# The Guild

**Maximilian Steinbeis**

07.10.2022 doi: 10.17176/20221008-110257-0

The Association of German Teachers of Constitutional Law turns 100 this year. Yesterday there was a big ceremony as part of this year's *Staatsrechtslehrertagung* in the venerable old *Ratshalle* of the city of Bremen, and I had the privilege of being there. It was a very uplifting experience, but also a very strange one. The *Staatsrechtslehrervereinigung*, for those who don't know it, is not just any academic learned society. It is something special. But what exactly, and why, is a question that is not easy to answer and which seems endlessly fascinating to themselves. The humongous festschrift under the title "*Streitsache Staat*" (roughly: litigation cause / matter of controversy state), which was written for this occasion and unveiled yesterday as the highlight of the ceremony, devotes a total of over 1000 pages of text to the search for an answer. I am not a *Staatsrechtslehrer* myself, not by a far shot. But I share this fascination. I find that really interesting.

The association is made up of people and does things, neither of which seems special at first glance: it is the professional society of German public law scholars, and it holds a yearly conference at which lectures are given and critically discussed. So far, so unremarkable. What makes it special is the limits it imposes on itself in both respects: Not everyone can become a member but only specific people, and it is not always easy to say who exactly and why. The lectures are held and discussed in a very specific way, not everyone can listen and criticize but only specific people, and who exactly and how exactly and to what end exactly – all that remains strangely mysterious and unspecified.

At any rate, what seems fairly clear to me is that, whatever motivates these exclusions, it is not the interest in achieving the highest possible scientific yield. The fact that the Association only accepts habilitated scholars and/or university professors and categorically excludes its junior ranks seems to me to run diametrically counter to this interest. The Association locks out, literally, researchers in the most innovative and intensive and possibly also most productive phase of their lives, so that they turn away in a huff and hold their own event, self-deprecatingly called a "*kleine Staatsrechtslehrertagung*" (small constitutional law scholars' conference), where they in turn lock out the habilitated scholars. I can guess what the point of all this locking out is. No one can tell me that it's all in the interest of good scholarship.

How the lectures come about, are held and discussed is also tightly regulated. It's not like members can apply in answer to a call, or even make suggestions. The assignment comes as a stroke of fate, along with the topic to be discussed. You can't just turn it down. You can't say, I'm sorry, I have that huge research project on my hands, and we're planning for another baby, and I don't really find the topic that exciting, so why don't we see if it works out next year or the year after that? That's an absolute no-no. You have to do it (and of course want to, since it's such an honour).

The lightning is hurled by the three-member board, which essentially does nothing but this, as the burden of the actual conference organisation is hung around the neck of a fourth so-called co-opted board member from the local university. The topic is not worked out in a discussion process, but is informally decided between the board members. In this anniversary year, the current board deemed the general topic of "Constituted Freedom" appropriate. When I arrived in Bremen on Thursday afternoon, the members had spent the whole day lecturing on / discussing "Autonomy and Heteronomy in Liberal Democracy". It's not as if there weren't all sorts of really urgent stuff going on out there right now. But then, of course, you can always talk about Autonomy and Heteronomy, too.

The lectures are actually not held, but read aloud. They have to be delivered exactly as they will be

printed later. The contributions to the plenary discussion afterwards, it is said, are sometimes also formulated in advance. Criticism can no longer have any effect on the lecturer's output anyway, because the printed version has to be ready before the lecture is given (a point Christoph Möllers emphasises in his contribution to the festschrift). No public is allowed, so I could not have listened even if I had wanted to. Which I'm not at all sure I would. I honestly imagine it to be excruciatingly boring mostly. Several members confirmed this assumption to me yesterday, sometimes in rather drastic terms.

Why do they do it that way? They can't possibly enjoy it, can they? Why don't they open it up more?

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Perhaps this constant drawing of boundaries becomes more plausible if one looks at the association not so much as a scientific institution, but as a club: Exclusion is the whole point. Members only. It excludes so much because it has to include so much.

The Association was founded in 1922, as Christoph Schönberger describes in the opening chapter of the festschrift, as an attempt by nationalist conservative, anti-republican constitutional law professors with a view to forestalling their own marginalisation: The Berlin professors Heinrich Triepel and Rudolf Smend feared the founding of a republican constitutional law teachers' association in which they and their fellow conservatives would no longer have a place and would lose much of their political and social clout. To prevent this, this opposition of political conviction was to be sublated in an "Association of German Teachers of Constitutional Law" and transformed into an opposition of scholarly opinion: This was then the famous Weimar *Methodenstreit*, "*Geisteswissenschaftler*" versus "*Positivisten*", which (with exceptions, such as Hermann Heller) largely ran along the political conflict line.

A similar dialectic, described by Anna-Bettina Kaiser, occurred after the end of the Nazi regime and the founding of the Federal Republic. The integration of Nazi supporters and collaborators (while hardly anyone cared much about émigrés like Hans Kelsen) was the subject of a dispute between "*Arbeitsgemeinschaftler*", ostensibly concerned with non-political scholarship as if nothing much had happened, and "*Grundgesetzler*", who insisted on keeping compromised scholars out, until this conflict turned into the much-described scholarly dispute between the Schmitt and Smend schools. It took the Association until the turn of the millennium to finally make its own handling of its Nazi past the subject of a conference.

The price for this kind of integration seems to me to be the peculiar introversion that characterises the Association. The public has to stay outside the door, they can read everything in the conference proceedings afterwards if they are interested (which, according to my impression, they rarely do). As Franz Reimer reconstructs (and criticises) in his chapter, taking a public position on legal policy, which its statutes have expressly made its purpose since 1922, practically does not take place at all. In the midst of the most serious global crisis of liberal democratic constitutionalism since 1945, virtually nothing is heard publicly from the German academic society of those who reflect on liberal democratic constitutionalism by profession. The "unity" of the discipline must not be put at risk.

Another price is that one no longer even gets to see what one excludes with the supposedly formal and neutral and non-political exclusion criteria. The Association's name refers to male *Staatsrechtslehrer*. "Of course, it's not just about male colleagues," Christian Waldhoff writes innocently (p. 174), "the Association has always been open to women in theory, even if the first female member was only admitted in 1970." In theory, indeed: The number of female members was 0 until 1970 and remained 1 until 1985, and even today, in 2022, women make up merely 14 per cent of the membership. Meanwhile, the "women's question", according to Pascale Cancik, is a "non-issue" in the Association (p. 800). Not to mention, quite literally, persons of colour.

The Association as a club: as a member, you like going there every once in a while, meet people you've known for a long time and people you don't know at all, it's nice as a tax lawyer to be able to chat with an international lawyer, you never have the opportunity otherwise. Still, you are among your own. Members only. But make no mistake: not all members are the same. Don't hope that the exclusion will end once you're in. It's true that things are not as authoritarian as they used to be, where non-tenured habilitated scholars, newly admitted members and associate professors were generally made to understand that it would be considered inappropriate if they spoke up in the discussion at all. That kind of restrictions no longer exists. But what does exist, at least among some, as I learned yesterday, is a distinction between what they call A colleagues, B colleagues and C colleagues: The A category is allowed to comment on anything, expertise or not. The B category speaks up when their particular research expertise is in demand. The C category generally has to keep its mouth shut.

It is very common among its members to refer to their club as "*die Zunft*" (the guild). This fits strikingly well, as Hermann Pünder shows in the final chapter of the anniversary volume: The doctoral apprentices at the feet of the cathedra, the habilitating journeymen on their post-doctoral wanderings, and finally the masterpiece, the habilitation, and with it access to the annual guild meeting and the chance to be chosen to sing the dreaded, longed-for master song in front of the *Staatsrechtslehrertagung*, full of fear that Sixtus Beckmesser will mark you down. That is all very pretty and fits in well with the Biedermeier atmosphere of this whole event. I wonder, though, if contemporary scholarship wouldn't be better served with freedom of trade?

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That's all for now. All the best, and see you next week!

Max Steinbeis

ABOUT THE AUTHOR
**Maximilian Steinbeis**
Maximilian Steinbeis is a legal journalist and writer and the founder and director of Verfassungsblog.

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