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## THE GERMAN FREE PROFESSIONS AFTER 1945\*

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At the end of the Hitler war, the professions in Germany had reached an historic low point, "Zero Hour." Organizationally, they had been taken over by the Nazi *Gleichschaltung* (coordination) in the 1930s and then dissolved by the occupying Allied powers. In terms of personnel, they had been purged of Jews, leftists, women (at least initially) and, thanks to an increasingly indiscriminate wartime military draft, large numbers of ordinary practitioners were left by 1945 in graves, POW camps or hospitals.

Even when the "free professions" were allowed to resume their role on the basis of their pre-1933 arrangements, they faced formidable problems. Such book titles as "Do the Free Professions Still have a Chance" or "Free Professions in Transition" point to insecurities and crises through which they passed. In the case of East Germany (GDR, 1949-89) "free professions" all but disappeared.<sup>1</sup> In West Germany many academically-trained professionals turned to the labor union movement to represent their interests, not exactly a vote of confidence in the effectiveness of traditional autonomous professional associations. The structure of professional practice in West Germany (FRG) intensified a pre-1933 pattern by which most academic professions had a "free" and an employee sector, with restrictions on professional autonomy implied in the bureaucratized public sector as well as in private corporations. The organization and representation of the interests of "learned" professions have come to reflect the complexity of professional life. Accompanying all other changes, the absolute and proportional number of academic professionals has grown in the past 50 years, partly in connection with the expansion of the higher education system and easier access to professional credentials. How has the increased competition for client le worked out for professionals? Have they faced "proletarianization," the hobgoblin of the 1920s and early 1930s? Finally, how will membership in the EU affect German professionals? Let us examine these topics.

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<sup>1</sup> By the *Wende* of 1989 the GDR had only an estimated 600 lawyers for 16 million inhabitants and 500 independently-practicing doctors and dentists. Altogether there were only 1500-2000 *Freiberufler* of all kinds in the entire GDR, from doctors through artists. At the time of the GDR's collapse, West Germany's *Freiberufler* had reached about 400,000, up from 295,000 in 1979. See Heinz Sahner, "Freie Berufe: Bundesrepublik, DDR, Europa," in Heinz Sahner (ed.), *Freie Berufe in der DDR und in den neuen Bundesl ndern* (L neburg, 1991), pp. 13-14.

The shortage of expert personnel to run occupied Germany provided one of several reasons to weaken, then (by March 1948) end the "denazification" of the professional sector. If the western Allies had really believed that "illiberal education" (K. Jarusch) at the university level had corrupted the "liberal professions," they showed little sign of wishing to reform it when they had the chance (nor did reports from their own professional establishments strongly urge them to do so).<sup>2</sup> A few notorious doctors, judges and professional Führer were tried; some others were banned from office or practice, at least for a while. As one American medical school professor wrote in a 1945 report after touring Germany, there were three options for postwar universities: (1) complete denazification with reform of professional higher education; (2) complete denazification without reform; and (3) partial denazification without reform. The second, he thought, resembled the actual policy of Allied military authorities. The third reflected the preference of the professoriate and what was likely to happen<sup>3</sup>

Reform of professional training has been practically identical with *Hochschulreform* over the last 55 years of German history. While the GDR carried out its own SED-driven *Gleichschaltung* in waves from the 1940s through the 1970s, the FRG postponed serious reforms until the mid-1960s, although these have not left most stakeholders satisfied. The first big reforms expanded greatly the number of higher-education students (and hence professional graduates) without providing adequate increases in teachers, staff and facilities.<sup>4</sup> Reforms under discussion today aim to reduce the flood of professionals by limiting the duration of study, scholarship aid or tuition subsidies. While not new by any means, today's reform ideas have received new urgency since reunification in 1990. After that, the relatively small GDR "cadre universities" were expanded and refunctionalized after the West German pattern. Ten years later both eastern and western higher-educational institutions are producing enormous numbers of professional graduates.

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<sup>2</sup> See Charles E. McClelland, "American Reform Efforts: German Professional Education after World War II," *Paedagogica Historica*, New Series, 33 (1997), pp. 265-75. Konrad H. Jarusch, *The Unfree Professions: German Lawyers, Teachers and Engineers, 1900-1950* (Oxford, 1990), especially p. 226.

<sup>3</sup> Wilbur C. Davison, "The German University Medical Schools during the Occupation," *Journal of the American Medical Association*, 129 (1945), p. 1226.

<sup>4</sup> The total number of students at West German universities in 1951 was under 74,000, of which 21% were women; at technical colleges, just under 23,000, of which 4% were women. See FRG, *Statistisches Jahrbuch* (1952), p. 70. With roughly the same population as the German Empire in 1913/14, the FRG had only a few more students by 1951. The equivalent enrollment figures for the Empire's last peacetime year were 70,000 (universities) and 17,000 (technical colleges), with 8% and 11% women, respectively. See German Empire, Statistisches Amt, *Statistisches Jahrbuch für das Deutsche Reich*, 35 (1914), pp. 316-17.

One effect of the expansion of higher-educational opportunities has been to alter the traditional recruitment base of the learned professions. Instead of 1.8% of the 18-25 age cohort (less than 0.3% of the corresponding female cohort) entering West German universities in 1949, in 1961 4.3% of the cohort did (nearly 1% women). The implication of a social revolution or an opening of the most prestigious learned professions to children of workers and peasants cannot, however, be assumed from these statistics. Despite changes in the size and composition of West German social classes, the traditional recruiting grounds for higher education -- the administrative, professional, propertied and academic strata -- held their own in the face of calls for "democratization." Only the children of *Angestellten* (employees), whose share of higher education places increased, and a few more workers' children -- some 5.5% of all students in 1967 but 15% in 1983 -- altered the traditional recruitment pattern slightly in West Germany.<sup>5</sup> After peaking in 1995/6, German higher education enrollments came down slightly to 1.8 million in 1998/9, of which nearly 45% were women -- a major change.<sup>6</sup> Even the GDR, with a conscious policy of denying higher-educational access to the "bourgeoisie," found itself unable to carry off such a revolution with success. Clearly the dominance of the old social strata, known as the *Bildungs- and Besitzbürgertum*, in staffing the learned professions -- like the structure and definition of these strata -- has yielded somewhat to broader recruitment patterns, without, however, creating a socially egalitarian access to the professions.<sup>7</sup>

Let us note that a considerable part of the expansion of higher education since the Hitler war has occurred in areas of professional training traditionally excluded from university circles or that had only established a toe-hold there. Primary school teaching, hardly an "academic" profession before, became one after 1945, for example. The profession of tax advisor (*Steuerberater*), formerly requiring mere accountancy skills, now draws its members in part from university and Fachhochschule (specialist college) graduates. In other words, not all the increase in student numbers since the 1960s has poured into the "old" professions (medicine, law, and law-based civil service, Gymnasium and university teaching, clergy) but also into ones considered "new" in the 1930s (e.g. engineering, psychotherapy) and others that are still not uniformly "academic" even today (e.g. tax advisor, manager).

Describing German professions in an international context always runs the risk of semantic confusion. The term "liberal professions" in English is best rendered by *akademische Berufe* in German, implying a "liberal" or "gentlemanly" education on a tertiary level -- the "old" professions. Traditionally, these were accessible only via the classical high school (Gymnasium) and its completion-exam, the Abitur, or some variant

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<sup>5</sup> See Konrad H. Jarausch, *Deutsche Studenten, 1800-1970* (Frankfurt/M., 1984), pp. 215-16, 234, 242.

<sup>6</sup> FRG, Statistisches Bundesamt, "Hochschulen," <http://www.statistik-bund.de/basis/d/biwiku/hochtxt/htm.>, p. 1.

<sup>7</sup> See Ralph Jessen, *Akademische Elite und kommunistische Diktatur* (Göttingen, 1999).

of that, followed by university study. But German also uses the term *freie Berufe* to distinguish between professions practiced "freely" by an individual entrepreneur and those practiced in an employee or civil-servant capacity. Virtually all the "liberal professions" have a variant involving the latter type of practice, but only a few still today have a "free" sector, notably medicine, law, engineering and natural-science disciplines, the fine arts and journalism. A few others have large sectors of "free" practice (such as *Steuerberater*) but do not consist exclusively of academically-trained graduates. In some cases -- such as the fine arts and journalism -- most practitioners are academically trained but do not possess degrees or certificates to distinguish their competence from that of an autodidact. Naturally the interests, outlook and strategies of the "free" and -- let us say in shorthand -- "bureaucratized" sectors of each profession (whether fully "academicized" or not) dictate divergent actions within the respective professional disciplines and among their representative organizations.

In the evolving economy of the past 50 years, with a higher emphasis on the "service" sector, we should not be surprised to find a majority of academic professionals working as employees in the public and corporate sectors. Law graduates, for example, might as likely pursue a career as judge or state prosecutor, or become a legal consultant for a private corporation, as hang out their shingle as an attorney or private (*Rechtsanwalt*). By the end of the 1990s, a bare majority (50.5%) of physicians worked in hospitals or other institution runs mostly by state and local governments. The minority (43%) still operating as individual or group practitioners, for the most part, effectively worked for the publicly-chartered health-insurance funds (*Krankenkassen*) that leave little leeway for the exercise of professional autonomy in areas from treatment to setting fees. Only six percent of all German physicians still practiced as completely independent entrepreneurs, with so-called "private patients," in 1999.<sup>8</sup>

Thus not even two of the classical "old" professions, law and medicine, not to mention most of the "new" and "aspirant" professions, from engineering and school teaching to social work, can claim that a majority of their practitioners operate as "free" professionals. The degree to which this disqualifies German (and indeed most European) professionals from full use of the Anglo-Saxon label may no longer be assumed automatically. The argument that real "professional" behavior can coexist within bureaucratic or other organizational structures has become increasingly common, with some scholars even positing the "organizationalization" (in preference to the term "professionalization") of administrative structures in which professionals are involved.<sup>9</sup>

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<sup>8</sup> "Ärzttestatistik zum 31. Dezember 1999," *Supplement zum Deutschen Ärzteblatt*, Heft 25 (2000), Figure 1.

<sup>9</sup> Even in the USA, the number of self-employed physicians fell from 80% to 50% between 1931 and 1980; and the number of self-employed lawyers, from 50% to 33% between 1950 and 1990. For an interesting discussion of the impact on organizations made up in large part by professionals, see Stephen R. Barley and Pamela S. Tolbert, "Introduction," in Barley and Tolbert (eds.), *Organizations and Professions* (Greenwich, CT., 1991), p. 2.

Nevertheless, it is my task today to focus on the minority of academic professionals still operating "freely" -- those that are both "liberal" and "free." Time does not allow much attention to the majority, but the situation of the minority of "liberal and free" professionals can also shed light on them.

First, let us examine the fearful question raised just after World War II --- "do the free professions still have a chance?" The market for the services of these professionals has, since then, expanded dramatically. The German Reich of 1900 had five doctors per 100,000 population, a ratio considered already then too high by some experts. Even in densely populated urban areas -- a more sensible index for comparisons with today -- 43:100,000 was considered "crowded." The ratio changed to 74 under the Weimar Republic, thinned to 65 under the Nazis in 1943, but swelled to 159 in the FRG of 1959. By contrast, Germany at the end of the 20th century had 443 doctors per 100,000 population.<sup>10</sup> The number of attorneys per 100,000 rose from 13 (1900) to 24 (1928) before being pared down by the Nazi regime to 22 (1939). By the time the postwar Wirtschaftswunder was in full swing in 1959, the ratio had reached 32; it had almost doubled by 1980 (to 62), rose another half by 1989 (to 94) and had reached 127 by 1999.<sup>11</sup> One can cite similar statistics for virtually all academic professions. To mention but one further example here, the number of architects in Germany reached 120,000 in 1999, with 41% more students finishing their studies in this field than in 1990. Much of this increase, which clearly worries professional leaderships, is attributable to graduates of specialized colleges and women, the latter moving from one-seventh to one-half of all graduates between 1973 and 1999.<sup>12</sup>

Second, how well-organized and influential are these professions? The West German "restoration" of the late 1940s brought back most of the professional organizations smashed or co-opted by the Nazis -- such as the DAV (German Attorneys' Association), DÄV (known today as the Hartmannbund), the VDI (German Engineers' Association), etc. Most "free professions" dealing with confidential or sensitive matters -- such as legal, medical or financial ones -- had also agitated for and achieved professional "chambers" (*Kammern*). These, unlike voluntary professional organizations, are corporations under public law and require membership of all licensed practitioners. They can thus effectively serve as disciplinary bodies representing autonomous self-administration by the profession. They do not exactly compete with coexisting voluntary associations in the same disciplines, and historically they have often been dominated by

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<sup>10</sup> See Charles E. McClelland, *The German Experience of Professionalization* (Cambridge, 1990), pp. 80-1, 137, 224; "Ärzttestatistik," Figure 1.

<sup>11</sup> McClelland, *German Experience*, pp. 155, 193, 223; Bundesrechtsanwaltskammer, "Jurastudenten, Prüfungen, Rechtsanwälte," <http://www.brak.de/aktuelles>, pp. 1-2.

<sup>12</sup> Thomas Walter, "Hochschulabsolventen," <http://www.bundesarchitektenkammer.de/578.php3>, p. 1

activists in the latter). Their existence probably explains why the membership in some voluntary associations is low in comparison to the pre-Hitler era. The DAV or German Bar Association, for example, had only 50,000 members in 1999, less than half the membership of the mandatory-membership lawyers' *Kammern* (with 104,000 members). By contrast, the DAV included two-thirds of German attorneys in 1900.<sup>13</sup> The Hartmannbund, once the powerful equivalent of the German Medical Association before World War I, had a voluntary membership of 42,000, only 12% of Germany's 363,000 licensed physicians in 1999.<sup>14</sup> But it promoted and remains close to yet another chamber, the *Kassenärztliche Vereinigungen* (health-insurance doctors' organization), a combination of mandatory autonomous professional body with disciplinary powers and negotiating partner for the country's health-insurance establishment. There is nothing to prevent physicians working in the public-health sector, e.g. in hospitals, from joining the Hartmannbund, but they do have their own labor union. The *Marburger Bund* represents about half (66,000) of Germany's employee-physicians, whose interests have often been at variance with those of the medical "free professionals." As a parallel to the fissures in the medical profession, individuals graduating from the law faculties might wind up in private practice, be required to join their local lawyers' *Kammer*, and choose to join the DAV or not. Or they might become judges and choose to join the DRB (German Judges League). Or they might become *Beamte* (higher civil servants) and choose to join the DBB (German Civil Servants' League). But there are no *Kammern* for judges and civil servants, since their professional discipline and oversight is built into their bureaucracy.

The most important point is not that German professional life is highly organized or, as far as the "free" branches are concerned, that professional self-administration and autonomy are anchored in such public institutions as chambers. What is notable is the absence of unified professional groups encompassing all functions in the professional spectrum, analogous to the American or British Medical Association or the American Bar Association. This means that, without careful and difficult coordination of the lobbying and negotiating efforts of multiple representative professional organizations, powerful players, such as reigning governments or the insurance industry, are confronting, in effect, limited-issue subgroups of the larger professions in Germany. Recent discussions of sweeping changes in the medical sector, under both the Kohl and Schröder governments, have demonstrated so far that practitioners from all sectors of the medical profession can go out on the street together in protest, but governments yield little.

A third point in evaluating the position of "free professions" in Germany is the degree of prosperity found among practitioners. West German physicians in private practice earned a net average of 158,000 DM in 1979, for example, and 204,000 DM by 1991. By way of comparison, the average net income of architects was about half that

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<sup>13</sup> Deutscher Anwaltverein, "Kurzprofil des DAV," <http://www.anwaltverein.de>, p. 1; Bundesrechtsanwaltskammer, "Jurastudenten...", p. 2.; McClelland, *German Experience*, p. 89.

<sup>14</sup> Hartmannbund, *Jahresbericht 2000* (Bonn, 2000), p. 28.

level.<sup>15</sup> As everywhere else, GPs earned far less than specialists (radiologists being at the top). Dentists incomes, exceptionally, declined. Medicine and law continue to attract university students partly because of this potential prosperity, so much so that medicine has had to adopt a system of rationing educational access in defiance of centuries-old traditions. For the first time since the Great Depression, there even appears to be a surplus of qualified physicians. Through the 1990s physicians' numbers grew by an average of 2.3% per year. Whether because of competition or other factors (such as early retirements or women doctors taking time out to have their children), about 20% of all German doctors were not practicing at the end of the 1990s.<sup>16</sup> Similar growth rates characterize the other "free professions."

All developments in German professions in the last decade have been deeply affected by two major changes: the unification of Germany and the opening of professional fields to international competition in the framework of the European Union. As mentioned already, the GDR had almost no "free professionals" left in 1989. Undoubtedly some of the growth in their overall numbers in unified Germany can be attributed to the creation of an equivalent set of "free professionals" to serve the market of 16 million "new Federal German citizens." The effect of EU agreements allowing professional mobility is at this point harder to gauge and will probably take some years to manifest itself. The most recent statistics for the medical profession, for example, show that only four percent of all doctors in Germany were foreigners. While two-thirds of these are from the European continent, only 27% came from EU member states.<sup>17</sup>

Before moving to some concluding observations, I would like to emphasize one "quiet revolution" in the area of recruitment of professionals. Overcoming covert discrimination in the Weimar era and outright hostility under Hitler, women finally have begun to constitute a significant portion of the members of free professions over the past three to four decades. Women comprised 25% of all German attorneys in 1998 and 26% of its judges. In 1975 only 11% of judges were women.<sup>18</sup> Also in 1998, 37% of practicing physicians in Germany were women.<sup>19</sup> While such figures undoubtedly reflect a quantum leap in professional educational opportunities for women, competition has also increased accordingly. The number of attorneys in the old FRG stood at 18,720 in 1960 but 104,000

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<sup>15</sup> "Reinertrag je Arztpraxisinhaber im Westen," *Gesundheitsbericht für Deutschland 1998*, Table 8.7.2, <http://www.gbe.bund.de>, p. 1.

<sup>16</sup> "Ärzttestatistik", Figure 1.

<sup>17</sup> Ibid.

<sup>18</sup> "Rechtspflege," <http://www.statistik-bund.de/basis/d/recht2.htm>, p. 1; "Anteil der Frauen in der Richterschaft," <http://www.brak.de/aktuelles/richter30.10.00.html>, p. 2.

<sup>19</sup> "Personal des Gesundheitswesens," <http://www.statistik-bund.de/d/gesu/gesutab2.htm>, p. 1.



in 1999 -- an increase of 555%. The number of physicians increased dramatically, too -- over 100% since 1970.<sup>20</sup>

Now let me conclude with some general observations about the postwar "free professions" in Germany. First, they have, I think, fulfilled in large part the "professionalization project" as identified by their own organizations before the Hitler era. They are recognized, both as voluntary organizations and -- in the forms of chambers -- corporations of public law. As such they negotiate with state and private entities that codetermine such central professional matters as fee structures, the treatment of clients and patients, professional education and ethics.

The expansion of educational opportunities since the 1960s has inevitably led to a certain lessening of the social prestige of medical and legal degrees; one can question whether this is a cause or just a result of the decline of the German *Bildungsbürgertum*. Certainly members of the "free professions" have never been as prosperous financially as they are now, despite what previous generations of practitioners would have considered potentially ruinous competition from continuing floods of qualified graduates. This prosperity continues to attract new generations, since the rewards now counterbalance, and even outweigh, the considerable income and matchless security of professional employment in the public sector.

Second, for all their successes in fulfilling long-standing agendas, German professions are partners in control, not monopolistic masters of the market in services. Because Germans have never had the market freedom Americans (and to some degree Britons) take for granted, their professions have never been able to fulfill a model of market monopolization conceived by social scientists observing America and Britain. Thus German professions follow the fissure-lines of German social and economic structures. Depending on one's perspective, then, the exclusion of the majority of doctors and at least a large minority of law graduates from autonomous, private practice might be taken as a sign of "bureaucratization" or dependent, and therefore deprofessionalized, status. But the inclusion even of employed or civil-service professionals in powerful *Kammern* or chambers (and in some cases labor unions), with a high degree of lobbying and organizational inclusion, also represents a great improvement in the ability to press the interests of professionals compared to 1940, 1930 or even 1900. And yet, as recent confrontations indicate, not even an across-the-board alliance of all health-care professionals can do more than modify and delay government determination to balance budgets by rationing health care. The open question remains: are German doctors, for example, being "deprofessionalized" by bureaucratic and legislative limitations on their scope as practitioners? If so, are they more or less deprofessionalized than their American counterparts confronting similar limitations in a notionally "free market" dominated by profit-oriented "health maintenance organizations" or HMOs?

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<sup>20</sup> "Jurastudenten, Prüfungen, Rechtsanwälte," pp. 1-2; "Gesundheitswesen," p. 1.

A third general observation relates to the broader topic of this conference, the role of professionals in postwar society. In contrast to the 1900 image of the professional as an "autonomous personality" shaped by classical and higher education to join the Bildungsbürgertum, today's image portrays a highly-skilled technocrat, a well-compensated part of an "achievement stratum" that administers but does not rule. This stratum is more diffuse in its social and political outlook than its predecessors of even 30 years ago, partly because of an unprecedented opening of its membership -- via educational expansion -- by broader social recruitment. It is a functional elite, but no longer a part of the political and social elite of former days. When all segments of a profession band together on issues (such as health insurance reform) they can have some impact on public policy, even if less than they wish. Generally, though, professional associations are today lumped together with other "interest groups" as part of the complex balance in a pluralistic democracy. If one deducts the "learned professionals" now working for public or private employers, one finds among the "free professionals" only a fraction of the medically, legally and artistically trained graduates. Most "free professions" have achieved most of the agenda they set a half-century ago. To answer an old question, the "free professions" do have a future chance in Germany, and hence in Europe. Whether their relatively small size alongside a much vaster -- and growing -- mass of bureaucratized and corporatized professionals allows them to play a significant social role in a globalizing world remains an open and fascinating question.

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