⁵⁵ Sontheimer, *Anti-demokratisches Denken*, p.195.

dürre Dogmen brachte; wir wundern uns nicht, dass sie [. . .] statt eines konstruktiven ein destruktives Werk geworden ist.⁵⁶

However, as Karl Kroeschell has pointed out, it was not only reactionaries who opposed the democracy that had emerged from the debates and struggles of 1918-19: “Darüber darf man freilich nicht vergessen, dass es auch Republikfeindschaft auf der Linken gab.”⁵⁷ Indeed, within the SPD itself, namely from the *Jungsozialisten*, was the shibboleth to be heard, “Republik – das ist nicht viel: Sozialismus ist das Ziel!”⁵⁸ As Sontheimer has so accurately indicated, the complaints made against the democratic system as established in 1919 not only criticised the way in which the State had come to function in practice, but also put forward other notions as to how the polity ought to be structured: “Die negative Funktion des anti-demokratischen Denkens, das *Anti* gegen die herrschende Demokratie, ist ja in aller Regel gekoppelt mit einem *Pro* für einen anders gestalteten Staat.”⁵⁹ With the apparent impracticality of the parliamentary system being displayed regularly in the rise and fall of short-term unstable governments and the prevalence of so many other theories of government circulating in the public fora, by the 1930s it seemed almost inevitable that the system was to be replaced with something else:

⁵⁶ Walther Lambach (ed.) *Politische Praxis* (Berlin: 1926), p.48, quoted in Sontheimer, *Anti-demokratisches Denken*, p.81.

⁵⁷ Karl Kroeschell, *Deutsche Rechtsgeschichte 3 (Seit 1650)* (Opladen: 1989), p.251.

⁵⁸ Cited in Heinrich August Winkler, *Der Weg in die Katastrophe. Arbeiter und Arbeiterbewegung in der Weimarer Republik 1930 bis 1933* (Berlin and Bonn: 1987), p.332.

⁵⁹ Sontheimer, *Anti-demokratisches Denken*, p.14.

Die Liberalen mochten [in der Weimarer Verfassung] noch am ehestens [*sic*] ein Gebilde sehen, das ihrer Vorstellung vom richtigen Staatswesen entsprach; aber sie verloren im Laufe der vierzehn Jahre nicht allein ihre relative politische Bedeutung, die zuletzt fast gleich null war, sondern auch manches von ihrem ersten Glauben an die Richtigkeit ihrer liberalen Prinzipien.⁶⁰

This effect on the manner in which the political parties behaved – a form of behaviour precipitated by the constitutional construction of their role vis-à-vis the President – combined with the actions taken initially in an attempt to react with a strong hand to the economic exigencies of the time, played eventually into the hands of those reactionary forces who wished to install authoritarian government in Germany. As Boldt has pointed out with regard to Article 48: “*Subjektiv* mochte er bis zuletzt als ein gegen die nationalsozialistische Diktatur gerichtetes Mittel verstanden worden sein. *Objektiv* hatte seine Handhabung eben dieser Diktatur die Wege geebnet.”⁶¹ Research into the causes for this state of affairs has implications, not only for a deepening of our understanding of why democratic government in Germany disintegrated in the 1930s, but also for our understanding of the issues involved in drafting a Constitution in a contemporary emerging democracy.

⁶⁰ Sontheimer, *Anti-demokratisches Denken*, p.27.

⁶¹ Boldt, “Der Artikel 48 der Weimarer Reichsverfassung”, p.306.

Chapter Two

The difference between God and the historians consists above all in the fact that God cannot alter the past.

Samuel Butler

Literature Review

This literature review outlines two dominant ideas in the existing scholarship on the liberal drafters of the Weimar Constitution and their conceptions of the Presidency, namely that the groups and individuals who were the driving forces behind the Constitution wanted a non-authoritarian, pluralist-democratic system of government, and that they were unaware of where the Presidential powers could – and did – ultimately lead. The critical analysis which follows the literature review interrogates those two ideas with reference to primary sources such as the proceedings of the National Assembly and the writings of Hugo Preuß and Max Weber.

Scholarly opinion on the drafters' general political outlook is fairly evenly divided, with some authors arguing that they were free of any authoritarian tendency, and other authors suggesting that they harboured profound (if perhaps unconscious) reservations about pluralist democracy. A typical example of the first argument is provided by Bruce B. Frye, who complains that:

Because of the DDP's central part in creating the president's office and because of some isolated remarks of intellectuals close to the DDP, the party has been accused of having an affinity for fascism, of longing for a führer. This is absurd. What the DDP wanted was a strong but democratic leader able to overcome the divisions and weakness of the Reichstag and still responsible to the people.⁶²

It is interesting to note that Frye sees a philosophical continuity between the liberal drafters of the Weimar Constitution and the *Deutsche Staatspartei* (which was formed in July 1930 from a merger of the DDP, which was by that point in terminal decline, and the *Volksnationale Reichsvereinigung*, which was the political arm of the anti-Semitic *Jungdeutsche Orden*), as he writes immediately after the passage quoted about that: "This desire existed after July 1930 as well, when the DStP succeeded the DDP and the crisis of German democracy deepened."⁶³

Elmar M. Hucko also vehemently rejects the idea that the drafters wished for anything other than a pluralist-democratic state:

Critics of the Weimar Constitution have often pointed out that the President occupied the position of Ersatzkaiser or acted as a regent for the Hohenzollern monarchy. This criticism is a travesty of the actual intention of the fathers of the Constitution. Not for one moment did they mourn the Kaiser's departure.⁶⁴

⁶² Bruce B. Frye, *Liberal Democrats in the Weimar Republic. The History of the German Democratic Party and the German State Party* (Carbondale and Edwardsville: 1985), pp.83-84.

⁶³ *Ibid.*, p.84.

⁶⁴ Elmar M. Hucko (ed.), *The Democratic Tradition: Four German Constitutions* (Leamington Spa: 1987), p.55.

This last comment seems particularly overstated given that one of those fathers, Max Weber, was a chthonic nationalist about whom it has been said that, “[n]either as a scholar nor as a political man of action could he really see Germany living up to its potential greatness under a republican regime.”⁶⁵ The conflicting view – and the view with which this thesis will align – is perhaps best represented by Hans Mommsen and Ernst Fraenkel. Thus Mommsen states that the Weimar Constitution has been criticised as being the product of an “authoritarian frame of mind” and admits that this criticism is “not without some justification.”⁶⁶ Similarly, Fraenkel writes: “Die angeblich demokratischste Verfassung der Welt war das Produkt obrigkeitsstaatlichen Denkens.”⁶⁷

The second aspect of the scholarship here analysed – the idea that the liberal drafters of 1919 were unaware of the potential for the powers which they had vested in the President to be used in a quasi-dictatorial manner – has broad support, though it is sometimes asserted in the face of evidence to the contrary. Thus Karl Dietrich Bracher, in *Deutschland zwischen Demokratie und Diktatur*, describes how the USPD criticised the proposed Presidential powers during the debates in the National Assembly, the party’s fear that the Presidency was “eine gefährliche Reminiszenz des wilhelminischen Systems”⁶⁸ and Preuß’s response that,

⁶⁵ Wolfgang J. Mommsen, *Max Weber*, p.287.

⁶⁶ Hans Mommsen, *Rise and Fall*, p.58.

⁶⁷ Ernst Fraenkel, “Die repräsentative und die plebisitäre Komponente im demokratischen Verfassungsstaat“, in his *Deutschland und die westlichen Demokratien* (Stuttgart: 1968), pp.81-119, p.113.

⁶⁸ Bracher, *Deutschland zwischen Demokratie und Diktatur*, p.27.

“das parlamentarische System enthalte starke Garantien gegen jeden Mißbrauch der Staatsgewalt.”⁶⁹ He concludes by writing that

in der endgültigen Fassung wurden alle weiteren Versuche, die präsidiale Gewalt einzuschränken [. . .] abgelehnt, die später so bedeutsame (und verhängnisvolle) Ausnahme “Diktaturgewalt” des Reichspräsidenten (Art. 48) ist in ihrem vollen Gewicht bei diesen Beratungen offenbar nicht erkannt worden.⁷⁰

In his earlier work *Die Auflösung der Weimarer Republik*, Bracher also asserts that Article 48 was designed specifically with someone like Ebert – the President during the Republic’s first turbulent years – in mind, and was only imagined as a tool for the defence of democracy, rather than for the subversion of it:

Dabei war auch diese Einfügung der Ausnahme- und Notverordnungsgewalt des Reichspräsidenten deutlich auf die Gestalt Eberts zugeschnitten und keineswegs als Mittel zur Transzendierung, sondern vielmehr zur ungeschmälernten Erhaltung der verfassungsmäßigen Ordnung in Krisentagen gemeint.⁷¹

Hans Mommsen takes a similar view of the drafters’ conception of the Presidency, notwithstanding his comments (noted above on p.31) about their “authoritarian frame of mind”:

⁶⁹ Ibid.

⁷⁰ Ibid.

⁷¹ Karl Dietrich Bracher, *Die Auflösung der Weimarer Republik: eine Studie zum Problem des Machtverfalls in der Demokratie* 3rd ed. (Villingen: 1960), p.52.

The possibility that the constitutional system could be destroyed by manipulation of the democratic process never occurred to the members of the National Assembly, particularly since protection of the constitution seemed to be secured through exceptional powers, such as the right to declare a state of emergency and to assume special executive power, that were granted to the president.⁷²

This view is paralleled by Kolb, who states that:

Die potentielle Tragweite dieses Artikels 48 erkannte die Parlamentsmehrheit nicht, er war zwischen den Parteien der Regierungskoalition nicht umstritten, ja die ursprüngliche Fassung erfuhr in den Ausschlußberatungen noch eine Verschärfung – trotz eindringlicher Warnung der USPD vor einem derartigen Blankoscheck für den Reichspräsidenten.⁷³

Kolb thus acknowledges that the USPD pointed out the potential for the powers contained in Article 48 to be misused, but maintains that the “potentielle Tragweite” of the Article was unrecognised. It is interesting to note that a few paragraphs later, during a discussion as to how the “Verfassungsväter” conceived the President as an “Ersatzkaiser” of sorts, Kolb indicates one very potent reason why the potential for quasi-dictatorial misuse of the Presidential powers could have been noticed and yet ignored by the bourgeois parties that exercised the most influence over the composition of the Constitution:

Unbeschränkter Parlamentarismus konnte dazu führen, dass eines Tages eine sozialistische Parlamentsmehrheit regieren würde – immerhin waren im Januar 1919

⁷² Hans Mommsen, *Rise and Fall*, p.56.

⁷³ Kolb, *Die Weimarer Republik*, p.19.

die beiden sozialistischen Parteien zusammen nur knapp unter der 50%-Marke geblieben.⁷⁴

David Dyzenhaus's analysis echoes that of Bracher, Hans Mommsen and Kolb. After a detailed exposition of the powers granted by Article 48, the limitations placed upon the exercise of that provision and the position of the President in that regard, he makes a self-contradictory assertion:

However, there was an obvious weakness in these limitations, which was not fully appreciated at the time. The President could get rid of the supervision of the Reichstag over his measures taken in terms of Article 48 by continued use of his authority to dissolve that body.⁷⁵

Again, without placing an emphasis on syntax and word-choice that was not intended by the scholar in question, it would seem incongruous to suggest that a weakness is "obvious" and yet "was not fully appreciated at the time" and thus to attribute a significant lack of political awareness to a National Assembly replete with experienced politicians no less than with jurists, sociologists and economists. Indeed, this view finds support in the work of Winkler, who has commented that the possibility was known to the Assembly members and that it was fear of a Socialist majority – mentioned by Kolb above, but not explicitly acknowledged as a cause – which caused them to draft the powers of the President in the form which they did:

⁷⁴ Ibid.

⁷⁵ Dyzenhaus, *Legality and Legitimacy*, p. 19.

Es war ebendieser Effekt, der die bürgerliche Mehrheit der Nationalversammlung für die direkte Volkswahl des Reichspräsidenten, seine siebenjährige Amtszeit und seine umfassenden Befugnisse im – weitgefaßten – Notstandsfall votieren ließ.⁷⁶

Thus Winkler and, by implication, Kolb are some of only a few scholars – including Lothar Albertin, as will be noted below – who suggest that the liberal drafters were aware of what they were doing in designing the Presidency in this way. In the critical analysis which follows, this thesis re-examines the dominant ideas in the existing scholarship about how the liberal drafters of the Weimar Constitution regarded pluralist democracy in general, and about how they conceived the Presidential powers in particular. With reference to relevant primary sources – the debates which took place in the National Assembly and the contemporary writings of Hugo Preuß and Max Weber – the thesis suggests a more differentiated interpretation of the drafters’ understanding of the Republic and the Presidency. Thus the thesis firstly aligns itself with the view (advanced by scholars such as Hans Mommsen and Fraenkel) that the drafters had substantial reservations about pluralist democracy, and secondly – and perhaps more importantly – the thesis argues that there is far more evidence than scholars have generally acknowledged that the drafters understood what they were doing in creating the position of the President in the way which they did.

⁷⁶ Winkler, *Von der Revolution zur Stabilisierung*, pp.231-232.

Critical Analysis

The first issue to be addressed is the views of the DDP and its members toward authoritarianism in government. The ideas of both Weber and Preuß about the polity in general, and the President's role specifically, are indicative of their respective attitudes toward the Constitution as a whole. Weber was a strong advocate for the role of a powerful President in the unofficial Constitutional Committee, and in the public press, and he predicated his argument around the belief that democracy without strong leadership would not be conducive to effective debate and the cogent advancement of political philosophies: "The *danger* which mass democracy presents to national politics consists principally in the possibility that *emotional* elements will become predominant in politics"⁷⁷ [his emphasis]. Weber had a "deprecatory" view of "the modern masses",⁷⁸ and distrusted any form of government which could lead to the "unregulated rule of the street."⁷⁹ He warned against

⁷⁷ Max Weber, "Parliament and Government in Germany under a New Political Order: Toward a Political Critique of Officialdom and the Party System", in Peter Lassman and Ronald Speirs (eds.), *Weber: Political Writings* (Cambridge: 1994), pp.130-271, p.230; originally published as *Parlament und Regierung im neugeordneten Deutschland. Zur politischen Kritik des Beamtentums und Parteiwesens* (Munich and Leipzig: 1918).

⁷⁸ Andreas Kalyvas, "Charismatic Politics and the Symbolic Foundations of Power in Max Weber", *New German Critique*, Winter 2002, vol.85, pp.67-103, p.94.

⁷⁹ Max Weber, "Suffrage and Democracy in Germany", in Lassman *et al.*, *Weber: Political Writings*, p.124; originally published as "Wahlrecht und Demokratie in Deutschland", in Wilhelm Heile and Walther Schotte (eds.), *Der Deutsche Volksstaat: Schriften zur inneren Politik* (Berlin: 1917).

being misled by “the term ‘democratization’” and any hopes it might cultivate as to the pace of democratic development in post-World War One Europe because

the *demos* itself, in the sense of a shapeless mass, never ‘governs’ larger associations, but rather is governed. What changes is only the way in which the executive leaders are selected and the measures of influence which the *demos*, or better, which social circles from the midst are able to exert upon the content and the direction of administrative activities by means of ‘public opinion.’⁸⁰

These excerpts from Weber’s *Economy and Society*, despite being written sometime before his death in 1920 (the work was published posthumously in 1922), are quite an accurate description of the state of German politics towards the end of the Republic’s life: a non-democratic selection of the executive, with the election of a mere social-representative body in the form of the Parliament. His remarks in both the *Wiesbadener Zeitung* and *Heidelberger Tageblatt* (see above p.17) are evidence of his related argumentation in favour of a centralised presidential role, as distinct from pluralistic parliamentary democracy. There was a need, in his view, for a charismatic leader who would have been trained and gained experience in the conflictual practices of parliaments that operated more as areas and mechanisms of leader-selection rather than as typical representative bodies.⁸¹ Weber, it seemed, had no great confidence in the development of a functional parliamentary democracy in Germany, though writing in 1917 he noted that it was not the absence of an Anglo-Saxon-style two-party system which was the problem:

⁸⁰ Max Weber, *Economy and Society: An Outline of Interpretative Sociology*, translated by Guenther Roth and Claus Wittich (Berkeley: 1978), p.985; originally published as *Wirtschaft und Gesellschaft* (Tübingen: 1922).

⁸¹ Weber, “Parliament and Government”, pp.173-174.

Weit wichtiger ist eine andere Schwierigkeit: parlamentarische Regierung ist nur möglich, wenn die größten Parteien prinzipiell zur Übernahme der verantwortlichen Leitung der Staatsgeschäfte *überhaupt bereit* sind. Und das war freilich bisher bei uns keineswegs der Fall.⁸² [His emphasis]

Weber, as can be deduced from his writings, was not an avowed democrat and perceived many problems inherent in the development of that form of government, which is recognised less within the scholarship on the Weimar Constitution than outside of it. While Frye concedes to this assessment of Weber's priorities to some degree, "His greatest concern – and this was also the DDP's most pressing goal – was to preserve the unity and strength of the Reich",⁸³ the scholarship on Weber's ideas alone, as distinct from his statements on the Weimar Constitution specifically, goes much further: "In the end, he placed his bet on the extraordinary powers of the charismatic politician to break through the dangers plaguing disenchanted mass-democratic societies."⁸⁴ The parliament was conceived as "only important because it was the arena or 'proving ground', which could promote a great and charismatic leader, which in turn was vital for Germany to emerge as a *Machtstaat*."⁸⁵ It is even mentioned that Weber regarded the Republic as a "necessary evil"⁸⁶ which he could bring

⁸² Quoted in Bracher, *Deutschland zwischen Demokratie und Diktatur*, p.35.

⁸³ Frye, *Liberal Democrats*, p.41.

⁸⁴ Kalyvas, "Charismatic Politics", p.68.

⁸⁵ John M. Hobson and Leonard Seabrooke, "Reimagining Weber: Constructing International Society and the International Balance of Power", *European Journal of International Relations*, 2001, vol.7 (no.2), pp.239-274, p.244.

⁸⁶ Ilse Dronberger, *The Political Thought of Max Weber: In Quest of Statesmanship* (New York: 1971), p.210.

himself to serve only with “the ethos of a public servant”⁸⁷ and there are far more overt statements as to the inapplicability of the term ‘democrat’ to Weber:

That Weber’s commitment to democracy was at best instrumental bears emphasis. He had no patience with believers in popular sovereignty or the “will of the people.” In 1908 he told Robert Michels that ‘such expressions were fictitious’ and that if Michels cherished such illusions, he “still had great disillusionments to suffer.”⁸⁸

Weber’s ideas found a parallel in Preuß’s writings and statements on the Presidency, though the latter tended to couch his views in more moderate language. The importance of having a centralised figure of authority in the body politic was just as prevalent in Preuß’s publications on constitutional matters. Writing in January 1919 in the *Reichsanzeiger* in accompaniment to his newly-published constitutional draft he advanced the view, when commenting on the seven-year term of the President when compared with the four-years allowed for Parliament, that a strong centralised Presidency was conducive to inculcating stability in political life:

Dieser Amtstermin selbst wird bei solcher Möglichkeit, in ernsten und wichtigen Fällen auch während seiner Dauer an das Volk appellieren zu können, auf einen längeren Zeitraum zu bemessen sein, um im Amte des Reichspräsidenten ein Element ruhiger Dauer in den staatlichen Organismus einzufügen.⁸⁹

⁸⁷ Attila Chanady, “The Dissolution of the German Democratic Party in 1930”, p.1438.

⁸⁸ Michael J. Smith, *Realist Thought from Weber to Kissinger* (London: 1986), p.39.

⁸⁹ Preuß, “Denkschrift zum Entwurf des allgemeinen Teils der Reichsverfassung vom 3. Januar 1919”, in Preuß, *Staat, Recht und Freiheit*, pp.368-394, p.389. Article first published in *Reichsanzeiger*, 20 January 1919.

The fact of the President's term of office being considerably longer than the Parliament's was a central problem in constitutional construction – causing the former, rather than the latter, to be seen as the focal-point of stability in Germany and German politics – as is pointed out by Kraus,⁹⁰ Bracher⁹¹ and others. While this is cited in the scholarship as a clear problem in the Constitution, the scholars who note the error fail to recognise that this is, in fact, the very role the President was designed to play. The stability which the Presidency was intended to lend the political process required that he be granted various constitutional advantages over Parliament. Preuß advocated a directly and popularly elected Presidency as one such advantage, deriding the alternative of the Parliament appointing the President as “unechten Parlamentarismus.” Thus in the article published in November 1918, on the day Ebert offered him the post of *Staatssekretär des Innern*, Preuß described the importance of establishing stability in the new democratic system and the necessity of the President being elected directly by the people in order to facilitate that aim:

Dies bedingt jedoch nicht die Wahl des Präsidenten durch das Parlament, wie in Frankreich. Im Gegenteil kann man dieses französische System treffend als unechten Parlamentarismus bezeichnen. Der echte Parlamentarismus setzt nämlich zwei einander wesentlich ebenbürtige höchste Staatsorgane voraus; unterscheidet sich jedoch vom Dualismus dadurch, dass sie nicht in unverbundener Gegensätzlichkeit nebeneinanderstehen, sondern dass die parlamentarische Regierung das bewegliche Bindeglied zwischen ihnen bildet. In der parlamentarischen Demokratie, in der alle politische Gewalt vom Volkswillen ausgeht, erhält der Präsident die ebenbürtige

⁹⁰ Kraus, *The Crisis of German Democracy*, p.169.

⁹¹ Bracher, *Deutschland zwischen Demokratie und Diktatur*, p.38.

Stellung neben der vom Volke unmittelbar gewählten Volksvertretung nur, wenn er nicht von dieser selbst, sondern unmittelbar vom Volke gewählt wird.⁹²

He expressed similar views in the specific context of the powers which ought to be granted to the President to facilitate this conception of his important role:

Die Ernennung des Reichskanzlers und in Übereinstimmung mit ihm die der anderen Mitglieder der Reichsregierung ist die wichtigste selbständige Funktion des Reichspräsidenten. Hierin vor allem hat er seine politische Führeigenschaft zu bewähren. Ein aus der Volkswahl hervorgegangener, also im politischen Treiben voraussichtlich erfahrener Führer kann die mannigfaltigen dabei in Betracht kommenden politischen und fachlichen Gesichtspunkte unzweifelhaft sicherer und besser abwägen und zur Entscheidung bringen, als es im Wege unmittelbarer parlamentarischer Wahlen möglich ist.⁹³

Preuß therefore seems to have embodied the prevailing liberal view with regard to the primacy of the Presidency, in which the holder of that office was the real leader of the State and intended to be the individual best equipped to deal with the exigencies of political life, which in drafting terms meant that he was to be granted various advantages over parliament. The DDP did not imagine that the President should be hampered by the will of the masses, but rather that he should school the masses in his role as leader. In the National Assembly the DDP's *Abgeordneter* Dr Bruno Ablass stated:

⁹² Preuß, "Denkschrift zum Entwurf", *Staat, Recht und Freiheit*, p.387.

⁹³ *Ibid.*, p.388.

Ganz gewiss ist auch das meine Auffassung [. . .], dass Sichbekennen zur Demokratie vor allem heißt ein Bekenntnis dahin ablegen, dass wir Führer des Volkes brauchen, die das Volk leiten und lenken aus dem Bewusstsein ihrer Pflicht dem Volke gegenüber. Das ist es, was wir wünschen und wollen; nicht dass die Masse der Führer ist, sondern dass der Abgeordnete, der Erwählte, derjenige Führer ist, der nicht sklavisch dasjenige ausführt, was ihm als Befehl der Masse vorgetragen wird, sondern der ein Leiter, ein Lenker der Masse ist, ein Erzieher des Volkes. So denken wir uns die Stellung eines Abgeordneten, eines Führers und auch eines Präsidenten.⁹⁴

Preuß was also an advocate of the idea that an executive must be given freedom to act in the manner it sees fit – and not be hampered by onerous restrictions on the exercise of power – and the related notion that the Parliament should be a training/selection ground for the individuals who were to make up that executive, rather than the central legislative body:

Es ist vielleicht die größte Gefahr, die einer Demokratie erwachsen kann, wenn durch allzu gehäufte Kontrollmaßregeln die demokratische Regierung allzusehr am Regieren behindert wird. Der Parlamentarismus soll die Schule, die Auslese der demokratischen Führer sein.⁹⁵

This belief in the need for a training and selection process for future leaders was based on the reservations Preuß and his colleagues had about the political maturity of the German people. For example he questioned his compatriots' readiness for a truly democratic government in the public press:

⁹⁴ Heilfron, *Die Deutsche Nationalversammlung*, vol.5, p.3196.

⁹⁵ Preuß, "Das Verfassungswerk von Weimar", in Preuß, *Staat, Recht und Freiheit*, pp.421-428, p.426. Article first published in *Das Neue Reich*, 10 August 1919.

Doch auch für die, die seit langem im geistigen Kampfe gegen das Obrigkeitssystem standen, bedeutet die fast unvermittelte Schnelligkeit des Umschwunges zu der von ihnen stets erstrebten Entwicklung eine sehr ernste Gefährdung. Sie verleitet unwillkürlich zu der Vorstellung, das [*sic*] schon geschehen sei, womit zu beginnen doch erst die Möglichkeit, aber auch die zwingendste Notwendigkeit gegeben ist. Sie legt es nur allzu nahe, die Ersatzmittel, zu denen im Drange des Augenblicks gegriffen werden musste, mit dem echten Material zu verwechseln, aus dem der neue Bau nur in langer, zäher und energischster Arbeit errichtet werden kann. Einst bestätigte Erfahrung den Satz: man kann einen Liberalen zum Minister machen, hat aber damit noch keinen liberalen Minister. Jetzt gilt noch sicherer: man kann Parlamentarier und Demokraten haufenweise zu Ministern und Staatssekretären machen, hat aber damit noch keinen Parlamentarismus und keine Demokratie.⁹⁶

As this quotation suggests, the conception of the position of President which was advanced by the liberals in their pre-revolutionary scholarship did not change after the revolution and during the drafting of the Constitution; indeed, the office of the Presidency became even more central in their minds as a bulwark against the possible threats which were a cause for so much contemporary anxiety during the November Revolution. It is possible that the creation of a powerful President was seen as necessary to protect against these threats and, in

⁹⁶ Preuß, "Die Improvisierung des Parlamentarismus", in Preuß, *Staat, Recht und Freiheit*, pp.361-364, p.363.

Article first published in *Norddeutsche Allgemeine Zeitung*, 26 October 1918. Frye argues that the widespread acceptance of the liberals' ideas about the new democratic State was aided by their access to the press, where their articles "were absorbed by opinion molders— editors, professors, teachers and pastors." See Frye, *Liberal Democrats*, p.43.

order to enable the office-holder to fulfill this role, it was considered unwise to hamper the exercise of these powers, lest that lead to a crippling of his protective role.

Preuß seemed to view the development of the new constitutional order as a stark choice between bloody revolution and democratic reform. He believed that the German people had experienced a campaign against the concept of democracy throughout their lives and that they had to an extent accepted this argument, which made the establishment of a truly democratic State in contemporary Germany difficult, especially in the absence of broad-based community consensus for the change. But he considered the alternative worse:

Wie haben uns die Reaktionäre die Entwicklung in der Art der “westlichen Demokratien” zu vereiteln gesucht; und nicht nur Liberale, auch Sozialdemokraten sind ihnen auf den Leim gegangen. Wollen wir jetzt statt dessen den Bolschewismus nachahmen, die negative Platte des russischen Zarismus? In epigrammatischer Zuspitzung, doch im Kerne treffend, schreibt eben jetzt Albert Thomas in der “Humanité”: “Entweder Wilson oder Lenin, entweder die aus der französischen Revolution hervorgegangene und von der amerikanischen Republik weiter entwickelte Demokratie oder die brutalen Formen des russischen Fanatismus. Man muss wählen.”⁹⁷

The bourgeoisie’s fear about the internal situation in Germany and the possibility of a Russian-style revolution dramatically influenced their thinking when drafting the Constitution in early 1919. Albertin notes, the widespread civil unrest led to “a remarkable

⁹⁷ Preuß, “Denkschrift zum Entwurf”, *Staat, Recht und Freiheit*, p.367.

pre-occupation with the need to strengthen the executive which marked the first decisions of the National Assembly.”⁹⁸ He goes on to say:

On the day prior to the first plenary session one DDP deputy declared frankly that, “the most important thing was to have a disciplined army.” This was how many looked at the priorities facing Germany [. . .]. The laws concerning the preliminary Reich executive power (February 10, 1919) and the formation of a provisional Reichswehr (March 6, 1919) were ratified with extreme haste.⁹⁹

The arguments propounded in this section of the thesis, namely that the drafters desired – with varying degrees of passion – for the Presidency to represent a central authority with the power to act in the face of threats to the State, and that the parliament was not designed to be a governing body, so much as a socially-representative one, therefore diverge from the interpretations of scholars such as Frye and Hucko (which are discussed above on pp.29-31). Rather, the thesis is aligned with the interpretation of Fraenkel and Albertin. Fraenkel writes that:

Im Denken der Väter der Weimarer Verfassung spukt noch die Vorstellung, dass das Oberhaupt der Exekutive dazu berufen sei, das Volksganze zu symbolisieren und das Gesamtinteresse wahrzunehmen. Dank ihres Unverständnisses für die repräsentativen Aufgaben eines Parlaments schufen sie eine plebiszitär-autoritäre Verfassung. Ein Volk, das seinem Parlament nicht die Fähigkeit zur Repräsentation zutraut, leidet an

⁹⁸ Lothar Albertin, “German Liberalism and the foundation of the Weimar Republic: a missed opportunity?”, in Nicholls *et al.*, pp. 29-46, p.40.

⁹⁹ *Ibid.*

einem demokratischen Minderwertigkeitskomplex. Die angeblich demokratischste Verfassung der Welt war das Produkt obrigkeitsstaatlichen Denkens.¹⁰⁰

Similarly, Albertin concludes that:

If one follows the statements made by the Democrats, the role of Parliament was merely to support the government rather than to control or guide it. Parliament was to help in the selection and training of leaders and to give the liberal ideal of the individual personality, acting within a representative mandate, a new and belated lease of life. And possibly it could even serve as a platform for new concepts as had been sketched out in Max Weber's typology of a plebiscitarian "Führer" democracy. Under the circumstances it was not surprising that the position of the Reich President was interpreted in an authoritarian fashion.¹⁰¹

On the basis of the primary sources examined above, it could perhaps be suggested that the political state of affairs which eventuated toward the end of the Republic was the one originally intended by the liberal drafters in 1919: a powerful President elected by the people and a Parliament which was a social-representative body. The opinions of Weber and Preuß reflected those of the liberal bourgeois as represented by the DDP and are cited here because they were among the most productive and widely published of their contemporary intellectual peers; and Preuß in particular held *the* central role in the drafting process.

The second issue to be addressed is the evidence that the liberals were aware, or at the very least could not have remained ignorant in the face of comments and arguments from

¹⁰⁰ Fraenkel, "Die repräsentative und die plebiszitäre Komponente", p.113.

¹⁰¹ Albertin, "German Liberalism", p.40.

others, that the powers of the President as enumerated in the Constitution had inherent authoritarian potential. There is considerable evidence that such comments and arguments were advanced, and that they were discounted by the DDP, in the proceedings of the National Assembly. Upon examining the draft constitution *Abgeordneter* Hermann Molkenbuhr (MSPD) told the Assembly that he, “[fand] ziemlich alles’ wieder [. . .], ‘was die alte Verfassung an reaktionären Bestimmungen besessen’ habe.”¹⁰² The continuity with previous German Constitutions, particularly with respect to provisions regulating the use of executive power during extraordinary situations, was pointed out by Dr Oskar Cohn of the USPD, “der Verfassungsexperte der USPD.”¹⁰³ When the debate turned to Article 48 he called the Assembly’s attention to the fact that the provision replicated reactionary clauses in previous Constitutions:

Geehrte Versammlung! Die Bücher, die ich hier vor mir habe, sollen Sie nicht erschrecken; sie sind lediglich dazu bestimmt, Ihnen den Nachweis zu führen, dass der Art. 49, wie er hier vorgeschlagen ist, uns in den Rechtszustand zurückführen soll, der vor dem Jahre 1848 in Preußen bestanden hat.¹⁰⁴

Subsequent debates about Parliamentary oversight of the President’s exercise of his powers under Article 48 offer a particularly interesting insight into the drafters’ expectations of those powers. The bourgeois majority actually *extended* the powers of the executive, despite the mentioned warnings from the USPD’s Dr Cohn. Up until July 30, the draft Constitution

¹⁰² Quoted in Winkler, *Von der Revolution zur Stabilisierung*, p.229.

¹⁰³ *Ibid.*, p.232.

¹⁰⁴ Heilfron, *Die Deutsche Nationalversammlung*, vol.5, p.3239. What Cohn here refers to as Article 49 became Article 48 of the Weimar Constitution.

required that the measures taken under Article 48 have the approval of the Parliament; the DDP requested that this be changed to require that the parliament only be notified, against the opposition of the two socialist parties who pointed out the dangers to which such a change could lead, saying that a President who knows he does not need the approval of the Parliament will be more inclined to act too quickly, too harshly and altogether without reflection as to where the measures could lead – in the words of *Abgeordneter* Katzenstein (MSPD), “Es ist besser, es wird vorher geprüft. Es ist besser, der Reichspräsident weiß vorher, dass er nachher die Genehmigung haben muss.”¹⁰⁵ By contrast the DDP position was to allow the President as much freedom as possible, as put by Dr Haas:

Mit unserem Abänderungsantrag auf Nr. 703 erstreben wir zunächst eine formelle Erleichterung für den Reichspräsidenten bei Erklärung des Belagerungszustandes [. . .]. Dann haben wir gegen die jetzige Fassung das starke Bedenken, das jedesmal, wenn der Belagerungszustand erklärt wird, nachträglich der Reichstag seine Genehmigung zu erteilen hat. Das würde bedeuten, dass, wenn in irgend einem Orte in Deutschland Unruhen entstehen und der Belagerungszustand notwendig wird, eine Verhandlung im Reichstag stattfinden muss. Das wäre doch unzweckmäßig. Wir sind der Meinung, dass der Reichspräsident seine Anordnungen lediglich dem Reichstag, und zwar zu Händen des Präsidenten des Reichstags, mitzuteilen hat.¹⁰⁶

During this debate as to how onerous the restrictions to be placed upon the use of Article 48 should be, the DDP was as one in their opposition to the suggestion that the measures should

¹⁰⁵ *Ibid.*, p.3228.

¹⁰⁶ Heilfron, *Die Deutsche Nationalversammlung*, vol.7, p.370.

require the approval of the Parliament, rather than that body simply having to be notified of their implementation. *Abgeordneter* Koch of the DDP said in no uncertain terms:

Wenn wir überhaupt dazu kommen wollen, unsere Demokratie lebensfähig zu erhalten, müssen wir dafür sorgen, dass sie marschieren kann, und dürfen die von uns gewählten Führer nicht bei jedem Schritt, den sie unternehmen wollen, noch drei bis fünfmal mit Beratungen und Beschlußfassungen aufhalten. (Zustimmung bei den Deutschen Demokraten).¹⁰⁷

Therefore, as few restrictions as possible were placed on the exercise of executive authority to fulfill this aim; to allow “democracy” to “march.” There may have been legitimate concerns about the ability of an emergency presidential government to govern if too many limitations were imposed on it, but in the face of the arguments presented by the other members of the National Assembly indicating the potential for abuse of these powers, usually the USPD, it cannot be posited without fear of contradiction that the liberal drafters were unaware of that potential. It can, of course, be posited – and indeed *is* posited in this thesis – that the liberal drafters *were* aware of the problems and simply accepted them.

Further to that, the MSPD was as disturbed by the violent upheaval the country had experienced – and was experiencing – as the bourgeois parties of the National Assembly and was equally in favour of strengthening the executive powers in order to prevent any future activities which could threaten the State, though they pointed out the dangers which could possibly arise as a result. When arguing in favour of Article 48 – while there was disagreement amongst the government parties as to the details concerning the Article and the manner in which it interacted with other aspects of the Constitution, its ‘necessity’ was not in

¹⁰⁷ Heilfron, *Die Deutsche Nationalversammlung*, vol.5, p.3229.

question – *Abgeordneter* Katzenstein (MSPD) used the analogy of the burning building to make his party's point:

Es ist nun einmal nicht zu vermeiden: wenn ein Brand gelöscht wird, dann entsteht Wasserschaden, und es gibt sogar Fälle, wo der Wasserschaden größer wird als der Brandschaden gewesen ist. Aber wenn die Feuerwehr nicht eingreift, dann wird der Brand unendlich größer, und die Brandstifter schreien über die Feuerwehr. Das kann uns also nicht abschrecken.¹⁰⁸

This quote, selected as representative of the view of the MSPD as a party, is evidence of the vigorous discussion which took place with the National Assembly regarding Article 48 and the potential damage it could cause, and indicates the likelihood that the liberals would have been made aware by the comments and debate going on around them of the potential inherent in the Article. During this reading of the constitutional draft in the National Assembly, the USPD's Cohn was especially critical of the anomalous manner in which the bourgeois parties talked of democracy while insisting on instituting such dubiously democratic provisions as Article 48:

Wollen Sie das, dann haben Sie Verantwortung dafür zu tragen. Nur machen Sie sich selbst nichts weis und versuchen Sie nicht, die Öffentlichkeit darüber zu täuschen, als ob Sie, wenn Sie einen solchen Art. 49 annehmen, Sie noch irgendetwas mit Demokratie zu tun hätten. (Sehr gut! bei den Unabhängigen Sozialdemokraten) Wenn dieser Art. 49 Gesetz geworden ist, dann wird die rückschauende Betrachtung einmal feststellen: Die Nationalversammlung, der Gaul, ist ausgezogen, das Königreich der

¹⁰⁸ *Ibid.*, p.3253.

Demokratie zu gewinnen, und er ist heimgekehrt mit dem Esel dieser Verfassung. (Sehr gut! und Beifall bei den Unabhängigen Sozialdemokraten).¹⁰⁹

The apparent wish of the bourgeois majority in the National Assembly to allow the President as much freedom to respond to the political needs of the moment influenced their voting patterns regarding the President's powers to a remarkable degree. When it came to a debate of the constitutional draft on Article 25 and the length of time the Parliament was able to be dissolved for before new elections were to be held, the USPD and MSPD were in agreement in suggesting that the time should be reduced from sixty to thirty days, given the importance they generally placed on the parliamentary body as a whole. The MSPD pointed out that, "Die Aufstellung der Kandidaten ist gerade bei dem System der Verhältniswahl eine viel weniger entscheidende Frage als bei dem Einerwahlssystem, das wir früher gehabt haben."¹¹⁰ MSPD *Abgeordneter* Katzenstein also pointed out the danger to which such an extended period of time with only a President in control of the government could lead:

Dass aber ein Zustand unerträglich ist, bei dem im Falle der Auflösung, also der allerhöchsten politischen Spannung, vielleicht bei einem schweren Konflikt zwischen dem Reichspräsidenten und dem Reichstag, der Reichstag zwei Monate ausgeschaltet sein soll, scheint mir doch klar zu sein. Man muss die Frist, in der der Reichstag unter solchen Umständen nicht versammelt ist, auf eine möglichst kurze Zeit beschränken.¹¹¹

¹⁰⁹ Ibid., p.3246.

¹¹⁰ Ibid., p.3127.

¹¹¹ Ibid., pp.3126-3127.

The motion failed due to opposition from the bourgeois parties, including those in government. This opposition was ostensibly due to the technical difficulties which would arise by having only thirty days to prepare the electoral lists of candidates, with Preuß responding to the proposition put forward by the USPD's *Abgeordneter* Agnes by arguing that:

Alle Wahltechniker werden bestätigen, dass es namentlich beim Proportionswahlrecht innerhalb dieses Zeitraumes, der durch den Antrag Agnes gefordert wird, unmöglich sein wird, die notwendigen Arbeiten ordnungsmäßig durchzuführen. Ich bitte, es bei der Frist des Entwurfs zu belassen.¹¹²

The DDP's *Abgeordneter* Koch made a different, though related, argument to that put forward by Preuß, which makes it clear that it is not purely technical reasons which account for their reluctance to shorten the period of time before which new elections are to be called. It ought to be recalled that the MSPD at this time was a highly organized party-political organization, especially compared with the DDP:

Bei der Größe der gegenwärtigen Wahlbezirke ist die Aufstellung der Kandidatenliste eine Arbeit, die, wenn die Wähler nicht vollkommen in die Hand der Parteileitung geraten sollen, immerhin einen nicht unerheblichen Zeitaufwand erfordert. (Sehr richtig! bei den Deutschen Demokraten.)¹¹³

Thus party-political concerns on the part of the bourgeois parties – the DNVP also spoke out against the motion, with Dr von Delbrück stating that he considered it, “wirklich für

¹¹² Ibid., p.3126.

¹¹³ Ibid., p.3127.

ausgeschlossen, dass in 30 Tagen” the “komplizierte Aufstellung des Wahlapparats”¹¹⁴ could take place – and the possibility of widespread success on the part of the socialist parties in any future election played a role in their determination of the length of time for which the parliament could be dissolved. But even if they were motivated by such political concerns in responding to the motion in the way they did, the central point is that they *had* to respond to a debate which discussed the potential dangers of allowing the longer time-frame to stand, and thus it cannot be claimed that they were unaware of these dangers.

There is also evidence in the proceedings of the National Assembly that the bourgeois parties, in keeping with their conceptions of the Presidency and the place of Parliament as primarily a social-representative body, intended the selection of cabinet members to be in no way restricted to those parties which held the majority in the parliament. When debating Article 53, Dr Heinze of the DVP suggested that the President should have absolute discretion as to the selection and dismissal of members of the cabinet,¹¹⁵ and Preuß answered the suggestion in the following manner:

Ich muss Wert auf die Feststellung legen, dass die Fassung des Entwurfs in keiner Weise den höchst gesunden und richtigen Grundsätzen, die der Herr Abgeordnete Dr. Heinze eben ausgesprochen hat, entgegensteht. Genau so ist es von der Verfassung gedacht.¹¹⁶

¹¹⁴ Loc. cit.

¹¹⁵ Ibid., p.3267.

¹¹⁶ Loc. cit.

Thus the drafters of the Constitution were not only *aware* of where the powers granted to the President with regard to the selection of the Cabinet and Chancellor could lead – with the President having the ultimate discretion to select, essentially, whomever he thought fit – they *intended* these consequences on some level. It was not only the bourgeois parties which endeavored to facilitate this form of selection process: Dr Quark (MSPD), on behalf of his party, wholeheartedly agreed with the sentiments expressed: “Wir sind ebenfalls der Meinung, dass die weiteste Auswahl unter den Männern des Landes gegeben sein soll.”¹¹⁷

Although the USPD representatives repeatedly called upon the National Assembly to restrict the power of the President and the manner in which he could exercise it, they were frequently ridiculed by the bourgeois members – with Preuß being no exception. Apart from his often exasperated response to suggestions put forward by other members of the Assembly during the third reading of the draft: “Die Frage ist von uns im Verfassungsausschuß sehr ausführlich erörtert worden”,¹¹⁸ the disdain which the bourgeois majority held for the Socialist members of the Assembly – particularly the USPD – is startling. The DDP often dismissed all the latter’s warnings about the potential dangers of constructing the powers of the President in the way that the liberals insisted by arguing that the Independent Socialists had themselves only a short time before the Assembly was elected acted in the dictatorial manner which they were warning against. Preuß himself was one of chief proponents of this line of attack:

Ich weiß nicht, ob, wenn Herr Dr. Cohn eine Verfassung ganz nach seinem Sinn machen könnte, er Bestimmungen dieser Art entbehren könnte. (Sehr gut! bei den

¹¹⁷ Ibid., p.3269.

¹¹⁸ Ibid., p.3126.

Deutschen Demokraten.) In der Praxis haben jedenfalls ihm politisch näher als uns stehende Kreise weder in Bremen noch in München und anderen Orten ohne Belagerungszustand regieren können. (Lebhafte Zustimmung rechts, im Zentrum und links. – Unruhe bei den Unabhängigen Sozialdemokraten.) Sie haben sogar mit einem Belagerungszustand regiert, zu dessen Härten man auf Grund dieser Bestimmungen niemals fortschreiten wird [. . .]. Hoffentlich vereinigen sich die Freunde des Herrn Dr. Cohn mit uns darin, Zustände herbeizuführen, die den Belagerungszustand überhaupt als überflüssig erscheinen lassen. (Beifall rechts, im Zentrum und bei den Deutschen Demokraten. – Zurufe bei den Unabhängigen Demokraten.)¹¹⁹

Preuß thus acknowledged that the USPD had ruled in a dictatorial way through similar provisions, but argued that a similar possibility for abuse did not exist in the powers granted to the President in the Weimar Constitution, because, “die Anordnungen müssen außer Kraft treten, wenn es der Reichstag beschließt.”¹²⁰ This is despite the fact that the President was granted the express power to dissolve that body on his authority alone: a fact of which Preuß cannot have been unaware, given the wide-ranging debates which had taken place in the preceding days (see above pp.47-52, 54); indeed, he wrote the power into the draft initially. Similar arguments were advanced for ignoring comments by the USPD about the potential for individual rights – specifically with regard to privacy of mail, phone and telegraph communication – to be abused under Article 48, with Dr Haas (DDP) asking *Abgeordneter* Cohn, “dass er doch bei seinen Freunden, wenn sie wieder einmal in irgendeiner Stadt die Macht in die Hand nehmen, dafür sorgt, dass dann das Telephon- und Telegraphengeheimnis

¹¹⁹ Ibid., pp.3246-3247.

¹²⁰ Ibid., p3247.

gewahrt wird”, mentioning that these rights had been abused by the USPD in Mannheim once they had power “so ein klein wenig in der Hand.”¹²¹ The ridicule to which the Socialists – the USPD in particular – were subjected extended also to the public press, where they were lampooned as essentially untrustworthy: a central reason for their being ignored by their fellow Assembly members of a liberal persuasion. A witty example of this treatment can be found in the DVP-affiliated *Tägliche Rundschau* of 11 February 1919, where the concerns of the USPD vis-à-vis the powers of the President were derided:

Aber Eberts ehemdem Intime bei den Unabhängigen, die ihn Friedrich den Unüberwindlichen nennen, behaupten, sein Sitzfleisch sei das Dauerhafteste an ihm. Wo er einmal sitze, da gebe es gleich eine Dynastie. Daher auch das verzweifelte Bestreben des verfassunggebenden Nationalversammlungsmitgliedes Cohn, an Stelle eines einzigen Präsidenten einen Fünf-Männer-Ausschuß zu setzen. Da könnte die Reichsgewalt doch wenigstens reihum gehen. Nach dem ABC natürlich. Und da käme Cohns C vor dem E unseres Ebert.¹²²

Despite being the butt of so many pointed comments, Dr Cohn was indefatigable in warning that the bourgeois parties were creating an overly powerful President. In responding to a particularly sarcastic barb from Preuß, which had implied that his statements of the preceding days had been contradictory, he gave a prescient summation of the situation as it stood in the Assembly:

¹²¹ Ibid., p.3249.

¹²² Reproduced in “A”, “Friedrich der Vorläufige”, *Friedrich der Vorläufige, die Zietz und die Anderen: Die Weimarer Nationalversammlung 1919 – Februar/August 1919* (Berlin: 1919), pp.29-32, p.30.

Dem Herrn Vertreter des Reichsministeriums Dr. Preuß sind für die Erreichung des Zweckes, der ihm und mir gemeinsam ist, alle Mittel recht, auch die Mittel der unkontrollierten Gewalt, und ich bin gegen diese Mittel. (Bravo! bei den Unabhängigen Sozialdemokraten).¹²³

During a debate about the putative Article 164, which was to prohibit members of the ex-imperial houses of Germany from holding the position of President either at all, for two generations, or for fifteen years, the majority of the National Assembly discounted the possibility of any coup d'état from the right. The debate shows how the DDP were made aware of the problems and dangers which could result from allowing such an individual to occupy the role of President and their summary rejection of these arguments. They argued against the inclusion of the Article, as put forward forcefully by *Abgeordneter* Ruschke:

Wenn nur die Befürchtung auftaucht, die deutschen Fürsten könnten in absehbarer Zeit durch die Präsidentschaftswahl sich wiederum eine Position erringen, so teilen wir diese Befürchtung nicht. Wir haben das Vertrauen zum deutschen Volke, nachdem die republikanische Staatsform da ist, dass sie sich auch festigen wird, und wir sehen in den Anträgen der Sozialdemokraten und der Unabhängigen tatsächlich ein Angstprodukt. (Oho! bei den Sozialdemokraten.) Wir teilen diese Angst nicht, sondern haben das Vertrauen zum deutschen Volke, dass es keine Dummheiten machen wird [. . .]. Wir werden infolgedessen den Art. 164 ablehnen und ebenso den Antrag der Unabhängigen Sozialdemokraten. (Bravo! bei den Deutschen Demokraten.)¹²⁴

¹²³ Heilfron, *Die Deutsche Nationalversammlung*, vol.5, p.3231.

¹²⁴ Heilfron, *Die Deutsche Nationalversammlung*, vol.7, pp.33-34.

This position was taken by the liberals on the grounds that the choice of candidates able to be offered to the people of Germany for election to the position of President should not be restricted: if the German people chose to elect a member of an ex-imperial house, that was their prerogative: “da [der Präsident] aber durch das gesamte Volk gewählt wird und dieses souverän ist, darf die Verfassung das Volk in seiner Wahl nicht bevormunden.”¹²⁵ These arguments were advanced against the background of the MSPD pointing out the negative experiences of other newly-formed democracies in not including such a clause, for example in the words of *Abgeordneter* Fischer:

Weiter dürfen wir auch nicht vergessen, dass in der Verfassung eine Bestimmung fehlt, die Frankreich aus bitterer Erfahrung heraus in seine Verfassung aufgenommen hat, nämlich bei Bestimmung:

Die Mitglieder der Familien, die in Frankreich regiert haben, sind für die Präsidentschaft der Republik nicht wählbar. (Sehr gut! bei den Sozialdemokraten.)

Ich glaube, es dürfte gar nicht unangebracht sein, zumal bei der großen Zahl solcher Bewerber um einen solchen Posten, diese Bestimmung auch in die Verfassung der deutschen Republik aufzunehmen. (Lebhafte Zustimmung bei den Sozialdemokraten.)¹²⁶

Despite the fact that this provision excluding such aristocrats from the post of President was not finally included in the document, the very existence of the debate shows that the

¹²⁵ *Abgeordneter* Ruschke quoting from a speech by Conrad Haußmann (DDP) in the Constitutional Committee cited in *ibid.*, p.33.

¹²⁶ Heilfron, *Die Deutsche Nationalversammlung*, vol.2, p.925.

individuals who drafted, discussed and finally voted on the Constitution were aware – and that those who were not aware were informed by the other members of the National Assembly – of the potential for the person occupying the position of President to do irreparable harm, if they so chose, to the effectiveness of democratic system in a nation with such a limited experience of that form of government. Dr Cohn, even made a prophetic statement regarding Article 48, in saying that one could only imagine what would happen, “wenn [. . .] ein Trabant der Hohenzollern, vielleicht ein General, an der Spitze des Reichs oder des Reichswehrministeriums steht.”¹²⁷ Yet Preuß in reply continued to discount any need for the powers to be constrained, largely because he thought it necessary to enable the government of the day to deal with problems expeditiously:

Meine Herren, der Belagerungszustand ist ein unerwünschter Zustand (sehr richtig!), ein in jedem Falle unerwünschter Zustand; aber er muss doch gerade dem Zugreifen der Behörden [. . .] einen gewissen Spielraum in Einzelheiten verschaffen.¹²⁸

Given the evidence taken from the primary sources cited above, the proposition put forward by the majority of scholars that it “never occurred to the members of the National Assembly”¹²⁹ that the powers granted to the President could be a detriment to the democratic process, and that the potential for these powers to be misused was “nicht erkannt worden”,¹³⁰ seems questionable. On the contrary, there seems to be considerable evidence to

¹²⁷ Heilfron, *Die Deutsche Nationalversammlung*, vol.5, p.3242.

¹²⁸ *Ibid.*, p.3247.

¹²⁹ Hans Mommsen, *Rise and Fall*, p.56.

¹³⁰ *Ibid.*

support the minority view of the literature. At the very least, given the wide-ranging arguments of various members of the Assembly, they could not have remained ignorant of the idea, even if they thought it was propounded by people who were not to be trusted, or that the Constitution contained sufficient safeguards to prevent abuse. As Winkler has pointed out:

Die Furcht vor dem “Parlaments-Absolutismus” hatte einen konkreten sozialen Hintergrund: Eine sozialistische Mehrheit in der Volksvertretung lag 1918/19 durchaus im Bereich des Vorstellbaren. Von einem Reichspräsidenten, der sein Amt einer Volkswahl verdankte, konnte man sich dagegen eine vergleichsweise konservativere Politik erhoffen. Es war ebendieser Effekt, der die bürgerliche Mehrheit der Nationalversammlung für die direkte Volkswahl des Reichspräsidenten, seine siebenjährige Amtszeit und seine umfassenden Befugnisse im – weitgefaßten – Notstandsfall votieren ließ.¹³¹

Whether the USPD’s warnings concerning the abuse of the presidential powers or the more favorably inclined comments of the MSPD – which nonetheless made reference to the possible damage that might be caused by use of the powers – when taken as a whole, the sum of the comments and arguments made would seem to indicate that the liberals would not have been able to sit in the National Assembly in Weimar and not be made aware of the possibilities for the powers granted to the President to cause harm – the notoriously poor acoustics in the chamber notwithstanding.

¹³¹ Winkler, *Von der Revolution zur Stabilisierung*, pp.231-232.

Conclusions

The extent to which the majority view – that the drafters of the Weimar Constitution were unaware of where the presidential powers could lead – has become entrenched in the literature is suggested by an academic work which, while not focused exclusively on the constitutional practices of Weimar Germany, makes reference to them. Writing in the *Yale Law Review*, Lindseth describes the drafters’ work in terms of what seems, by the time of publication in 2004, to be the well-established understanding:

[P]erhaps more famously, Article 48 gave the President an initially overlooked but extremely important set of emergency powers that could be invoked in situations “[w]here public security and order [were] seriously disturbed or endangered.”¹³²

The words “initially overlooked” are footnoted to a secondary source by Peter C. Caldwell,¹³³ who states that Article 48 was viewed “merely as a carryover from the 1871 Imperial Constitution and the 1850 Prussian Constitution.”¹³⁴ But Lindseth further notes that Caldwell himself cites secondary sources by Willibalt Apelt¹³⁵ and Harlow James Heneman.¹³⁶ Thus this view of Article 48 has been transmitted through a series of secondary sources which were

¹³² Lindseth, “The Paradox of Parliamentary Supremacy”, p.1362.

¹³³ Peter C. Caldwell, *Popular Sovereignty and the Crisis of German Constitutional Law: the Theory and Practice of Weimar Constitutionalism* (Durham, NC: 1997).

¹³⁴ *Ibid.*, p.67.

¹³⁵ Willibalt Apelt, *Geschichte der Weimarer Verfassung* (Munich: 1946).

¹³⁶ Harlow James Heneman, *The Growth of Executive Power in Germany: a Study of the German Presidency* (Minneapolis: 1934).

written well after 1919 and after the collapse of the democratic system in Germany had occurred. Scepticism about such transmission underlies the methodology used throughout this thesis and its emphasis on the evidence of primary sources when comparing the various views in the literature.

This thesis has argued that the drafters of the Weimar Constitution had some measure of authoritarian tendencies in their ideas on government, even if these ideas were not recognised by the individuals who held them as necessarily authoritarian in nature. The conception of the State held by the liberal drafters and their understanding of the roles the various political bodies had to play, namely the Parliament and President, were expressed in the Weimar Constitution and there embodied these authoritarian ideas. This conclusion aligns with the scholarship exemplified by Hans Mommsen and Ernst Fraenkel.

This thesis has also argued that it would not have been possible for the same liberal drafters to have been unaware of the inherent possibilities of the powers granted to the President to be used in a quasi-dictatorial manner, given the extensive and numerous debates which were held on just these possibilities within the National Assembly. This conclusion aligns with the minority view in the scholarship as exemplified by Albertin, Fraenkel and Winkler. The majority view in the field of research is that the individuals and groups who most influenced the constitutional drafting process were ignorant of the authoritarian possibilities inherent in Article 48 and the powers of the President. This conclusion is sometimes arrived at in the absence of substantive evidence being supplied to support the supposition and, in several cases, is followed by evidence suggesting the contrary: that the National Assembly as a whole and the various committee members as individuals were aware – and if not, were *made* aware by the debates and arguments of others – of where such provisions could lead. To posit these possibilities is not to completely discount the possibility that some among them

believed the governmental form which they had constructed contained enough checks to balance that power: but it certainly contradicts any argument asserting that they were not aware of its nascent possibilities. It seems therefore justified to suggest that a more nuanced approach is needed within the scholarship in the area, which does not discount the possibility out of hand that the drafters of the Constitution were either made aware of, knew but considered justified, or intended the authoritarian consequences of the document they had created. While it is usually true that, what we look for we tend to find, it is nonetheless able to be asserted, with credible evidence from primary source documents, that the drafters did intend these consequences to some degree, though whether this was done to facilitate the liberal ideal of a charismatic individual leading the nation with a representative body beneath him or in an attempt to allow the repression of a future Socialist majority which still seemed to threaten in 1919, can only be speculated upon.

An enquiry into the conceptions of the drafters regarding these elements of the Weimar Constitution has relevance, not only for our understanding of their palpable impact on the events of the 1920s and 1930s, but also for contemporary conceptions of various constitutional forms. The emergence of many new democracies onto the international scene following the break-up of the Soviet bloc – and more recently in the Middle East – means that it is of more than historical interest to note the successes and failures of the drafters of an avowedly democratic Constitution in a country which had only a limited experience of that governmental form, and the reasons they made the decisions they did in drafting the document. A range of studies has been conducted in recent years – particularly following the collapse of the Soviet Union – into the so-called “export potential” of various forms of democratic government, be they presidential, parliamentary or a combination of both. One particularly interesting finding, given the eventual trajectory of the Weimar Republic’s

political life, was that of a seminal study, completed by Adam Przeworski in 2000, which concluded that presidential democracies are, “simply more brittle under all economic and political conditions.”¹³⁷

To draw a wider conclusion, it can be argued that those drafting Constitutions in new democratic societies today should not become so concerned with fears for the parliamentary majorities which could arise in the future that they create an even bigger hindrance to the development and continuation of democratic government by granting overriding power to a directly elected presidential authority. It is also interesting to note – given the allusion made by *Abgeordneter* Fischer to the lessons to be learned from the mistakes of the French Constitution of 1848 – Hugh Brogan’s statement that the constitutional convention in that country at that time was fixated with the same concerns and fears which preoccupied the National Assembly in Weimar:

The committeemen were experienced enough to know that [. . .] the Left [. . .] might win a majority. Haunted by the usual memories the committee supposed that its prime duty was to make sure that the Assembly could never turn into another Convention [. . .]. On the whole, they coalesced as a single device: strengthening the executive.¹³⁸

It must be remembered that the manner in which that Constitution had been drafted led in only three short years to the *coup d'état* of the man who had been elected as the first President of the Second Republic in 1848 – Louis Napoleon – who ruled as a dictator before crowning himself Napoleon III in 1852. The fact that this series of events was mentioned –

¹³⁷ Adam Przeworski *et al.*, *Democracy and Development: Political Institutions and Well-Being in the World 1950-1990* (New York, NY: 2000), p.136.

¹³⁸ Hugh Brogan, *Alexis de Tocqueville: A Life* (London: 2006), p.453.

however tangentially – during the debates in the Weimar, with no effect upon the minds or opinions of the majority of the assembled grandees, only highlights the validity of the hackneyed phrase, which is no less valid for its overuse: those who do not learn from history are condemned to repeat it.

Appendix

The appendix includes all the Articles of the Weimar Constitution which are quoted or referred to in this thesis. The text is taken from the website of the *Deutsches Historisches Museum* at <http://www.dhm.de/lemo/html/weimar/verfassung/index.html>. In that text, paragraphs within Articles are not numbered.

Die Verfassung des Deutschen Reiches

Das deutsche Volk, einig in seinen Stämmen und von dem Willen beseelt, sein Reich in Freiheit und Gerechtigkeit zu erneuern und zu festigen, dem inneren und dem äußeren Frieden zu dienen und den gesellschaftlichen Fortschritt zu fördern, hat sich diese Verfassung gegeben.

[. . .]

Artikel 23

Der Reichstag wird auf vier Jahre gewählt. Spätestens am sechzigsten Tage nach ihrem [sic] Ablauf muß die Neuwahl stattfinden.

Der Reichstag tritt zum ersten Male spätestens am dreißigsten Tage nach der Wahl zusammen.

[. . .]

Artikel 25

Der Reichspräsident kann den Reichstag auflösen, jedoch nur einmal aus dem gleichen Anlaß.

Die Neuwahl findet spätestens am sechzigsten Tage nach der Auflösung statt.

[. . .]

Artikel 43

Das Amt des Reichspräsidenten dauert sieben Jahre. Wiederwahl ist zulässig. Vor Ablauf der Frist kann der Reichspräsident auf Antrag des Reichstags durch Volksabstimmung abgesetzt werden. Der Beschluß des Reichstags erfordert Zweidrittelmehrheit. Durch den Beschluß ist der Reichspräsident an der ferneren Ausübung des Amtes verhindert. Die Ablehnung der Absetzung durch die Volksabstimmung gilt als neue Wahl und hat die Auflösung des Reichstags zur Folge. Der Reichspräsident kann ohne Zustimmung des Reichstags nicht strafrechtlich verfolgt werden.

[. . .]

Artikel 48

Wenn ein Land die ihm nach der Reichsverfassung oder den Reichsgesetzen obliegenden Pflichten nicht erfüllt, kann der Reichspräsident es dazu mit Hilfe der bewaffneten Macht anhalten.

Der Reichspräsident kann, wenn im Deutschen Reiche die öffentliche Sicherheit und Ordnung erheblich gestört oder gefährdet wird, die zur Wiederherstellung der öffentlichen Sicherheit und Ordnung nötigen Maßnahmen treffen, erforderlichenfalls mit Hilfe der bewaffneten Macht einschreiten. Zu diesem Zwecke darf er vorübergehend die in den Artikeln 114, 115, 117, 118, 123, 124 und 153 festgesetzten Grundrechte ganz oder zum Teil außer Kraft setzen.

Von allen gemäß Abs. 1 oder Abs. 2 dieses Artikels getroffenen Maßnahmen hat der Reichspräsident unverzüglich dem Reichstag Kenntnis zu geben. Die Maßnahmen sind auf Verlangen des Reichstags außer Kraft zu setzen.

Bei Gefahr im Verzuge kann die Landesregierung für ihr Gebiet einstweilige Maßnahmen der in Abs. 2 bezeichneten Art treffen. Die Maßnahmen sind auf Verlangen des Reichspräsidenten oder des Reichstags außer Kraft zu setzen.

Das Nähere bestimmt ein Reichsgesetz.

[. . .]

Artikel 50

Alle Anordnungen und Verfügungen des Reichspräsidenten, auch solche auf dem Gebiete der Wehrmacht, bedürfen zu ihrer Gültigkeit der Gegenzeichnung durch den Reichskanzler oder den zuständigen Reichsminister. Durch die Gegenzeichnung wird die Verantwortung übernommen.

[. . .]

Artikel 53

Der Reichskanzler und auf seinen Vorschlag die Reichsminister werden vom Reichspräsidenten ernannt und entlassen.

Artikel 54

Der Reichskanzler und die Reichsminister bedürfen zu ihrer Amtsführung des Vertrauens des Reichstags. Jeder von ihnen muß zurücktreten, wenn ihm der Reichstag durch ausdrücklichen Beschluß sein Vertrauen entzieht.

[. . .]

Artikel 114

Die Freiheit der Person ist unverletzlich. Eine Beeinträchtigung oder Entziehung der persönlichen Freiheit durch die öffentliche Gewalt ist nur auf Grund von Gesetzen zulässig. Personen, denen die Freiheit entzogen wird, sind spätestens am darauffolgenden Tage in Kenntnis zu setzen, von welcher Behörde und aus welchen Gründen die Entziehung der

Freiheit angeordnet worden ist; unverzüglich soll ihnen Gelegenheit gegeben werden, Einwendungen gegen ihre Freiheitsentziehung vorzubringen.

Artikel 115

Die Wohnung jedes Deutschen ist für ihn eine Freistätte und unverletzlich. Ausnahmen sind nur auf Grund von Gesetzen zulässig.

[. . .]

Artikel 117

Das Briefgeheimnis sowie das Post-, Telegraphen- und Fernsprechgeheimnis sind unverletzlich. Ausnahmen können nur durch Reichsgesetz zugelassen werden.

Artikel 118

Jeder Deutsche hat das Recht, innerhalb der Schranken der allgemeinen Gesetze seine Meinung durch Wort, Schrift, Druck, Bild oder in sonstiger Weise frei zu äußern. An diesem Rechte darf ihn kein Arbeits- oder Anstellungsverhältnis hindern, und niemand darf ihn benachteiligen, wenn er von diesem Rechte Gebrauch macht. Eine Zensur findet nicht statt, doch können für Lichtspiele durch Gesetz abweichende Bestimmungen getroffen werden. Auch sind zur Bekämpfung der Schund- und Schmutzliteratur sowie zum Schutze der Jugend bei öffentlichen Schaustellungen und Darbietungen gesetzliche Maßnahmen zulässig.

[. . .]

Artikel 123

Alle Deutschen haben das Recht, sich ohne Anmeldung oder besondere Erlaubnis friedlich und unbewaffnet zu versammeln.

Versammlungen unter freiem Himmel können durch Reichsgesetz anmeldepflichtig gemacht und bei unmittelbarer Gefahr für die öffentliche Sicherheit verboten werden.

Artikel 124

Alle Deutschen haben das Recht, zu Zwecken, die den Strafgesetzen nicht zuwiderlaufen, Vereine oder Gesellschaften zu bilden. Dies [*sic*] Recht kann nicht durch Vorbeugungsmaßnahmen beschränkt werden. Für religiöse Vereine und Gesellschaften gelten dieselben Bestimmungen.

Der Erwerb der Rechtsfähigkeit steht jedem Verein gemäß den Vorschriften des bürgerlichen Rechts frei. Er darf einem Vereine nicht aus dem Grunde versagt werden, daß er einen politischen, sozialpolitischen oder religiösen Zweck verfolgt.

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